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## Nebraska Revised Statutes: Selected Provisions Pertaining to Child Welfare and Juvenile Justice, 2007 Edition

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**NEBRASKA REVISED STATUTES:**  
**SELECTED PROVISIONS**  
**PERTAINING TO CHILD WELFARE**  
**AND JUVENILE JUSTICE**

**2007 Edition**

**This Edition is Current through  
the 2007 Regular Legislative Session <sup>1</sup>**

This manual was compiled by the University of Nebraska-Lincoln's Center on Children, Families, and the Law, 121 S. 13th Street, Suite 302, Lincoln, Nebraska 68588-0227 (402/472-3479), with partial funding provided by the Nebraska Department of Health and Human Services System and the Nebraska Court Improvement Project.

Note: Every attempt was made to ensure the accuracy of the provisions set forth in this manual, but the user is cautioned that if citing any sections or relying on complete accuracy, the official statutory source should be used. Please contact Kathryn A. Olson, Center on Children, Families, and the Law at the above address, if any errors are discovered.

**NEBRASKA REVISED STATUTES**

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<sup>1</sup> Certain sections included in this edition have effective dates later than September 1, 2007.

**SELECTED PROVISIONS PERTAINING TO CHILD WELFARE AND JUVENILE JUSTICE**

**(Current through the 2007 Regular Legislative Session)**

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## I. DUTY AND POWER OF DHHS REGARDING THE PROTECTION OF CHILDREN

### **43-707. Protection of children; Department of Health and Human Services; powers and duties.**

The Department of Health and Human Services shall have the power and it shall be its duty:

- (1) To promote the enforcement of laws for the protection and welfare of children born out of wedlock, mentally and physically handicapped children, and dependent, neglected, and delinquent children, except laws the administration of which is expressly vested in some other state department or division, and to take the initiative in all matters involving such children when adequate provision therefor has not already been made;
- (2) To visit and inspect public and private institutions, agencies, societies, or persons caring for, receiving, placing out, or handling children;
- (3) To prescribe the form of reports required by law to be made to the departments by public officers, agencies, and institutions;
- (4) To exercise general supervision over the administration and enforcement of all laws governing the placing out and adoption of children;
- (5) To advise with judges and probation officers of courts of domestic relations and juvenile courts of the several counties, with a view to encouraging, standardizing, and coordinating the work of such courts and officers throughout the state; and
- (6) To regulate the issuance certificates or licenses to such institutions, agencies, societies, or persons and to revoke such licenses or certificates for good cause shown. If a license is refused or revoked, the refusal or revocation may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act.

**43-708. Parent; guardian; or custodian; powers.** No official, agent, or representative of the Department of Health and Human Services shall, by virtue of sections 43-701 to 43-709, have any right to enter any home over the objection of the occupants thereof or to take charge of any child over the objection of the parents, or either of them, or of the person standing in loco parentis or having the custody of such child. Nothing in sections 43-701 to 43-709 shall be construed as limiting the power of a parent or guardian to determine what treatment or correction shall be provided for a child or the agency or agencies to be employed for such purposes.

## II. GENERAL SOCIAL SERVICES PROVISIONS

**68-1202. Social services; services included.** Social services may be provided on behalf of recipients with payments for such social services made directly to vendors. Social services shall include those mandatory and optional services to former, present, or potential social services recipients provided for under the federal Social Security Act, as such act existed on September 4, 2005, and described by the State of Nebraska in the approved State Plan for Services. Such services may include, but shall not be limited to, foster care for children, child care, family planning, treatment for alcoholism and drug addiction, treatment for persons with mental retardation, health-related services, protective services for children, homemaker services, employment services, foster care for adults, protective services for adults, transportation services, home management and other functional education services, housing improvement services, legal services, adult day services, home delivered or congregate meals, educational services, and secondary prevention services, including, but not limited to, home visitation, child screening and early intervention, and parenting education programs.

**68-1203. Social services; provided or purchased; dependent children and families; aged, blind, or disabled persons.** Social services shall be provided or purchased for dependent children and families, aged persons, blind individuals, and disabled individuals as defined by state law and to former and potential recipients as defined in federal regulations.

**68-1204. Social services or specialized developmental disability services; Director of Health and Human Services; rules and regulations; agreements; fee schedules.**

(1) For the purpose of providing or purchasing social services described in section 68-1202, the state hereby accepts and assents to all applicable provisions of the federal Social Security Act, as such act existed on July 1, 2006. The Department of Health and Human Services may adopt and promulgate rules and regulations, enter into agreements, and adopt fee schedules with regard to social services described in section 68-1202.

(2) The department shall adopt and promulgate rules and regulations to administer funds under Title XX of the federal Social Security Act, as such title existed on July 1, 2006, designated for specialized developmental disability services.

**68-1205. Matching funds.** The matching funds required to obtain the federal share of the services described in section 68-1202 may come from either state, county, or donated sources in amounts and other provisions to be determined by the Department of Health and Human Services.

**68-1206. Social services; administration; contracts; payments.**

(1) The Department of Health and Human Services shall administer the program of social services in this state. The department may contract with other social agencies for the purchase of social services at rates not to exceed those prevailing in the state or the cost at which the department could provide those services. The statutory maximum payments for the separate program of aid to dependent children shall apply only to public assistance grants and shall not apply to payments for social services.

(2) In determining the rate or rates to be paid by the department for child care as defined in section 43-2605, the department shall adopt a fixed-rate schedule for the state or a fixed-rate schedule for an area of the state applicable to each child care program category of provider as defined in section 71-1910 which may claim reimbursement for services provided by the federal Child Care Subsidy program, except that the department shall not pay a rate higher than that charged by an individual provider to that provider's private clients. The schedule may provide separate

rates for care for infants, for children with special needs, including disabilities or technological dependence, or for other individual categories of children. The schedule shall be effective on October 1 of every year and shall be revised annually by the department.

**68-1207. Director of Health and Human Services; public child welfare services; supervise; caseload requirements.** The Department of Health and Human Services shall supervise all public child welfare services as described by law. The department shall establish and maintain caseloads to carry out child welfare services which provide for adequate, timely, and indepth investigations and services to children and families. In establishing the standards for such caseloads, the department shall (1) include the workload factors that may differ due to geographic responsibilities, office location, and the travel required to provide a timely response in the investigation of abuse and neglect, the protection of children, and the provision of services to children and families in a uniform and consistent statewide manner and (2) consider workload standards recommended by national child welfare organizations and factors related to the attainment of such standards. The department shall consult with the appropriate employee representative in establishing such standards. To carry out the provisions of this section, the Legislature shall provide funds for additional staff.

**68-1207.01. Director of Health and Human Services; caseloads report; contents.**

The Department of Health and Human Services shall annually provide a report to the Legislature and Governor outlining the caseloads of child protective services, the factors considered in their establishment, and the fiscal resources necessary for their maintenance. Such report shall include:

- (1) A comparison of caseloads established by the department with the workload standards recommended by national child welfare organizations along with the amount of fiscal resources necessary to maintain such caseloads in Nebraska;
- (2)(a) The number of child welfare services caseworkers and case managers employed by the State of Nebraska and child welfare services workers, providing services directly to children and families, who are under contract with the State of Nebraska or employed by a private entity under contract with the State of Nebraska and (b) statistics on the average length of employment in such positions, statewide and by health and human services area;
- (3)(a) The average caseload of child welfare services caseworkers and case managers employed by the State of Nebraska and child welfare services workers, providing services directly to children and families, who are under contract with the State of Nebraska or employed by a private entity under contract with the State of Nebraska and (b) the outcomes of such cases, including the number of children reunited with their families, children adopted, children in guardianships, placement of children with relatives, and other permanent resolutions established, statewide and by health and human services area; and
- (4) The average cost of training child welfare services caseworkers and case managers employed by the State of Nebraska and child welfare services workers, providing services directly to children and families, who are under contract with the State of Nebraska or employed by a private entity under contract with the State of Nebraska, statewide and by health and human services area.

**68-1208. Rules and regulations; right of appeal and hearings.** Authority to adopt rules and regulations and the right to appeal and hearing shall be the same in the program of social services as in the program of assistance to families and children and the aged, blind, or disabled.

**68-1209. Applications for social services; information; safeguarded.** Information regarding applicants for or



recipients of social services shall be safeguarded and shall be used only for purposes connected with the administration of social services.

**68-1210. Director of Health and Human Services; certain foster care children; payment rates.**

Notwithstanding any other provision of law, the Department of Health and Human Services shall have the authority through rule or regulation to establish payment rates for children with special needs who are in foster care and in the custody of the department.

### III. FAMILY POLICY ACT

#### **43-532. Family policy; declaration; legislative findings.**

(1) The Legislature finds and declares that children develop their unique potential in relation to a caring social unit, usually the family, and other nurturing environments, especially the schools and the community. The Legislature further finds that the state shall declare a family policy to guide the actions of state government in dealing with problems and crises involving children and families.

(2) When children and families require assistance from a department, agency, institution, committee, or commission of state government, the health and safety of the child is the paramount concern and reasonable efforts shall be made to provide such assistance in the least intrusive and least restrictive method consistent with the needs of the child and to deliver such assistance as close to the home community of the child or family requiring assistance as possible. The policy set forth in this subsection shall be (a) interpreted in conjunction with all relevant laws, rules, and regulations of the state and shall apply to all children and families who have need of services or who, by their circumstances or actions, have violated the laws, rules, or regulations of the state and are found to be in need of treatment or rehabilitation and (b) implemented through the cooperative efforts of state, county, and municipal governments, legislative, judicial, and executive branches of government, and other public and private resources.

(3) The family policy objectives prescribed in sections 43-532 to 43-534 shall not be construed to mean that a child shall be left in the home when it is shown that continued residence in the home places the child at risk and does not make the health and safety of the child of paramount concern.

**43-533. Family policy; guiding principles.** The following principles shall guide the actions of state government and departments, agencies, institutions, committees, courts, and commissions which become involved with children and families in need of assistance or services:

(1) Prevention, early identification of problems, and early intervention shall be guiding philosophies when the state or a department, agency, institution, committee, court, or commission plans or implements services for families or children when such services are in the best interests of the child;

(2) When families or children request assistance, state and local government resources shall be utilized to complement community efforts to help meet the needs of such families or the needs and the safety and best interests of such children. The state shall encourage community involvement in the provision of services to families and children, including as an integral part, local government and public and private group participation, in order to encourage and provide innovative strategies in the development of services for families and children;

(3) To maximize resources the state shall develop methods to coordinate services and resources for families and children. Every child-serving department, agency, institution, committee, court, or commission shall recognize that the jurisdiction of such department, agency, institution, committee, court, or commission in serving multiple-need children is not mutually exclusive;

(4) When children are removed from their home, permanency planning shall be the guiding philosophy. It shall be the policy of the state (a) to make reasonable efforts to reunite the child with his or her family in a time frame 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 concern, 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 parents, to give preference to relatives as a placement resource, and (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

(5) When families cannot be reunited and when active parental involvement is absent, adoption shall be aggressively pursued. Absent the possibility of adoption other permanent settings shall be pursued. In either situation, the health, safety, and best interests of the child shall be the overriding concern. Within that context, preference shall be given to relatives for the permanent placement of the child.

**43-534. Family policy; annual statement required.** Every department, agency, institution, committee, and commission of state government which is concerned or responsible for children and families shall submit, as part of the annual budget request of such department, agency, institution, committee, or commission, a comprehensive statement of the efforts such department, agency, institution, committee, or commission has taken to carry out the policy and principles set forth in sections 43-532 and 43-533. The statement shall include, but not be limited to, a listing of programs provided for children and families and the priority of such programs, a summary of the expenses incurred in the provision and administration of services for children and families, the number of clients served by each program, and data being collected to demonstrate the short-term and long-term effectiveness of each program.

#### IV. CHILD ABUSE MANDATORY REPORTING PROVISIONS

**28-710. Act, how cited; terms, defined.**

(1) Sections 28-710 to 28-727 shall be known and may be cited as the Child Protection Act.

(2) For purposes of the Child Protection Act:

(a) Child abuse or neglect means knowingly, intentionally, or negligently causing or permitting a minor child to be:

(i) Placed in a situation that endangers his or her life or physical or mental health;

(ii) Cruelly confined or cruelly punished;

(iii) Deprived of necessary food, clothing, shelter, or care;

(iv) Left unattended in a motor vehicle if such minor child is six years of age or younger;

(v) Sexually abused; or

(vi) 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;

(b) Department means the Department of Health and Human Services;

(c) Law enforcement agency means the police department or town marshal in incorporated municipalities, the office of the sheriff in unincorporated areas, and the Nebraska State Patrol;

(d) Out-of-home child abuse or neglect means child abuse or neglect occurring in day care homes, foster homes, day care centers, group homes, and other child care facilities or institutions; and

(e) Subject of the report of child abuse or neglect means the person or persons identified in the report as responsible for the child abuse or neglect.

**28-711. Child subjected to abuse or neglect; report; contents; toll-free number.**

(1) When any physician, medical institution, nurse, school employee, social worker, or other person has reasonable cause to believe that a child has been subjected to child abuse or neglect or observes such child being subjected to conditions or circumstances which reasonably would result in child abuse or neglect, he or she shall report such incident or cause a report of child abuse or neglect 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 abused or neglected child, the address of the person or persons having custody of the abused or neglected child, the nature and extent of the child abuse or neglect or the conditions and circumstances which would reasonably result in such child abuse or neglect, any evidence of previous child abuse or neglect including the nature and extent, and any other information which in the opinion of the person may be helpful in establishing the cause of such child abuse or neglect and the identity of the perpetrator or perpetrators. Law enforcement agencies receiving any reports of child abuse or neglect under this subsection shall notify the the department pursuant to section 28-718 on the next working day by telephone or mail.

(2) The department shall establish a statewide toll-free number to be used by any person any hour of the day or

night, any day of the week, to make reports of child abuse or neglect. Reports of child abuse or neglect not previously made to or by a law enforcement agency shall be made immediately to such agency by the department.

**28-712. Repealed. Laws 1992, LB 1184, s. 25.**

**28-713. Reports of abuse or neglect; law enforcement agency; department; duties.** Upon the receipt of a call reporting child abuse and neglect as required by section 28-711:

(1) It is the duty of the law enforcement agency to investigate the report, to take immediate steps to protect the child, and to institute legal proceedings if appropriate. In situations of alleged out-of-home child abuse or neglect if the person or persons to be notified have not already been notified and the person to be notified is not the subject of the report of child abuse or neglect, the law enforcement agency shall immediately notify the person or persons having custody of each child who has allegedly been abused or neglected that such report of alleged child abuse or neglect has been made and shall provide such person or persons with information of the nature of the alleged child abuse or neglect. The law enforcement agency may request assistance from the department during the investigation and shall, by the next working day, notify either the hotline or the department of receipt of the report, including whether or not an investigation is being undertaken by the law enforcement agency. A copy of all reports, whether or not an investigation is being undertaken, shall be provided to the department;

(2) In situations of alleged out-of-home child abuse or neglect if the person or persons to be notified have not already been notified and the person to be notified is not the subject of the report of child abuse or neglect, the department shall immediately notify the person or persons having custody of each child who has allegedly been abused or neglected that such report of alleged child abuse or neglect has been made and shall provide such person or persons with information of the nature of the alleged child abuse or neglect and any other information that the department deems necessary. The department shall investigate for the purpose of assessing each report of child abuse or neglect to determine the risk of harm to the child involved. The department shall also provide such social services as are necessary and appropriate under the circumstances to protect and assist the child and to preserve the family;

(3) The department may make a request for further assistance from the appropriate law enforcement agency or take such legal action as may be appropriate under the circumstances;

(4) The department shall, by the next working day after receiving a report of child abuse or neglect under subdivision (1) of this section, make a written report or a summary on forms provided by the department to the proper law enforcement agency in the county and enter in the tracking system of child protection cases maintained pursuant to section 28-715 all reports of child abuse or neglect opened for investigation and any action taken; and

(5) The department shall, upon request, make available to the appropriate investigating law enforcement agency and the county attorney a copy of all reports relative to a case of suspected child abuse or neglect.

**28-713.01. Cases of abuse or neglect; classification of report; notice to subject; when; contents.** Upon completion of the investigation pursuant to section 28-713:

(1) In situations of alleged out-of-home child abuse or neglect, the person or persons having custody of the allegedly abused or neglected child or children shall be given written notice of the results of the investigation 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 of child abuse or neglect shall be given written notice of the determination of the case

and whether the subject of the report of child abuse or neglect will be entered into the central register of child protection cases maintained pursuant to section 28-718 under the criteria provided in section 28-720.

Such notice to the subject shall be sent by certified mail to the last-known address of the subject of the report of child abuse or neglect and shall include:

- (a) The nature of the report;
- (b) The classification of the report under section 28-720; and
- (c) Notification of the right of the subject of the report of child abuse or neglect to a hearing and appeal in accordance with section 28-723.

**28-714. Privileged communications; not grounds for excluding evidence.** The privileged communication between patient and physician, between client and professional counselor, and between husband and wife, shall not be a ground for excluding evidence in any judicial proceeding resulting from a report of child abuse or neglect required by section 28-711.

**28-715. Tracking system; department; duties; use authorized.** The department shall retain all information from all reports of suspected child abuse or neglect required by section 28-711 and all records generated as a result of such reports in a tracking system of child protection cases. The tracking system shall be used for statistical purposes as well as a reference for future investigations if subsequent reports of child abuse or neglect are made involving the same victim or subject of a report of child abuse or neglect.

**28-716. Person participating in an investigation or making report; immune from liability; civil or criminal.** Any person participating in an investigation or the making of a report of child abuse or neglect required by section 28-711 or participating in a judicial proceeding resulting therefrom shall be immune from any liability, civil or criminal, that might otherwise be incurred or imposed, except for maliciously false statements.

**28-717. Violations; penalty.** Any person who willfully fails to make any report of child abuse or neglect required by section 28-711 shall be guilty of a Class III misdemeanor.

## V. CENTRAL REGISTER OF CHILD PROTECTION CASES AND CHILD FATALITY INFORMATION

**28-718. Child protection cases; central register.** There shall be a central register of child protection cases maintained in the department containing records of all reports of child abuse or neglect opened for investigation as provided in section 28-713 and classified as either court substantiated or inconclusive as provided in section 28-720.

**28-719. Child abuse and neglect records; access; when.** Upon complying with identification requirements established by regulation of the department, or when ordered by a court of competent jurisdiction, any person legally authorized by section 28-722, 28-726, or 28-727 to have access to records relating to child abuse and neglect may request and shall be immediately provided the information requested in accordance with the requirement of the Child Protection Act. Such information shall not include the name and address of the person making the report of child abuse or neglect. The names and other identifying data and the dates and the circumstances of any persons requesting or receiving information from the central register of child protection cases maintained pursuant to section 28-718 shall be entered in such register record.

**28-720. Cases; central register; classification.** All cases entered into the central register of child protection cases maintained pursuant to section 28-718 shall be classified as one of the following:

- (1) Court substantiated, if a court of competent jurisdiction has entered a judgment of guilty against the subject of the report of child abuse or neglect upon a criminal complaint, indictment, or information or there has been an adjudication of jurisdiction of a juvenile court over the child under subdivision (3)(a) of section 43-247 which relates or pertains to the report of child abuse or neglect;
- (2) Court pending, if a criminal complaint, indictment, or information or a juvenile petition under subdivision (3)(a) of section 43-247, which relates or pertains to the subject of the report of abuse or neglect, has been filed and is pending in a court of competent jurisdiction; or
- (3) Inconclusive, if the department's determination of child abuse or neglect against the subject of the report of child abuse or neglect was made, by a preponderance of the evidence, based upon an investigation pursuant to section 28-713.

**28-720.01. Unfounded reports; how treated.** All reports of child abuse or neglect which are not under subdivision (1), (2), or (3) of section 28-720 shall be considered unfounded and shall be maintained only in the tracking system of child protection cases pursuant to section 28-715 and not in the central register of child protection cases maintained pursuant to section 28-718.

**28-721. Central register; record; amend, expunge, or remove.** At any time, the department may amend, expunge, or remove from the central register of child protection cases maintained pursuant to section 28-718 any record upon good cause shown and upon notice to the subject of the report of child abuse or neglect.

**28-722. Central register; subject of report; access to information.** Upon request, a subject of the report of child abuse or neglect or, if such subject is a minor or otherwise legally incompetent, the guardian or guardian ad litem of the subject, shall be entitled to receive a copy of all information contained in the central register of child protection cases maintained pursuant to section 28-718 pertaining to his or her case. The department shall not release data that would be harmful or detrimental or that would identify or locate a person who, in good faith, made

a report of child abuse or neglect or cooperated in a subsequent investigation unless ordered to do so by a court of competent jurisdiction.

**28-723. Subject of report; request to amend, expunge, or remove information; denied; hearing; decision; appeal.** At any time subsequent to the completion of the department's investigation, the subject of the report of child abuse or neglect may request the department to amend, expunge identifying information from, or remove the record of the report from the central register of child protection cases maintained pursuant to section 28-718. If the department refuses to do so or does not act within thirty days, the subject of the report of child abuse or neglect shall have the right to a fair hearing within the department to determine whether the record of the report of child abuse or neglect should be amended, expunged, or removed on the grounds that it is inaccurate or that it is being maintained in a manner inconsistent with the Child Protection Act. Such fair hearing shall be held within a reasonable time after the subject's request and at a reasonable place and hour. In such hearings, the burden of proving the accuracy and consistency of the record shall be on the department. A juvenile court finding of child abuse or child neglect shall be presumptive evidence that the report was not unfounded. The hearing shall be conducted by the head of the department or his or her designated agent, who is hereby authorized and empowered to order the amendment, expunction, or removal of the record to make it accurate or consistent with the requirements of the act. The decision shall be made in writing, at the close of the hearing, or within thirty days thereof, and shall state the reasons upon which it is based. Decisions of the department may be appealed under the provisions of the Administrative Procedure Act.

**28-724. Record; amendment, expunction, or removal; notice.** Written notice of any amendment, expunction, or removal of any record in the central register of child protection cases maintained pursuant to section 28-718 shall be served upon the subject of the report of child abuse or neglect. The department shall inform any other individuals or agencies which received such record of any amendment, expunction, or removal of such record.

**28-725. Information, report; confidential; violation; penalty.** All information of the department concerning reports of child abuse or neglect of noninstitutional children, including information in the tracking system of child protection cases maintained pursuant to section 28-715 or records in the central register of child protection cases maintained pursuant to section 28-718, and all information of the department generated as a result of such reports or records, shall be confidential and shall not be disclosed except as specifically authorized by the Child Protection Act and sections 28-734 to 28-739 or other applicable law. The subject of the report of child abuse or neglect may authorize any individual or organization to receive the following information from the central register of child protection cases maintained pursuant to section 28-718 which relates or pertains to him or her: (1) The date of the alleged child abuse or neglect; and (2) the classification of the case pursuant to section 28-720. Permitting, assisting, or encouraging the unauthorized release of any information contained in such reports or records shall be a Class V misdemeanor.

**28-726. Information; access.** Except as provided in this section and sections 28-722 and 28-734 to 28-739, no person, official, or agency shall have access to information in the tracking system of child protection cases maintained pursuant to section 28-715 or in records in the central register of child protection cases maintained pursuant to section 28-718 unless in furtherance of purposes directly connected with the administration of the Child Protection Act. Such persons, officials, and agencies having access to such information shall include, but not be limited to:

- (1) A law enforcement agency investigating a report of known or suspected child abuse or neglect;
- (2) A county attorney in preparation of a child abuse or neglect petition or termination of parental rights petition;



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

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

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

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

(7) The designated protection and advocacy system authorized pursuant to the Developmental Disabilities Assistance and Bill of Rights Act of 2000, 42 U.S.C. 15001, as the act existed on January 1, 2005, and the Protection and Advocacy for Mentally Ill Individuals Act, 42 U.S.C. 10801, as the act existed on September 1, 2001, acting upon a complaint received from or on behalf of a person with developmental disabilities or mental illness;

(8) The person or persons having custody of the abused or neglected child in situations of alleged out-of-home child abuse or neglect; and

(9) For purposes of licensing providers of child care programs, the Department of Health and Human Services.

**28-727. Report; person making; receive summary of findings and actions; when.** Upon request, a physician or the person in charge of an institution, school, facility, or agency making a legally mandated report of child abuse or neglect pursuant to section 28-711 shall receive a summary of the findings of and actions taken by the department in response to his or her report. The amount of detail such summary contains shall depend on the source of the report of child abuse or neglect and shall be established by regulations of the department.

**[28-728 through 28-733 regarding Child Abuse and Neglect Investigation and Treatment Teams are in the next section of this manual. See Table of Contents.]**

**28-734. Child fatality or near fatality; terms, defined.** For purposes of sections 28-734 to 28-739:

(1) Child fatality means the death of a child from suspected abuse, neglect, or maltreatment as determined by the county coroner or county attorney;

(2) Department means the Department of Health and Human Services;

(3) Findings and information means a written summary as described in section 28-736; and

(4) Near fatality means a case in which an examining physician determines that a child is in serious or critical condition as the result of sickness or injury caused by suspected abuse, neglect, or maltreatment.

**28-735. Child fatality or near fatality; disclosure; when.**

Notwithstanding any other provision of law and subject to sections 28-734 to 28-739, the department shall disclose to the public, upon request, a summary of the findings and information related to a child fatality or near fatality if:

(1) A person is criminally charged with having caused the child fatality or near fatality and is convicted or acquitted of the charged offense or a lesser offense; or

(2) A county attorney certifies that a person would have been charged with having caused the child fatality or near fatality but for that person's prior death.

**28-736. Child fatality or near fatality; disclosure; contents.** Findings and information disclosed pursuant to section 28-735 shall consist of a written summary that includes any of the following information the department is able to provide:

(1) The dates, outcomes, and results of any actions taken or services rendered by the department; and

(2) Confirmation of the receipt of all reports, accepted or not accepted, by the local office of the department for assessment of suspected child abuse, neglect, or maltreatment, including confirmation that investigations were conducted, the results of the investigations, a description of the conduct of the most recent investigation and the services rendered, and a statement of the basis for the department's determination.

This section does not authorize access to confidential records in the custody of the department or disclosure to the public of the records or the content of any psychiatric, psychological, or therapeutic evaluations or of information that would reveal the identities of persons who provided information related to suspected child abuse, neglect, or maltreatment.

**28-737. Child fatality or near fatality; disclosure request; procedure.**

Within five working days after receipt of a request for a summary of the findings and information related to a child fatality or near fatality, the department shall consult with the appropriate county attorney and provide the findings and information unless the department or county attorney has reasonable cause to believe that the release of the information:

(1) Is not authorized by section 28-735;

(2) Is likely to cause mental, emotional, or physical harm or danger to a minor child residing in the household of the deceased or injured child or who is the sibling of the deceased or injured child;

(3) Is the subject of an ongoing or future criminal investigation or prosecution;

(4) Is not authorized by federal law and regulations; or

(5) Could result in physical or emotional harm to an individual.

**28-738. Child fatality or near fatality; disclosure request; denial; appeal.**

A person whose request under section 28-737 is denied may apply to the district court of Lancaster County for an order compelling disclosure of a summary of the findings and information by the department. The application shall set forth with reasonable particularity factors supporting the application. Actions under this section

shall be set for immediate hearing, and subsequent proceedings in such actions shall be accorded priority by the appellate courts. After the district court has reviewed the specific findings and information in camera, the court shall issue an order compelling disclosure unless the court finds that one or more of the circumstances set out in section 28-737 exist.

**28-739. Child fatality or near fatality; immunity.**

Any person acting in good faith in disclosing or declining to disclose findings and information under sections 28-734 to 28-738 of this act is immune from criminal or civil liability that might otherwise be incurred or imposed for that action.

## VI. CHILD ABUSE AND NEGLECT INVESTIGATION AND TREATMENT TEAMS

### **28-728. Legislative findings and intent; child abuse and neglect investigation team; child advocacy center; child abuse and neglect treatment team; powers and duties.**

(1) The Legislature finds that child abuse and neglect are community problems requiring a cooperative complementary response by law enforcement, child advocacy centers, prosecutors, the Department of Health and Human Services, and other agencies or entities designed to protect children. It is the intent of the Legislature to create a child abuse and neglect investigation team in each county or contiguous group of counties and to create a child abuse and neglect treatment team in each county or contiguous group of counties.

(2) Each county or contiguous group of counties will be assigned by the Department of Health and Human Services to a child advocacy center. The purpose of a child advocacy center is to provide a child-focused response to support the physical, emotional, and psychological needs of children who are victims of abuse or neglect. Each child advocacy center shall meet accreditation criteria set forth by the National Children's Alliance. Nothing in this section shall prevent a child from receiving treatment or other services at a child advocacy center which has received or is in the process of receiving accreditation.

(3) Each county attorney or the county attorney representing a contiguous group of counties is responsible for convening the child abuse and neglect investigation team and ensuring that protocols are established and implemented. A representative of the child advocacy center assigned to the team shall assist the county attorney in facilitating case review, developing and updating protocols, and arranging training opportunities for the team. Each team must have protocols which, at a minimum, shall include procedures for:

- (a) Conducting joint investigations of child abuse and other child abuse and neglect matters which the team deems necessary;
- (b) Ensuring that a law enforcement agency will participate in the investigation;
- (c) Conducting joint investigations of other child abuse and neglect matters which the team deems necessary;
- (d) Arranging for a videotaped forensic interview at a child advocacy center for children sixteen years of age or younger who are alleging sexual abuse or serious physical abuse or neglect or who have witnessed a violent crime, been removed from a clandestine drug lab, or been recovered from a kidnapping;
- (e) Reducing the risk of harm to child abuse and neglect victims;
- (f) Ensuring that the child is in safe surroundings, including removing the perpetrator when necessary;
- (g) Sharing of case information;
- (h) How and when the team will meet; and
- (i) Responding to drug-endangered children.

(4) Each county attorney or the county attorney representing a contiguous group of counties is responsible for convening the child abuse and neglect treatment team and ensuring that protocols are established and implemented. A representative of the child advocacy center appointed to the team shall assist the county attorney in facilitating case review, developing and updating protocols, and arranging training opportunities for the team. Each team must have protocols which, at a minimum, shall include procedures for:

- (a) Case coordination and assistance, including the location of services available within the area;
- (b) Case staffings and the coordination, development, implementation, and monitoring of treatment plans;
- (c) Reducing the risk of harm to child abuse and neglect victims;

- (d) Assisting those child abuse and neglect victims who are abused and neglected by perpetrators who do not reside in their homes;
- (e) How and when the team will meet; and
- (f) Working with multiproblem delinquent youth.

**28-729. Teams; members; training; county attorney; duties; meetings; annual report.**

(1) A child abuse and neglect investigation team shall include a representative from the county attorney's office, a child protective services representative from the Department of Health and Human Services, a representative from each law enforcement agency which has jurisdiction within the county or contiguous group of counties, a representative from the child advocacy center, and representatives from such other agencies as determined by the team.

(2) A child abuse and neglect treatment team shall include a child protective services representative from the Department of Health and Human Services, a juvenile probation officer, a representative from the mental health profession or medical profession actively practicing within the county or contiguous group of counties, a representative from each school district which provides services within the county or contiguous group of counties, a representative from the child advocacy center, and representatives from such other agencies as determined by the team. For purposes of this subsection, more than one school district may be represented by the same individual.

(3) The teams established pursuant to this section and section 28-728 shall be encouraged to expand their membership to include the various relevant disciplines which exist within the county or contiguous group of counties. The additional members shall have the requisite experience necessary as determined by the core members of the teams. Consistent with requirements set out by the teams, all members of both teams shall attend child abuse and neglect training on an annual basis. Such training shall be no less than eight hours annually and consist of the following components:

- (a) Child abuse and neglect investigation procedures as provided by law enforcement standards;
- (b) Legal requirements and procedures for successful prosecution of child abuse and neglect cases;
- (c) Roles and responsibilities of child protective services, law enforcement agencies, county attorneys, the Attorney General, and judges;
- (d) Characteristics of child development and family dynamics;
- (e) Recognition of various types of abuse and neglect;
- (f) Duty of public and private individuals and agencies, including schools, governmental agencies, physicians, and child advocates, to report suspected or known child abuse;
- (g) Multidisciplinary approaches to providing services to children; and
- (h) Weaknesses in the current child protection system.

(4) The representative of the county attorney shall report the name and address of each team member to the Nebraska Commission on Law Enforcement and Criminal Justice. If more than one county is part of a team, the representative of the participating county attorneys shall jointly and cooperatively report their results to the commission.

(5) Each team shall meet at a location agreed to by the team. The number of meetings of the team shall be secondary to the caseload of the team, but each team shall meet at least quarterly. The representative from the child advocacy center assigned to the team shall annually report to the commission the number of times the team met within a calendar year and any changes in team membership. Each team shall select a chairperson annually in the first quarter of each calendar year. Each team may substitute a telephone conference call among team members

in lieu of meeting in person. If a team fails to convene, the commission shall notify the Child Protection Division of the office of the Attorney General and the division shall appoint the team members or convene the team pursuant to sections 28-728 to 28-730. Nothing in this section shall relieve the county attorney from ensuring that the teams meet as required by this section.

**28-730. Records and information; access; disclosure; limitation; review of cases; immunity; violation; penalty.**

(1) Notwithstanding any other provision of law regarding the confidentiality of records and when not prohibited by the federal Privacy Act of 1974, as amended, juvenile court records and any other pertinent information that may be in the possession of school districts, law enforcement agencies, county attorneys, the Attorney General, the Department of Health and Human Services, child advocacy centers, and other team members concerning a child whose case is being investigated or discussed by a child abuse and neglect investigation team or a child abuse and neglect treatment team shall be shared with the respective team members as part of the discussion and coordination of efforts for investigative or treatment purposes. Upon request by a team, any individual or agency with information or records concerning a particular child shall share all relevant information or records with the team as determined by the team pursuant to the appropriate team protocol. Only a team which has accepted the child's case for investigation or treatment shall be entitled to access to such information.

(2) All information acquired by a team member or other individuals pursuant to protocols developed by the team shall be confidential and shall not be disclosed except to the extent necessary to perform case consultations, to carry out a treatment plan or recommendations, or for use in a legal proceeding instituted by a county attorney or the Child Protection Division of the office of the Attorney General. Information, documents, or records otherwise available from the original sources shall not be immune from discovery or use in any civil or criminal action merely because the information, documents, or records were presented during a case consultation if the testimony sought is otherwise permissible and discoverable. Any person who presented information before the team or who is a team member shall not be prevented from testifying as to matters within the person's knowledge.

(3) Each team may review any case arising under the Nebraska Criminal Code when a child is a victim or any case arising under the Nebraska Juvenile Code. A member of a team who participates in good faith in team discussion or any person who in good faith cooperates with a team by providing information or records about a child whose case has been accepted for investigation or treatment by a team shall be immune from any civil or criminal liability. The provisions of this subsection or any other section granting or allowing the grant of immunity from liability shall not be extended to any person alleged to have committed an act of child abuse or neglect.

(4) A member of a team who publicly discloses information regarding a case consultation in a manner not consistent with sections 28-728 to 28-730 shall be guilty of a Class III misdemeanor.

**28-731. Teams; exempt from public meetings provisions.** The teams established by sections 28-728 to 28-730 shall not be considered a public body for purposes of the Open Meetings Act.

**28-732. Failure to establish teams; requirements.** If a county or contiguous group of counties does not establish the teams required by sections 28-728 to 28-730, it shall establish a program of child abuse and neglect investigation and treatment services to accomplish the goals of section 28-728. Such program shall be submitted to the Nebraska Commission on Law Enforcement and Criminal Justice, prior to July 15, 1993, to ensure that such program meets the goals of section 28-728. If the commission does not recognize such program as meeting the goals of such section, the commission shall make recommendations for changes to the program and establish an appropriate time period for the changes to be adopted. In the event an agreement cannot be reached between the

commission and the county or contiguous group of counties proposing the alternative program, sections 28-728 to 28-730 shall be met with implementation to begin within one year.

**28-733. Sections; when operative.** Sections 28-728 to 28-732 shall become operative July 15, 1993, except that the creation and appointment of the child abuse and neglect investigation and treatment teams and the development of protocols shall be made as soon after July 15, 1992, as possible.

## VII. ACCESS TO INFORMATION AND RECORDS

**43-3001. Child in state custody; court records and information; court order authorized;**

**information confidential; immunity of liability; violation; penalty.**

(1) Notwithstanding any other provision of law regarding the confidentiality of records and when not prohibited by the federal Privacy Act of 1974, as amended, juvenile court records and any other pertinent information that may be in the possession of school districts, county attorneys, the Attorney General, law enforcement agencies, child advocacy centers, state probation personnel, state parole personnel, youth detention facilities, medical personnel, treatment or placement programs, the Department of Health and Human Services, the Department of Correctional Services, the State Foster Care Review Board, child abuse and neglect investigation teams, child abuse and neglect treatment teams, or other multidisciplinary teams for abuse, neglect, or delinquency concerning a child who is in the custody of the state may be shared with individuals and agencies who have been identified in a court order authorized by this section.

(2) In any judicial proceeding concerning a child who is currently, or who may become at the conclusion of the proceeding, a ward of the court or state or under the supervision of the court, an order may be issued which identifies individuals and agencies who shall be allowed to receive otherwise confidential information concerning the juvenile for legitimate and official purposes. The individuals and agencies who may be identified in the court order are the child's attorney or guardian ad litem, the parents' attorney, foster parents, appropriate school personnel, county attorneys, authorized court personnel, law enforcement agencies, state probation personnel, state parole personnel, youth detention facilities, medical personnel, treatment or placement programs, the Department of Health and Human Services, the Office of Juvenile Services, the Department of Correctional Services, the State Foster Care Review Board, child abuse and neglect investigation teams, child abuse and neglect treatment teams, and other multidisciplinary teams for abuse, neglect, or delinquency. Unless the order otherwise states, the order shall be effective until the child leaves the custody of the state or until a new order is issued.

(3) All information acquired by an individual or agency pursuant to this section shall be confidential and shall not be disclosed except to other persons who have a legitimate and official interest in the information and are identified in the court order issued pursuant to this section with respect to the child in question. A person who receives such information or who cooperates in good faith with other individuals and agencies identified in the appropriate court order by providing information or records about a child shall be immune from any civil or criminal liability. The provisions of this section granting immunity from liability shall not be extended to any person alleged to have committed an act of child abuse or neglect.

(4) Any person who publicly discloses information received pursuant to this section shall be guilty of a Class III misdemeanor.

## VIII. NEBRASKA JUVENILE CODE

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



- (1) Age of majority means nineteen years of age;
- (2) Approved center means a center that has applied for and received approval from the Director of the Office of Dispute Resolution under section 25-2909;
- (3) Cost or costs means (a) the sum or equivalent expended, paid, or charged for goods or services, or expenses incurred, or (b) the contracted or negotiated price;
- (4) Juvenile means any person under the age of eighteen;
- (5) Juvenile court means the separate juvenile court where it has been established pursuant to sections 43-2,111 to 43-2,127 and the county court sitting as a juvenile court in all other counties. Nothing in the Nebraska Juvenile Code shall be construed to deprive the district courts of their habeas corpus, common-law, or chancery jurisdiction or the county courts and district courts of jurisdiction of domestic relations matters as defined in section 25-2740;
- (6) Juvenile detention facility has the same meaning as in section 83-4,125;
- (7) Mediator for juvenile offender and victim mediation means a person who (a) has completed at least thirty hours of training in conflict resolution techniques, neutrality, agreement writing, and ethics set forth in section 25-2913, (b) has an additional eight hours of juvenile offender and victim mediation training, and (c) meets the apprenticeship requirements set forth in section 25-2913;
- (8) Mental health facility means a treatment facility as defined in section 71-914 or a government, private, or state hospital which treats mental illness;
- (9) Nonoffender means a juvenile who is subject to the jurisdiction of the juvenile court for reasons other than legally prohibited conduct, including, but not limited to, juveniles described in subdivision (3)(a) of section 43-247;
- (10) Nonsecure detention means detention characterized by the absence of restrictive hardware, construction, and procedure. Nonsecure detention services may include a range of placement and supervision options, such as home detention, electronic monitoring, day reporting, drug court, tracking and monitoring supervision, staff secure and temporary holdover facilities, and group homes;
- (11) Parent means one or both parents or a stepparent when such stepparent is married to the custodial parent as of the filing of the petition;
- (12) Parties means the juvenile as described in section 43-247 and his or her parent, guardian, or custodian;
- (13) Except in proceedings under the Nebraska Indian Child Welfare Act, relative means father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, nephew, or niece;
- (14) Secure detention means detention in a highly structured, residential, hardware-secured facility designed to restrict a juvenile's movement;
- (15) Status offender means a juvenile who has been charged with or adjudicated for conduct which would not be a crime if committed by an adult, including, but not limited to, juveniles charged under subdivision (3)(b) of section 43-247 and sections 53-180.01 and 53-180.02; and

(16) 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.

**43-246. Code, how construed.** Acknowledging the responsibility of the juvenile court to act to preserve the public peace and security, the Nebraska Juvenile Code shall be construed to effectuate the following:

(1) To assure the rights of all juveniles to care and protection and a safe and stable living environment and to development of their capacities for a healthy personality, physical well-being, and useful citizenship and to protect the public interest;

(2) To provide for the intervention of the juvenile court in the interest of any juvenile who is within the provisions of the Nebraska Juvenile Code, with due regard to parental rights and capacities and the availability of nonjudicial resources;

(3) To remove juveniles who are within the Nebraska Juvenile Code from the criminal justice system whenever possible and to reduce the possibility of their committing future law violations through the provision of social and rehabilitative services to such juveniles and their families;

(4) To offer selected juveniles the opportunity to take direct personal responsibility for their individual actions by reconciling with the victims through juvenile offender and victim mediation and fulfilling the terms of the resulting agreement which may require restitution and community service;

(5) To achieve the purposes of subdivisions (1) through (3) of this section in the juvenile's own home whenever possible, separating the juvenile from his or her parent when necessary for his or her welfare, the juvenile's health and safety being of paramount concern, or in the interest of public safety and, when temporary separation is necessary, to consider the developmental needs of the individual juvenile in all placements, to consider relatives as a preferred potential placement resource, and to make reasonable efforts to preserve and reunify the family if required under section 43-283.01;

(6) To promote adoption, guardianship, or other permanent arrangements for children in the custody of the Department of Health and Human Services who are unable to return home;

(7) To provide a judicial procedure through which these purposes and goals are accomplished and enforced in which the parties are assured a fair hearing and their constitutional and other legal rights are recognized and enforced; and

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

**43-247. Juvenile court; jurisdiction.** The juvenile court shall have exclusive original jurisdiction as to any juvenile defined in subdivision (1) of this section who is under the age of sixteen, as to any juvenile defined in subdivision (3) of this section, and as to the parties and proceedings provided in subdivisions (5), (6), and (8) of this section. As used in this section, all references to the juvenile's age shall be the age at the time the act which occasioned the juvenile court action occurred. The juvenile court shall have concurrent original jurisdiction with the district court as to any juvenile defined in subdivision (2) of this section. The juvenile court shall have concurrent original jurisdiction with the district court and county court as to any juvenile defined in subdivision (1) of this section who is age sixteen or seventeen, any juvenile defined in subdivision (4) of this section, and any proceeding under subdivision (7) or (11) of this section. The juvenile court shall have concurrent original jurisdiction with the county court as to any proceeding under subdivision (9) or (10) of this section. Notwithstanding any disposition entered by the juvenile court under the Nebraska Juvenile Code, the juvenile

court's jurisdiction over any individual adjudged to be within the provisions of this section shall continue until the individual reaches the age of majority or the court otherwise discharges the individual from its jurisdiction.

The juvenile court in each county as herein provided shall have jurisdiction of:

- (1) Any juvenile who has committed an act other than a traffic offense which would constitute a misdemeanor or an infraction under the laws of this state, or violation of a city or village ordinance;
- (2) Any juvenile who has committed an act which would constitute a felony under the laws of this state;
- (3) Any juvenile
  - (a) who is homeless or destitute, or without proper support through no fault of his or her parent, guardian, or custodian; who is abandoned by his or her parent, guardian, or custodian; who lacks proper parental care by reason of the fault or habits of his or her parent, guardian, or custodian; whose parent, guardian, or custodian neglects or refuses to provide proper or necessary subsistence, education, or other care necessary for the health, morals, or well-being of such juvenile; whose parent, guardian, or custodian 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 71-908;
- (4) Any juvenile who has committed an act which would constitute a traffic offense as defined in section 43-245;
- (5) The parent, guardian, or custodian who has custody of any juvenile described in this section;
- (6) The proceedings for termination of parental rights as provided in the Nebraska Juvenile Code;
- (7) The proceedings for termination of parental rights as provided in section 42-364;
- (8) Any juvenile who has been voluntarily relinquished, pursuant to section 43-106.01, to the Department of Health and Human Services or any child placement agency licensed by the Department of Health and Human Services;
- (9) Any juvenile who was a ward of the juvenile court at the inception of his or her guardianship and whose guardianship has been disrupted or terminated;
- (10) The adoption or guardianship proceedings for a child over which the juvenile court already has jurisdiction under another provision of the Nebraska Juvenile Code; and
- (11) The paternity determination for a child over which the juvenile court already has jurisdiction.

Notwithstanding the provisions of the Nebraska Juvenile Code, the determination of jurisdiction over any Indian child as defined in section 43-1503 shall be subject to the Nebraska Indian Child Welfare Act; and the district court shall have exclusive jurisdiction in proceedings brought pursuant to section 71-510.

**43-248. Temporary custody of juvenile without warrant; when.**

A juvenile may be taken into temporary custody by any peace officer without a warrant or order of the court when:

- (1) A juvenile has violated a state law or municipal ordinance in the presence of the officer;
- (2) A felony has been committed and the officer has reasonable grounds to believe such juvenile committed it;
- (3) A juvenile is seriously endangered in his or her surroundings and immediate removal appears to be necessary for the juvenile's protection;
- (4) The officer believes the juvenile to be mentally ill and dangerous as defined in section 71-908 and that the harm described in that section is likely to occur before proceedings may be instituted before the juvenile court; or
- (5) There are reasonable grounds to believe that the juvenile has run away from his or her parent, guardian, or custodian.

**43-248.01 Juvenile in custody; right to call or consult an attorney.** 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. An attorney shall be permitted to see and consult with the person in custody alone and in private at the place of custody.

**43-249. Temporary custody; not an arrest; exception.** No juvenile taken into temporary custody under section 43-248 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 United States.

**43-250. Temporary custody; disposition; custody requirements.** A peace officer who takes a juvenile into temporary custody under section 43-248 shall immediately take reasonable measures to notify the juvenile's parent, guardian, custodian, or relative and shall proceed as follows:

- (1) The peace officer shall release such juvenile;
- (2) The peace officer shall prepare in triplicate a written notice requiring the juvenile to appear before the juvenile court of the county in which such juvenile was taken into custody at a time and place specified in the notice or at the call of the court. The notice shall also contain a concise statement of the reasons such juvenile was taken into custody. The peace officer shall deliver one copy of the notice to such juvenile and require such juvenile or his or her parent, guardian, other custodian, or relative, or both, to sign a written promise that such signer will appear at the time and place designated in the notice. Upon the execution of the promise to appear, the peace officer shall immediately release such juvenile. The peace officer shall, as soon as practicable, file one copy of the notice with the county attorney and, when required by the juvenile court, also file a copy of the notice with the juvenile court or the officer appointed by the court for such purpose;
- (3) While retaining temporary custody, the peace officer shall communicate all relevant available information regarding such juvenile to the probation officer and shall deliver the juvenile, if necessary to the probation officer. The probation officer shall determine the need for detention of the juvenile as provided in section 43-260.01. Upon determining that the juvenile should be placed in a secure or nonsecure placement and securing placement in such secure or nonsecure setting by the probation officer, the peace officer shall implement the probation officer's decision to release or to detain and place the juvenile. When secure detention of a juvenile is

necessary, such detention shall occur within a juvenile detention facility except:

(a) When a juvenile described in subdivision (1) or (2) of section 43-247, except for a status offender, is taken into temporary custody within a metropolitan statistical area and where no juvenile detention facility is reasonably available, the juvenile may be delivered, for temporary custody 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 juvenile and ascertaining his or her health and well-being and for safekeeping while awaiting transport to an appropriate juvenile placement or release to a responsible party;

(b) When a juvenile described in subdivision (1) or (2) of section 43-247, except for a status offender, is taken into temporary custody outside of a metropolitan statistical area and where no juvenile detention facility is reasonably available, the juvenile may be delivered, for temporary custody not to exceed twenty-four hours excluding nonjudicial days 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 juvenile and ascertaining his or her health and well-being and for safekeeping while awaiting transport to an appropriate juvenile placement or release to a responsible party;

(c) Whenever a juvenile is held in a secure area of any jail or other facility intended or used for the detention of adults, there shall be no verbal, visual, or physical contact between the juvenile and any incarcerated adult and there shall be adequate staff to supervise and monitor the juvenile's activities at all times. This subdivision shall not apply to a juvenile charged with a felony as an adult in county or district court if he or she is sixteen years of age or older;

(d) If a juvenile is under sixteen years of age or is a juvenile as described in subdivision (3) of section 43-247, he or she shall not be placed within a secure area of a jail or other facility intended or used for the detention of adults;

(e) If, within the time limits specified in subdivision (3)(a) or (3)(b) of this section, a felony charge is filed against the juvenile as an adult in county or district court, he or she may be securely held in a jail or other facility intended or used for the detention of adults beyond the specified time limits;

(f) A status offender or nonoffender taken into temporary custody shall not be held in a secure area of a jail or other facility intended or used for the detention of adults. A status offender accused of violating a valid court order may be securely detained in a juvenile detention facility longer than twenty-four hours if he or she is afforded a detention hearing before a court within twenty-four hours, excluding nonjudicial days, and if, prior to a dispositional commitment to secure placement, a public agency, other than a court or law enforcement agency, is afforded an opportunity to review the juvenile's behavior and possible alternatives to secure placement and has submitted a written report to the court; and

(g) A juvenile described in subdivision (1) or (2) of section 43-247, except for a status offender, may be held in a secure area of a jail or other facility intended or used for the detention of adults for up to six hours before and six hours after any court appearance;

(4) When a juvenile is taken into temporary custody pursuant to subdivision (3) of section 43-248, the peace officer shall deliver the custody of such juvenile to the Department of Health and Human Services which shall make a temporary placement of the juvenile in the least restrictive environment consistent with the best interests of the juvenile as determined by the department. The department shall supervise such placement and, if necessary, consent to any necessary emergency medical, psychological, or psychiatric treatment for such juvenile. The department shall have no other authority with regard to such temporary custody until or unless there is an order by the court placing the juvenile in the custody of the department. If the peace officer delivers temporary custody of the juvenile pursuant to this subdivision, the peace officer shall make a full written report to the county attorney within twenty-four hours of taking such juvenile into temporary custody. If a court order of temporary custody is not issued within forty-eight hours of taking the juvenile into custody, the temporary custody by the department shall terminate and the juvenile shall be returned to the custody of his or her parent, guardian, custodian, or relative; or

(5) If the peace officer takes the juvenile into temporary custody pursuant to subdivision (4) of section 43-

248, the peace officer may place the juvenile at a mental health facility for evaluation and emergency treatment or may deliver the juvenile to the Department of Health and Human Services as provided in subdivision (4) of this section. At the time of the admission or turning the juvenile over to the department, the peace officer responsible for taking the juvenile into custody shall execute a written certificate as prescribed by the Department of Health and Human Services which will indicate that the peace officer believes the juvenile to be mentally ill and dangerous, a summary of the subject's behavior supporting such allegations, and that the harm described in section 71-908 is likely to occur before proceedings before a juvenile court may be invoked to obtain custody of the juvenile.

A copy of the certificate shall be forwarded to the county attorney. The peace officer shall notify the juvenile's parents, guardian, custodian, or relative of the juvenile's placement.

In determining the appropriate temporary placement of a juvenile under this section, the peace officer shall select the placement which is least restrictive of the juvenile's freedom so long as such placement is compatible with the best interests of the juvenile and the safety of the community.

**43-251. Preadjudication placement or detention; prohibitions.**

(1) When a juvenile is taken into custody pursuant to sections 43-248 and 43-250, the court or magistrate may take any action for preadjudication placement or detention prescribed in the Nebraska Juvenile Code.

(2) Any juvenile taken into custody under the Nebraska Juvenile Code for allegedly being mentally ill and dangerous shall not be placed in a jail or detention facility designed for juveniles who are accused of criminal acts or for juveniles as described in subdivision (1), (2), or (4) of section 43-247 either as a temporary placement by a peace officer, as a temporary placement by a court, or as an adjudication placement by the court.

**43-251.01 Juveniles; placements and commitments; restrictions.** All placements and commitments of juveniles for evaluations or as temporary or final dispositions are subject to the following:

(1) No juvenile shall be confined in an adult correctional facility as a disposition of the court;

(2) A juvenile who is found to be a juvenile as described in subdivision (3) of section 43-247 shall not be placed in an adult correctional facility, the secure youth confinement facility operated by the Department of Correctional Services, or a youth rehabilitation and treatment center or committed to the Office of Juvenile Services;

(3) A juvenile who is found to be a juvenile as described in subdivision (1), (2), or (4) of section 43-247 shall not be assigned or transferred to an adult correctional facility or the secure youth confinement facility operated by the Department of Correctional Services; and

(4) A juvenile under the age of twelve years shall not be placed with or committed to a youth rehabilitation and treatment center except as provided in section 43-286.

**43-252. Fingerprints; when authorized; disposition.**

(1) The fingerprints of any juvenile less than fourteen years of age, who has been taken into custody in the investigation of a suspected unlawful act, shall not be taken unless the consent of any district, county, associate county, associate separate juvenile court, or separate juvenile court judge has first been obtained.

(2) If the judge permits the fingerprinting, the fingerprints must be filed by law enforcement officers in files kept separate from those of persons of the age of majority.

(3) The fingerprints of any juvenile shall not be sent to a state or federal depository by a law enforcement agency of this state unless:

- (a) The juvenile has been convicted of or adjudged to have committed a felony;
- (b) the juvenile has unlawfully terminated his or her commitment to a youth development center;

or

(c) the juvenile is a runaway and a fingerprint check is needed for identification purposes to return the juvenile to his or her parent.

**43-253. Temporary custody; investigation; release; when.**

(1) Upon delivery to the probation officer of a juvenile who has been taken into temporary custody under sections 43-248 and 43-250, the probation officer shall immediately investigate the situation of the juvenile and the nature and circumstances of the events surrounding his or her being taken into custody. Such investigation may be by informal means when appropriate.

(2) The probation officer's decision to release the juvenile from custody or place the juvenile in secure or nonsecure detention shall be based upon the results of the standardized juvenile detention screening instrument described in section 43-260.01.

(3) No juvenile who has been taken into temporary custody under subdivision (3) of section 43-250 shall be detained in any secure detention facility for longer than twenty-four hours, excluding nonjudicial days, after having been taken into custody unless such juvenile has appeared personally before a court of competent jurisdiction for a hearing to determine if continued detention is necessary. If continued secure detention is ordered, such detention shall be in a juvenile detention facility, except that a juvenile charged with a felony as an adult in county or district court may be held in an adult jail as set forth in subdivision (3)(e) of section 43-250.

(4) When the probation officer deems it to be in the best interests of the juvenile, the probation officer shall immediately release such juvenile to the custody of his or her parent. If the juvenile has both a custodial and a noncustodial parent and the probation officer deems that release of the juvenile to the custodial parent is not in the best interests of the juvenile, the probation officer shall, if it is deemed to be in the best interests of the juvenile, attempt to contact the noncustodial parent, if any, of the juvenile and to release the juvenile to such noncustodial parent. If such release is not possible or not deemed to be in the best interests of the juvenile, the probation officer may release the juvenile to the custody of a legal guardian, a responsible relative, or another responsible person.

(5) The court may admit such juvenile to bail by bond in such amount and on such conditions and security as the court, in its sole discretion, shall determine, or the court may proceed as provided in section 43-254. In no case shall the court or probation officer release such juvenile if it appears that further detention or placement of such juvenile is a matter of immediate and urgent necessity for the protection of such juvenile or the person or property of another or if it appears that such juvenile is likely to flee the jurisdiction of the court.

**43-254. Placement or detention pending adjudication; restrictions; assessment of costs.** Pending the adjudication of any case, if it appears that the need for placement or further detention exists, the juvenile may be (1) placed or detained a reasonable period of time on order of the court in the temporary custody of either the person having charge of the juvenile or some other suitable person, (2) kept in some suitable place provided by the city or county authorities, (3) placed in any proper and accredited charitable institution, (4) placed in a state institution, except any adult penal institution, when proper facilities are available and the only local facility is a city or county jail, at the expense of the committing county on a per diem basis as determined from time to time by the head of the

particular institution, or (5) placed in the temporary care and custody of the Department of Health and Human Services when it does not appear that there is any need for detention in a locked facility. The court may assess the cost of such placement or detention in whole or in part to the parent of the juvenile as provided in section 43-290.

If a juvenile has been removed from his or her parent, guardian, or custodian pursuant to subdivision (3) of section 43-248, the court may enter an order continuing detention or placement upon a written determination that continuation of the juvenile in his or her home would be contrary to the health, safety, or welfare of such juvenile and that reasonable efforts were made to preserve and reunify the family if required under subsections (1) through (4) of section 43-283.01.

**43-254.01. Temporary mental health placement; evaluation; procedure.**

(1) Any time a juvenile is temporarily placed at a mental health facility pursuant to subdivision (5) of section 43-250 or by a court as a juvenile who is mentally ill and dangerous, a mental health professional as defined in section 71-906 shall evaluate the mental condition of the juvenile as soon as reasonably possible but not later than thirty-six hours after the juvenile's admission, unless the juvenile was evaluated by a mental health professional immediately prior to the juvenile being placed in temporary custody and the temporary custody is based upon the conclusions of that evaluation. The mental health professional who performed the evaluation prior to the temporary custody or immediately after the temporary custody shall, without delay, convey the results of his or her evaluation to the county attorney.

(2) If it is the judgment of the mental health professional that the juvenile is not mentally ill and dangerous or that the harm described in section 71-908 is not likely to occur before the matter may be heard by a juvenile court, the mental health professional shall immediately notify the county attorney of that conclusion and the county attorney shall either proceed to hearing before the court within twenty-four hours or order the immediate release of the juvenile from temporary custody. Such release shall not prevent the county attorney from proceeding on the petition if he or she so chooses.

(3) A juvenile taken into temporary protective custody under subdivision (5) of section 43-250 shall have the opportunity to proceed to adjudication hearing within seven days unless the matter is continued. Continuances shall be liberally granted at the request of the juvenile, his or her guardian ad litem, attorney, parents, or guardian. Continuances may be granted to permit the juvenile an opportunity to obtain voluntary treatment.

**43-254.02. Temporary detention rules and regulations; Nebraska Commission on Law Enforcement and Criminal Justice; duties.** The Nebraska Commission on Law Enforcement and Criminal Justice shall adopt, promulgate, and implement rules and regulations to harmonize state and federal law on the temporary detention of juveniles.

**43-255. Detention or placement; release required; exceptions.** Whenever a juvenile is detained or placed under section 43-250 or 43-253, the juvenile shall be released unconditionally within forty-eight hours after the detention or placement order or the setting of bond, excluding nonjudicial days, unless within such period of time (1) a petition has been filed alleging that such juvenile has violated an order of the juvenile court, (2) a petition has been filed pursuant to section 43-274, or (3) a criminal complaint has been filed in a court of competent jurisdiction.

**43-256. Continued placement or detention; probable cause hearing; release requirements; exceptions.** When the court enters an order continuing placement or detention pursuant to section 43-253, upon request of the juvenile, or his or her parent, guardian, or attorney, the court shall hold a hearing within forty-eight



hours, at which hearing the burden of proof shall be upon the state to show probable cause that such juvenile is within the jurisdiction of the court. Strict rules of evidence shall not apply at the probable cause hearing. The juvenile shall be released if probable cause is not shown. At the option of the court, it may hold the adjudication hearing provided in section 43-279 as soon as possible instead of the probable cause hearing if held within a reasonable period of time. This section and section 43-255 shall not apply to a juvenile (1) who has escaped from a commitment or (2) who has been taken into custody for his or her own protection as provided in subdivision (3) of section 43-248 in which case the juvenile shall be held on order of the court with jurisdiction for a reasonable period of time.

**43-257. Unlawful detention or placement; penalty.** Any person who knowingly holds a juvenile in detention or placement in violation of any of the provisions of section 43-255 or 43-256 shall be guilty of a Class III misdemeanor.

**43-258. Preadjudication physical and mental evaluation; placement; restrictions; reports; costs.**

(1) Pending the adjudication of any case under the Nebraska Juvenile Code, the court may order the juvenile examined by a physician, surgeon, psychiatrist, duly authorized community mental health service program, or psychologist to aid the court in determining (a) a material allegation in the petition relating to the juvenile's physical or mental condition, (b) the juvenile's competence to participate in the proceedings, (c) the juvenile's responsibility for his or her acts, or (d) whether or not to provide emergency medical treatment.

(2) Pending the adjudication of any case under the Nebraska Juvenile Code and after a showing of probable cause that the juvenile is within the court's jurisdiction, for the purposes of subsection (1) of this section, the court may order such juvenile to be placed in one of the facilities or institutions of the State of Nebraska. Such juvenile shall not be placed in an adult correctional facility, the secure youth confinement facility operated by the Department of Correctional Services, or a youth rehabilitation and treatment center. Any placement for evaluation may be made on a residential or nonresidential basis for a period not to exceed thirty days except as provided by section 43-415. The head of any facility or institution shall make a complete evaluation of the juvenile, including any authorized area of inquiry requested by the court.

(3) Upon completion of the evaluation, the juvenile shall be returned to the court together with a written report of the results of the evaluation. Such report shall include an assessment of the basic needs of the juvenile and recommendations for continuous and long-term care and shall be made to effectuate the purposes in subdivision (1) of section 43-246.

(4) In order to encourage the use of the procedure provided in this section, all costs incurred during the period the juvenile is being evaluated at a state facility or program funded by the Office of Juvenile Services shall be the responsibility of the state unless otherwise ordered by the court pursuant to section 43-290. The county in which the case is pending shall be liable only for the cost of delivering the juvenile to the facility or institution and the cost of returning him or her to the court for disposition.

**43-259. Evaluation; motion for release of juvenile in custody.** The juvenile, his or her attorney, parent, guardian, or custodian may file a motion to release the juvenile from custody and request a hearing after the initial commitment order for evaluation provided in section 43-258 is entered. Pending the hearing on such application, the juvenile shall remain in custody in such manner as the court determines to be in the best interests of the juvenile.

**43-260. Standardized juvenile detention screening instrument.** The Office of Probation

Administration shall prepare and distribute to probation officers a standardized juvenile detention screening instrument. The types of risk factors to be included as well as the format of this standardized juvenile detention screening instrument shall be determined by the office. The standardized juvenile detention screening instrument shall be used as an assessment tool statewide by probation officers under section 43-260.01 in order to determine if detention of the juvenile is necessary and, if so, whether secure or nonsecure detention is indicated. Probation officers trained to administer the juvenile detention screening instrument shall act as juvenile intake probation officers. Only duly trained probation officers shall be authorized to administer the juvenile detention screening instrument.

**43-260.01 Detention; factors.** The need for preadjudication placement or supervision and the need for detention of a juvenile and whether secure or nonsecure detention is indicated may be determined as follows:

- (1) The standardized juvenile detention screening instrument shall be used to evaluate the juvenile;
- (2) If the results indicate that secure detention is not required, nonsecure detention placement or supervision options shall be pursued; and
- (3) If the results indicate that secure detention is required, detention at the secure level as indicated by the instrument shall be pursued.

**43.260.02 Juvenile pretrial diversion program; authorized.** A county attorney may establish a juvenile pretrial diversion program with the concurrence of the county board. If the county is part of a multicounty juvenile services plan under the Nebraska County Juvenile Services Plan Act, the county attorney may establish a juvenile pretrial diversion program in conjunction with other county attorneys from counties that are a part of such multicounty plan. A city attorney may establish a juvenile pretrial diversion program with the concurrence of the governing body of the city. Such programs shall meet the requirements of sections 43-260.02 to 43-260.07.

**43-260.03 Juvenile pretrial diversion program; goals.** The goals of a juvenile pretrial diversion program are:

- (1) To provide eligible juvenile offenders with an alternative program in lieu of adjudication through the juvenile court;
- (2) To reduce recidivism among diverted juvenile offenders;
- (3) To reduce the costs and caseload burdens on the juvenile justice system and the criminal justice system; and
- (4) To promote the collection of restitution to the victim of the juvenile offender's crime.

**43-260.04 Juvenile pretrial diversion program; requirements.** A juvenile pretrial diversion program shall:

- (1) Be an option available for the county attorney or city attorney based upon his or her determination under this subdivision. The county attorney or city attorney may use the following information:
  - (a) The juvenile's age;
  - (b) The nature of the offense and role of the juvenile in the offense;
  - (c) The number and nature of previous offenses involving the juvenile;
  - (d) The dangerousness or threat posed by the juvenile to persons or property; or
  - (e) The recommendations of the referring agency, victim, and advocates for the juvenile;
- (2) Permit participation by a juvenile only on a voluntary basis and shall include a juvenile diversion agreement described in section 43-260.06;
- (3) Allow the juvenile to consult with counsel prior to a decision to participate in the program;

(4) Be offered to the juvenile prior to an adjudication but after the arrest of the juvenile or issuance of a citation to the juvenile if after the arrest or citation a decision has been made by the county attorney or city attorney that the offense will support the filing of a juvenile petition or criminal charges;

(5) Result in dismissal of the juvenile petition or criminal charges if the juvenile successfully completes the program;

(6) Be designed and operated to further the goals stated in section 43-260.03 and comply with sections 43-260.04 to 43-260.07; and

(7) Require information received by the program regarding the juvenile to remain confidential unless a release of information is signed upon admission to the program or is otherwise authorized by law.

**43-260.05 Juvenile pretrial diversion program; optional services.** A juvenile pretrial diversion program may:

(1) Provide screening services to the court and county attorney or city attorney to help identify likely candidates for the program;

(2) Establish goals for diverted juvenile offenders and monitor performance of the goals;

(3) Perform chemical dependency assessments of diverted juvenile offenders when indicated, make appropriate referrals for treatment, and monitor treatment and aftercare;

(4) Provide individual, group, and family counseling services;

(5) Oversee the payment of victim restitution by diverted juvenile offenders;

(6) Assist diverted juvenile offenders in identifying and contacting appropriate community resources;

(7) Provide educational services to diverted juvenile offenders to enable them to earn a high school diploma or general education development diploma; and

(8) Provide accurate information on how diverted juvenile offenders perform in the program to the juvenile courts, county attorneys, city attorneys, defense attorneys, and probation officers.

**43-260.06 Juvenile diversion agreement; contents.** A juvenile diversion agreement shall include, but not be limited to, one or more of the following:

(1) A letter of apology;

(2) Community service, not to be performed during school hours if the juvenile offender is attending school;

(3) Restitution;

(4) Attendance at educational or informational sessions at a community agency;

(5) Requirements to remain during specified hours at home, school, and work and restrictions on leaving or entering specified geographical areas; and

(6) Upon agreement of the victim, participation in juvenile offender and victim mediation.

**43-260.07 Juvenile pretrial diversion program; data; duties.**

(1) Beginning December 1, 2003, and every December 1 thereafter, every county attorney or city attorney of a county or city which has a juvenile pretrial diversion program shall report the information pertaining to the program required by rules and regulations adopted and promulgated by the Nebraska Commission on Law Enforcement and Criminal Justice to the commission.

(2) Juvenile pretrial diversion program data shall be maintained and compiled by the Nebraska Commission on Law Enforcement and Criminal Justice.

**43-261. Juvenile charged in court other than juvenile court; transfer to juvenile court; procedure.**

Before the plea is entered, or in case a felony is charged, at any time prior to or at the preliminary hearing, the court shall advise any person who was a juvenile at the time of the commission of the alleged act charged in any court other than a juvenile court that such juvenile may orally or in writing move the court in which the charge is pending to waive jurisdiction to the juvenile court for further proceedings under the Nebraska Juvenile Code. If a felony is charged, such motion shall be filed in the county or district court, and the hearing shall be held before a county or district judge. Such motion may be entered at any time prior to commencement of trial or acceptance of a plea of guilty or no contest by the court. The court shall schedule a hearing on the motion within fifteen days. The customary rules of evidence shall not be followed at such hearing. The county attorney shall present the evidence and reasons why the case should be retained, and the defendant shall present evidence and reasons why the case should be transferred, and both sides shall consider the criteria set forth in section 43-276. In deciding the motion the court shall, after considering the evidence and the reasons presented by the parties and the matters required to be considered by the county attorney pursuant to section 43-276, transfer the case unless a sound basis exists for retaining jurisdiction.

Nothing in this section shall prohibit the county attorney from waiving any objection to such a transfer even when a complaint is filed. In such cases it shall be sufficient for the court to sustain the motion of the juvenile without entering a finding.

The court shall set forth findings for the reason for its decision, which shall not be a final order for the purpose of enabling an appeal. If the court determines that the juvenile should be transferred to the juvenile court, the complete file in the court shall be transferred to the juvenile court and the complaint may be filed in place of a petition therein. The court making such transfer shall order the juvenile to be taken forthwith to the juvenile court and designate where the juvenile shall be kept pending determination by the juvenile court. The juvenile court shall then proceed as provided in the Nebraska Juvenile Code.

Nothing in this section shall be construed to require more than one transfer proceeding.

**43-262. Issuance of process; notice in lieu of summons.** No summons or notice shall be required to be served on any person who shall voluntarily appear before the court and whose appearance is noted on the records thereof. In actions involving a juvenile who may invoke the jurisdiction of the court under the Nebraska Juvenile Code, the court, in its discretion, may cause the issuance of a notice in lieu of summons to the juvenile and to the juvenile's parent or the person who has the custody or control of the juvenile. Such notice in lieu of summons may be delivered by mail, shall be accompanied by a copy of the petition in cases when jurisdiction under subdivision (1) or (2) of section 43-247 is alleged, and shall contain a statement that (1) the recipient is entitled by statute to have the summons or notice, as the case may be, served upon him or her by personnel of the sheriff's office or some other person under the direction of the court, (2) service by the sheriff's office has been dispensed with for the convenience of the recipient, (3) if the recipient appears in court for the hearing fixed in the notice, he or she shall be deemed to have waived issuance and service of a notice and the seventy-two hour waiting period, as the case may be, and (4) if he or she does not appear, a summons or notice, as the case may be, shall be served upon him or her by personnel of the sheriff's office or some other suitable person under the direction of the court.

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

**43-264. Summons; service.** If the petition filed under section 43-274 alleges that the juvenile is a juvenile as described in subdivision (1), (2), or (3)(b) of section 43-247, a summons with a copy of the petition attached shall be served as provided in section 43-263 on such juvenile and his or her parent, guardian, or custodian requiring the juvenile and such parent, guardian, or custodian to appear personally at the time and place stated. When so ordered by the court, personal service shall be obtained upon such juvenile notwithstanding any other provisions of the Nebraska Juvenile Code.

**43-265. Summons; notice to parent, guardian, or relative required; appointment of guardian ad litem.** If the person so summoned under section 43-263 is other than a parent or guardian of the juvenile, then the parent or guardian or both, if their residence is known, shall also be notified of the pendency of the case and of the time and place appointed; if there is neither a parent nor guardian, or if his or her residence is not known, then some relative, if there be one and his or her residence is known, shall be notified, except that in any case the court may appoint some suitable person guardian ad litem to act in behalf of the juvenile.

**43-266. Immediate custody of juvenile; when.** If it appears that the juvenile is in such condition or surroundings that his or her welfare requires that his or her custody be immediately assumed by the court, the court may, by endorsement upon the summons provided under section 43-263, order the officer serving it to take the juvenile into custody at once.

**43-267. Subpoena; notice of subsequent hearing.**

(1) As provided under sections 43-263 to 43-266, subpoenas may be issued requiring the appearance of any other person whose presence, in the opinion of the judge, is necessary.

(2) Notice of the time, date, place, and purpose of any juvenile court hearing subsequent to the initial hearing, for which a summons or notice has been served or waived, shall be given to all parties either in court, by mail, or in such other manner as the court may direct.

**43-268. Summons, notice, subpoena; manner given; time.**

(1) Service of summons shall be made by the delivery of a copy of the summons to the person summoned or by leaving one at his or her usual place of residence with some person of suitable age and discretion residing therein.

(2) Except as provided in section 43-264, notice, when required, shall be given in the manner provided for service of a summons in a civil action. Any published notice shall simply state that a proceeding concerning the juvenile is pending in the court and that an order making an adjudication and disposition will be entered therein. If the names of one or both parents or the guardian are unknown, he, she, or they may be notified as the parent or

parents, or guardian of (naming or describing the juvenile) found (stating address or place where the juvenile was found). Such notice shall be published once each week for three weeks, the last publication of which shall be at least five days before the time of hearing.

(3) Personal or residence service shall be effected at least seventy-two hours before the time set for the hearing, but upon cause shown the court shall grant additional time to prepare for a hearing. A guardian ad litem, one of the parents, the person having custody if there be no guardian ad litem, or the attorney for such juvenile may waive such service for the juvenile, if such juvenile concurs in open court duly noted on the records of the court. Registered or certified mail shall be mailed at least five days before the time of the hearing.

(4) Service of summons, notice, or subpoena may be made by any suitable person under the direction of the court.

**43-269. Failure to comply with summons or subpoena; contempt.** If the person summoned or subpoenaed as provided in sections 43-262 to 43-268 shall without reasonable cause fail to appear and abide the order of the court or bring the juvenile, he or she may be proceeded against as in the case of contempt of court.

**43-270. Warrant; when issued.** In case the summons cannot be served or the parties fail to obey the summons and, in any case when it shall be made to appear to the court that such summons would be ineffectual, a warrant may issue on the order of the court, either against the parent or guardian or the person having custody of the juvenile, or with whom the juvenile may be, or against the juvenile himself or herself.

**43-271. Prompt hearing and disposition.**

(1) (a) A juvenile taken into custody pursuant to sections 43-248, 43-250, and 43-253 shall be brought before the court for adjudication as soon as possible after the petition is filed. On the return of the summons or other process, or mailing of the notice in lieu of summons, or as soon thereafter as legally maybe, the court shall proceed to hear and dispose of the case as provided in section 43-279.

(b) The 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. The computation of the six-month period provided for in this section shall be made as provided in section 29-1207, as applicable.

(2) Any juvenile taken into custody pursuant to sections 43-248, 43-250, and 43-253 may request a detention review hearing. The detention review hearing shall be conducted withing forty-eight hours after the request.

**43-272. Right to counsel; appointment; payment; guardian ad litem; appointment; when; duties.**

(1) When any juvenile shall be brought without counsel before a juvenile court, the court shall advise such juvenile and his or her parent or guardian of their right to retain counsel and shall inquire of such juvenile and his or her parent or guardian as to whether they desire to retain counsel. The court shall inform such juvenile and his or her parent or guardian of such juvenile's right to counsel at county expense if none of them is able to afford counsel. If the juvenile or his or her parent or guardian desires to have counsel appointed for such juvenile, or the parent or guardian of such juvenile cannot be located, and the court ascertains that none of such persons are able to afford an attorney, the court shall forthwith appoint an attorney to represent such juvenile for all proceedings before the juvenile court, except that if an attorney is appointed to represent such juvenile and the court later

determines that a parent of such juvenile is able to afford an attorney, the court shall order such parent or juvenile to pay for services of the attorney to be collected in the same manner as provided by section 43-290. If the parent willfully refuses to pay any such sum, the court may commit him or her for contempt, and execution may issue at the request of the appointed attorney or the county attorney or by the court without a request.

(2) The court, on its own motion or upon application of a party to the proceedings, shall appoint a guardian ad litem for the juvenile:

- (a) If the juvenile has no parent or guardian of his or her person or if the parent or guardian of the juvenile cannot be located or cannot be brought before the court;
- (b) if the parent or guardian of the juvenile is excused from participation in all or any part of the proceedings;
- (c) if the parent is a juvenile or an incompetent;
- (d) if the parent is indifferent to the interests of the juvenile; or
- (e) in any proceeding pursuant to the provisions of subdivision (3)(a) of section 43-247.

A guardian ad litem shall have the duty to protect the interests of the juvenile for whom he or she has been appointed guardian, and shall be deemed a parent of the juvenile as to those proceedings with respect to which his or her guardianship extends.

(3) The court shall appoint an attorney as guardian ad litem. A guardian ad litem shall act as his or her own counsel and as counsel for the juvenile, unless there are special reasons in a particular case why the guardian ad litem or the juvenile or both should have separate counsel. In such cases the guardian ad litem shall have the right to counsel, except that the guardian ad litem shall be entitled to appointed counsel without regard to his or her financial ability to retain counsel. Whether such appointed counsel shall be provided at the cost of the county shall be determined as provided in subsection (1) of this section.

**43-272.01. Guardian ad litem; appointment; powers and duties; consultation; payment of costs.**

(1) A guardian ad litem as provided for in subsections (2) and (3) of section 43-272 shall be appointed when a child is removed from his or her surroundings pursuant to subdivision (3) or (4) of section 43-248, subdivision (4) of section 43-250, or section 43-251. If removal has not occurred, a guardian ad litem shall be appointed at the commencement of all cases brought under subdivision (3)(a) or (8) of section 43-247 and section 28-707.

(2) In the course of discharging duties as guardian ad litem, the person so appointed shall consider, but not be limited to, the criteria provided in this subsection. The guardian ad litem:

- (a) Is appointed to stand in lieu of a parent for a protected juvenile who is the subject of a juvenile court petition, shall be present at all hearings before the court in such matter unless expressly excused by the court, and may enter into such stipulations and agreements concerning adjudication and disposition deemed by him or her to be in the juvenile's best interests;
- (b) Is not appointed to defend the parents or other custodian of the protected juvenile but shall defend the legal and social interests of such juvenile. Social interests shall be defined generally as the usual and reasonable expectations of society for the appropriate parental custody and protection and quality of life for juveniles without regard to the socioeconomic status of the parents or other custodians of the juvenile;
- (c) May at any time after the filing of the petition move the court of jurisdiction to provide medical or psychological treatment or evaluation as set out in section 43-258. The guardian ad litem shall have access to all reports resulting from any examination ordered under section 43-258, and such reports shall be used for evaluating the status of the protected juvenile;
- (d) Shall make every reasonable effort to become familiar with the needs of the protected juvenile which (i) shall include consultation with the juvenile within two weeks after the appointment and once every six months thereafter and inquiry of the most current caseworker, foster parent, or other custodian and (ii) may include inquiry of others directly involved with the juvenile or who may have information or knowledge about the

circumstances which brought the juvenile court action or related cases and the development of the juvenile, including biological parents, physicians, psychologists, teachers, and clergy members;

(e) May present evidence and witnesses and cross-examine witnesses at all evidentiary hearings;

(f) Shall be responsible for making recommendations to the court regarding the temporary and permanent placement of the protected juvenile and shall submit a written report to the court at every dispositional or review hearing, or in the alternative, the court may provide the guardian ad litem with a checklist that shall be completed and presented to the court at every dispositional or review hearing;

(g) Shall consider such other information as is warranted by the nature and circumstances of a particular case; and

(h) May file a petition in the juvenile court on behalf of the juvenile, including a supplemental petition as provided in section 43-291.

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

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

**43-272.02. Court appointed special advocate volunteer.** The court may appoint a court appointed special advocate volunteer pursuant to the Court Appointed Special Advocate Act.

**43-273. Appointed counsel and guardians ad litem; fees; allowance.** Counsel and guardians ad litem appointed as provided in section 43-272 shall apply to the court before which the proceedings were had for fees for services performed. The court upon hearing the application shall fix reasonable fees. The county board of the county wherein the proceedings were had shall allow the account, bill, or claim presented by any attorney or guardian ad litem for services performed under section 43-272 in the amount determined by the court. No such account, bill, or claim shall be allowed by the county board until the amount thereof shall have been determined by the court.

**43-274. Criminal complaint; proceedings; by whom and how instituted; mediation; procedures.**

(1) The county attorney, having knowledge of a juvenile in his or her county who appears to be a juvenile described in subdivision (1), (2), (3), or (4) of section 43-247, may file with the clerk of the court having jurisdiction in the matter, a petition in writing specifying which subdivision of section 43-247 is alleged, setting forth the facts verified by affidavit, and requesting the court to determine whether support will be ordered pursuant to section 43-290. Allegations under subdivisions (1), (2), and (4) of section 43-247 shall be made with the same specificity as a criminal complaint. It shall be sufficient if the affidavit is based upon information and belief. Such petition and all subsequent proceedings shall be entitled In the Interest of ....., a Juvenile Under Eighteen Years of Age, inserting the juvenile's name in the blank.

(2) In all cases involving violation of a city or village ordinance, the city attorney or village prosecutor may file a petition in juvenile court. If such a petition is file, for purposes of such proceeding, references in the Nebraska Juvenile Code to county attorney shall be construed to include a city attorney or village prosecutor.

(3) The county attorney or city attorney may offer pretrial diversion to the juvenile in accordance with a juvenile pretrial diversion program established pursuant to sections 43-260.02 to 43-260.07.

(4) (a) If a juvenile appears to be a juvenile described in subdivision (1), (2), (3)(b), or (4) of



section 43-247 because of a nonviolent act or acts, the county attorney may offer mediation to the juvenile and the victim of the juvenile's act. If both the juvenile and the victim agree to mediation, the juvenile, his or her parent, guardian, or custodian, and the victim shall sign a mediation consent form and select a mediator or approved center from the roster made available pursuant to section 25-2908. The county attorney shall refer the juvenile and the victim to such mediator or approved center. The mediation sessions shall occur within thirty days after the date the mediation referral is made unless an extension is approved by the county attorney. The juvenile or his or her parent, guardian, or custodian shall pay the mediation fees. The fee shall be determined by the mediator in private practice or by the approved center. A juvenile shall not be denied services at an approved center because of an inability to pay.

(b) 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 juvenile does not complete the agreement within the agreement's specified time.

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

- (i) Participation by the juvenile in certain community service programs;
- (ii) Payment of restitution by the juvenile to the victim;
- (iii) Reconciliation between the juvenile and the victim; and
- (iv) Any other areas of agreement.

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

(e) 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 (i) the juvenile may be referred back to mediation with suggestions for changes needed in the agreement to meet approval or (ii) the county attorney may proceed with the filing of a criminal charge or juvenile court petition. If the juvenile agrees to return to mediation but the victim does not agree to return to mediation, the county attorney may consider the juvenile's willingness to return to mediation when determining whether or not to file a criminal charge or a juvenile court petition.

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

**43-275. Petition, complaint, or mediation consent form; filing; time.** Whenever a juvenile is detained or placed in custody under the provisions of section 43-253, a petition, complaint, or mediation consent form must be filed within forty-eight hours excluding nonjudicial days.

**43-276. County attorney; criminal charge, juvenile court petition, or mediation referral; determination; considerations.** In cases coming within subdivision (1) of section 43-247, when there is concurrent jurisdiction, or subdivision (2) or (4) of section 43-247, when the juvenile is under the age of sixteen years, the county attorney shall, in making the determination whether to file a criminal charge, file a juvenile court petition, offer juvenile pretrial diversion, or offer mediation, consider:

- (1) the type of treatment such juvenile would most likely be amenable to;
- (2) whether there is evidence that the alleged offense included violence or was committed in an aggressive and premeditated manner;
- (3) the motivation for the commission of the offense;
- (4) the age of the juvenile and the ages and circumstances of any others involved in the offense;
- (5) the previous history of the juvenile, 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;
- (6) the sophistication and maturity of the juvenile 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;

(7) whether there are facilities particularly available to the juvenile court for treatment and rehabilitation of the juvenile;

(8) whether the best interests of the juvenile and the security of the public may require that the juvenile continue in secure detention or under supervision for a period extending beyond his or her minority and, if so, the available alternatives best suited to this purpose;

(9) whether the victim agrees to participate in mediation;

(10) whether there is a juvenile pretrial diversion program established pursuant to sections 43-260.02 to 43-260.07; and

(11) such other matters as the county attorney deems relevant to his or her decision.

**43-277. Juvenile in custody; adjudication hearing; requirements.** Except as provided in sections 43-254.01 and 43-277.01 and unless sooner released, a juvenile taken into custody or remaining in custody under sections 43-248, 43-250, 43-253, and 43-254 shall be brought before the juvenile court for an adjudication hearing as soon as possible but, in all cases, within a six-month period after a petition is filed. If the juvenile is not brought before the juvenile court within such period of time, he or she shall be released from custody, except that such hearing shall not be had until there is before the court the juvenile when charged under subdivision (1), (2), (3)(b), or (4) of section 43-247, and in all cases the juvenile's custodian or person with whom he or she may be, or his or her parent or guardian, or, if they fail to appear, and in all cases under subdivision (3)(a) of section 43-247, a guardian ad litem. The computation of the six-month period provided for in this section shall be made as provided in section 29-1207, as applicable.

**43-277.01. Mental health hearing; requirements.** All hearings concerning a juvenile court petition filed pursuant to subdivision (3)(c) of section 43-247 shall be closed to the public except at the request of the juvenile or the juvenile's parent or guardian. Such hearings shall be held in a courtroom or at any convenient and suitable place designated by the juvenile court judge. The proceeding may be conducted where the juvenile is currently residing if the juvenile is unable to travel.

**43-278. Adjudication hearing; held within ninety days after petition is filed; additional reviews; telephonic hearing; authorized.** Except as provided in sections 43-254.01 and 43-277.01, 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 court shall also review every case filed under such subdivision which has been adjudicated or transferred to it for disposition not less than once every six months. All communications, notices, orders, authorizations, and requests authorized or required in the Nebraska Juvenile Code, with the exception of any adjudication hearing, disposition hearing, or hearing to terminate parental rights, may be made by telephone when other means of communication are impractical as determined by the court. All of the orders generated by way of a telephonic hearing shall be recorded as if the judge were conducting a hearing on the record. Telephonic hearings allowed under this section shall not be in conflict with section 24-734.

**43-279. Juvenile violator or juvenile in need of special supervision; rights of parties; proceedings.**

(1) The adjudication portion of hearings shall be conducted before the court without a jury, applying the customary rules of evidence in use in trials without a jury. When the petition alleges the juvenile to be within the provisions of subdivision (1), (2), (3)(b), or (4) of section 43-247 and the juvenile or his or her parent, guardian, or custodian appears with or without counsel, the court shall inform the parties:

(a) Of the nature of the proceedings and the possible consequences or dispositions pursuant

to sections 43-284 to 43-286, 43-289, and 43-290 that may apply to the juvenile's case following an adjudication of jurisdiction;

- (b) Of such juvenile's right to counsel as provided in sections 43-272 and 43-273;
- (c) Of the privilege against self-incrimination by advising the juvenile, parent, guardian, or custodian that the juvenile may remain silent concerning the charges against the juvenile and that anything said may be used against the juvenile;
- (d) Of the right to confront anyone who testifies against the juvenile and to cross-examine any persons who appear against the juvenile;
- (e) Of the right of the juvenile to testify and to compel other witnesses to attend and testify in his or her own behalf;
- (f) Of the right of the juvenile to a speedy adjudication hearing; and
- (g) Of the right to appeal and have a transcript for such purpose. After giving such warnings and admonitions, the court may accept an in-court admission by the juvenile of all or any part of the allegations in the petition if the court has determined from examination of the juvenile and those present that such admission is intelligently, voluntarily, and understandingly made and with an affirmative waiver of rights and that a factual basis for such admission exists. The court may base its adjudication provided in subsection (2) of this section on such admission.

(2) If the juvenile denies the petition or stands mute the court shall first allow a reasonable time for preparation if needed and then consider only the question of whether the juvenile is a person described by section 43-247. After hearing the evidence on such question, the court shall make a finding and adjudication, to be entered on the records of the court, whether or not the juvenile is a person described by subdivision (1), (2), (3)(b), or (4) of section 43-247 based upon proof beyond a reasonable doubt. If an Indian child is involved, the standard of proof shall be in compliance with the Nebraska Indian Child Welfare Act, if applicable.

(3) If the court shall find that the juvenile named in the petition is not within the provisions of section 43-247, it shall dismiss the case. If the court finds that the juvenile named in the petition is such a juvenile, it shall make and enter its findings and adjudication accordingly, designating which subdivision or subdivisions of section 43-247 such juvenile is within; the court shall allow a reasonable time for preparation if needed and then proceed to an inquiry into the proper disposition to be made of such juvenile.

**43-279.01. Juvenile in need of assistance or termination of parental rights; rights of parties; proceedings.**

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

- (a) Nature of the proceedings and the possible consequences or dispositions pursuant to sections 43-284, 43-285, and 43-288 to 43-295;
- (b) Right to engage counsel of their choice at their own expense or to have counsel appointed if unable to afford to hire a lawyer;
- (c) Right to remain silent as to any matter of inquiry if the testimony sought to be elicited might tend to prove the parent or custodian guilty of any crime;
- (d) Right to confront and cross-examine witnesses;
- (e) Right to testify and to compel other witnesses to attend and testify;
- (f) Right to a speedy adjudication hearing; and
- (g) Right to appeal and have a transcript or record of the proceedings for such purpose.

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

(3) In the case of a denial, the court shall allow a reasonable time for preparation if needed and then proceed to determine the question of whether the juvenile falls under the provisions of section 43-247 as alleged. After hearing the evidence, the court shall make a finding and adjudication to be entered on the records of the court as to whether the allegations in the petition have been proven by a preponderance of the evidence in cases under subdivision (3)(a) of section 43-247 or by clear and convincing evidence in proceedings to terminate parental rights. If an Indian child is involved, the standard of proof shall be in compliance with the Nebraska Indian Child Welfare Act, if applicable.

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

**43-280. Adjudication; effect; use of in-court statements.** No adjudication by the juvenile court upon the status of a juvenile shall be deemed a conviction nor shall the adjudication operate to impose any of the civil disabilities ordinarily resulting from conviction. The adjudication and the evidence given in the court shall not operate to disqualify such juvenile in any future civil or military service application or appointment. Any admission, confession, or statement made by the juvenile in court and admitted by the court, in a proceeding under section 43-279, shall be inadmissible against such juvenile in any criminal or civil proceeding but may be considered by a court as part of a presentence investigation involving a subsequent transaction.

**43-281. Adjudication of jurisdiction; temporary placement for evaluation.** Following an adjudication of jurisdiction and prior to final disposition, the court may place the juvenile with the Office of Juvenile Services or the Department of Health and Human Services for evaluation. The office or department shall make arrangements for an appropriate evaluation.

**43-282. Juvenile court; transfer case and records to court of domicile.** If a petition alleging a juvenile to be within the jurisdiction of the Nebraska Juvenile Code is filed in a county other than the county where the juvenile is presently living or domiciled, the court, at any time after adjudication and prior to final termination of jurisdiction, may transfer the proceedings to the county where the juvenile lives or is domiciled and the court having juvenile court jurisdiction therein shall thereafter have sole charge of such proceedings and full authority to enter any order it could have entered had the adjudication occurred therein.

All documents, social histories, and records, or certified copies thereof, on file with the court pertaining to the case shall accompany the transfer.

**43-283. Dispositional hearing; rules of evidence.** Strict rules of evidence shall not be applied at any dispositional hearing.

**43-283.01. Preserve and reunify the family; reasonable efforts; requirements.**

(1) In determining whether reasonable efforts have been made to preserve and reunify the family and in making such reasonable efforts, the juvenile's health and safety are the paramount concern.

(2) Except as provided in subsection (4) of this section, reasonable efforts shall be made to preserve and reunify families prior to the placement of a juvenile in foster care to prevent or eliminate the need for removing the juvenile from the juvenile's home and to make it possible for a juvenile to safely return to the juvenile's home.

(3) If continuation of reasonable efforts to preserve and reunify the family is determined to be inconsistent with the permanency plan determined for the juvenile in accordance with a permanency hearing under section 43-1312, efforts shall be made to place the juvenile in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the juvenile.

(4) Reasonable efforts to preserve and reunify the family are not required if a court of competent jurisdiction has determined that:

(a) The parent of the juvenile has subjected the juvenile to aggravated circumstances, including, but not limited to, abandonment, torture, chronic abuse, or sexual abuse;

(b) The parent of the juvenile has (i) committed first or second degree murder to another child of the parent, (ii) committed voluntary manslaughter to another child of the parent, (iii) aided or abetted, attempted, conspired, or solicited to commit murder, or aided or abetted voluntary manslaughter of the juvenile or another child of the parent, or (iv) committed a felony assault which results in serious bodily injury to the juvenile or another minor child of the parent; or

(c) The parental rights of the parent to a sibling of the juvenile have been terminated involuntarily.

(5) If reasonable efforts to preserve and reunify the family are not required because of a court determination made under subsection (4) of this section, a permanency hearing, as provided in section 43-1312, shall be held for the juvenile within thirty days after the determination, reasonable efforts shall be made to place the juvenile in a timely manner in accordance with the permanency plan, and whatever steps are necessary to finalize the permanent placement of the juvenile shall be made.

(6) Reasonable efforts to place a juvenile for adoption or with a guardian may be made concurrently with reasonable efforts to preserve and reunify the family, but priority shall be given to preserving and reunifying the family as provided in this section.

**43-284. Juvenile in need of assistance or special supervision; care and custody; payments for support; removal from home; restrictions.**

When any juvenile is adjudged to be under subdivision (3), (4), or (9) of section 43-247, the court may permit such juvenile to remain in his or her own home subject to supervision or may make an order committing the juvenile to (1) the care of some suitable institution, (2) inpatient or outpatient treatment at a mental health facility or mental health program, (3) the care of some reputable citizen of good moral character, (4) the care of some association willing to receive the juvenile embracing in its objects the purpose of caring for or obtaining homes for such juveniles, which association shall have been accredited as provided in section 43-296, (5) the care of a suitable family, or (6) the care and custody of the Department of Health and Human Services.

Under subdivision (1), (2), (3), (4), or (5) of this section, upon a determination by the court that there are no parental, private, or other public funds available for the care, custody, education, and maintenance of a juvenile, the court may order a reasonable sum for the care, custody, education, and maintenance of the juvenile to be paid out of a fund which shall be appropriated annually by the county where the petition is filed until suitable provisions may be made for the juvenile without such payment.

The amount to be paid by a county for education pursuant to this section shall not exceed the average cost for education of a public school student in the county in which the juvenile is placed and shall be paid only for education in kindergarten through grade twelve.

The court may enter a dispositional order removing a juvenile from his or her home upon a written determination that continuation in the home would be contrary to the health, safety, or welfare of such juvenile and

that reasonable efforts to preserve and reunify the family have been made if required under section 43-283.01.

**43-284.01. Juvenile voluntarily relinquished; custody; alternative disposition; effect.** Any juvenile adjudged to be under subdivision (8) of section 43-247 shall remain in the custody of the Department of Health and Human Services or the licensed child placement agency to whom the juvenile has been relinquished unless the court finds by clear and convincing evidence that the best interests of the juvenile require that an alternative disposition be made. If the court makes such finding, then alternative disposition may be made as provided under section 43-284. Such alternative disposition shall relieve the department or licensed child placement agency of all responsibility with regard to such juvenile.

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

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

**43-285. Care of juvenile; authority of guardian; placement plan and report; when; standing; State Foster Care Review Board; participation authorized; immunity.**

(1) When the court awards a juvenile to the care of the Department of Health and Human Services, an association, or an individual in accordance with the Nebraska Juvenile Code, the juvenile shall, unless otherwise ordered, become a ward and be subject to the guardianship of the department, association, or individual to whose care he or she is committed. Any such association and the department shall have authority, by and with the assent of the court, to determine the care, placement, medical services, psychiatric services, training, and expenditures on behalf of each juvenile committed to it. Such guardianship shall not include the guardianship of any estate of the juvenile.

(2) Following an adjudication hearing at which a juvenile is adjudged to be under subdivision (3) of section 43-247, the court may order the department to prepare and file with the court a proposed plan for the care, placement, services, and permanency which are to be provided to such juvenile and his or her family. The health and safety of the juvenile shall be the paramount concern in the proposed plan. The department shall include in the plan for a juvenile who is sixteen years of age or older and subject to the guardianship of the department a written proposal describing programs and services designed to assist the juvenile in acquiring independent living skills. If any other party, including, but not limited to, the guardian ad litem, parents, county attorney, or custodian, proves by a preponderance of the evidence that the department's plan is not in the juvenile's best interests, the court shall disapprove the department's plan. The court may modify the plan, order that an alternative plan be developed, or implement another plan that is in the juvenile's best interests. In its order the court shall include a finding regarding the appropriateness of the programs and services described in the proposal designed to assist the juvenile in acquiring independent living skills. Rules of evidence shall not apply at the dispositional hearing when the court considers the plan that has been presented. The department or any other party may request a review of the court's order concerning the plan by a juvenile review panel as provided in section 43-287.04.

(3) Within thirty days after an order awarding a juvenile to the care of the department, an association, or an individual and until the juvenile reaches the age of majority, the department, association, or individual shall file with the court a report stating the location of the juvenile's placement and the needs of the juvenile in order to effectuate

the purposes of subdivision (1) of section 43-246. The department, association, or individual shall file a report with the court once every six months or at shorter intervals if ordered by the court or deemed appropriate by the department, association, or individual. The department, association, or individual shall file a report and notice of placement change with the court and shall send copies of the notice to all interested parties at least seven days before the placement of the juvenile is changed from what the court originally considered to be a suitable family home or institution to some other custodial situation in order to effectuate the purposes of subdivision (1) of section 43-246. The court, on its own motion or upon the filing of an objection to the change by an interested party, may order a hearing to review such a change in placement and may order that the change be stayed until the completion of the hearing. Nothing in this section shall prevent the court on an ex parte basis from approving an immediate change in placement upon good cause shown. The department may make an immediate change in placement without court approval only if the juvenile is in a harmful or dangerous situation or when the foster parents request that the juvenile be removed from their home. Approval of the court shall be sought within twenty-four hours after making the change in placement or as soon thereafter is possible. The department or any other party may request a review of the change in placement by a juvenile review panel in the manner set out in section 43-287.04. The department shall provide the juvenile's guardian ad litem with a copy of any report filed with the court by the department pursuant to this subsection.

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

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

(6) Whenever a juvenile is in a foster care placement as defined in section 43-1301, the State Foster Care Review Board may participate in proceedings concerning the juvenile as provided in section 43-1313 and notice shall be given as provided in section 43-1314.

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

(8) Any member of the State Foster Care Review Board, any of its agents or employees, or any member of any local foster care review board participating in an investigation or making any report pursuant to the Foster Care Review Act or participating in a judicial proceeding pursuant to this section shall be immune from any civil liability that would otherwise be incurred except for false statements negligently made.

**43-286. Juvenile violator or juvenile in need of special supervision; disposition; violation of probation; procedure.**

(1) When any juvenile is adjudicated to be a juvenile described in subdivision (1), (2), or (4) of section 43-247:

(a) The court may continue the dispositional portion of the hearing, from time to time upon such terms and conditions as the court may prescribe, including an order of restitution of any property stolen or damaged or an order requiring the juvenile to participate in community service programs, if such order is in the interest of the juvenile's reformation or rehabilitation, and, subject to the further order of the court, may:

- (i) Place the juvenile on probation subject to the supervision of a probation officer;
- (ii) Permit the juvenile to remain in his or her own home or be placed in a suitable family home, subject to the supervision of the probation officer; or
- (iii) Cause the juvenile to be placed in a suitable family home or institution, subject to the supervision of the probation officer. If the court has committed the juvenile to the care and custody

of the Department of Health and Human Services, the department shall pay the costs of the suitable family home or institution which are not otherwise paid by the juvenile's parents.

Under subdivision (1)(a) of this section, upon a determination by the court that there are no parental, private, or other public funds available for the care, custody, and maintenance of a juvenile, the court may order a reasonable sum for the care, custody, and maintenance of the juvenile to be paid out of a fund which shall be appropriated annually by the county where the petition is filed until a suitable provision may be made for the juvenile without such payment; or

(b) The court may commit such juvenile to the Office of Juvenile Services, but a juvenile under the age of twelve years shall not be placed at the Youth Rehabilitation and Treatment Center-Geneva or the Youth Rehabilitation and Treatment Center-Kearney 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 juvenile and the welfare of the community demand his or her commitment. This minimum age provision shall not apply if the act in question is murder or manslaughter.

(2) When any juvenile is found by the court to be a juvenile described in subdivision (3)(b) of section 43-247, the court may enter such order as it is empowered to enter under subdivision (1)(a) of this section or enter an order committing or placing the juvenile to the care and custody of the Department of Health and Human Services.

(3) Beginning July 15, 1998, when any juvenile is adjudicated to be a juvenile described in subdivision (1), (2), (3)(b), or (4) of section 43-247 because of a nonviolent act or acts and the juvenile has not previously been adjudicated to be such a juvenile because of a violent act or acts, the court may, with the agreement of the victim, order the juvenile to attend juvenile offender and victim mediation with a mediator or at an approved center selected from the roster made available pursuant to section 25-2908.

(4) (a) When a juvenile is placed on probation or under the supervision of the court and it is alleged that the juvenile is again a juvenile described in subdivision (1), (2), (3)(b), or (4) of section 43-247, a petition may be filed and the same procedure followed and rights given at a hearing on the original petition. If an adjudication is made that the allegations of the petition are true, the court may make any disposition authorized by this section for such adjudications.

(b) When a juvenile is placed on probation or under the supervision of the court for conduct under subdivision (1), (2), (3)(b), or (4) of section 43-247 and it is alleged that the juvenile has violated a term of probation or supervision or that the juvenile has violated an order of the court, a motion to revoke probation or supervision or to change the disposition may be filed and proceedings held as follows:

(i) The motion shall set forth specific factual allegations of the alleged violations and a copy of such motion shall be served on all persons required to be served by sections 43-262 to 43-267;

(ii) The juvenile shall be entitled to a hearing before the court to determine the validity of the allegations. At such hearing the juvenile shall be entitled to those rights relating to counsel provided by section 43-272 and those rights relating to detention provided by sections 43-254 to 43-256. The juvenile shall also be entitled to speak and present documents, witnesses, or other evidence on his or her own behalf. He or she may confront persons who have given adverse information concerning the alleged violations, may cross-examine such persons, and may show that he or she did not violate the conditions of his or her probation or, if he or she did, that mitigating circumstances suggest that the violation does not warrant revocation. The revocation hearing shall be held within a reasonable time after the juvenile is taken into custody;

(iii) The hearing shall be conducted in an informal manner and shall be flexible enough to consider evidence, including letters, affidavits, and other material, that would not be admissible in an adversarial criminal trial;

(iv) The juvenile shall be given a preliminary hearing in all cases when the juvenile is confined, detained, or otherwise significantly deprived of his or her liberty as a result of his or her alleged violation of probation. Such preliminary hearing shall be held before an impartial person other than his or her probation officer or any person directly involved with the case. If, as a result of such preliminary hearing, probable cause



is found to exist, the juvenile shall be entitled to a hearing before the court in accordance with this subsection;

(v) If the juvenile is found by the court to have violated the terms of his or her probation, the court may modify the terms and conditions of the probation order, extend the period of probation, or enter any order of disposition that could have been made at the time the original order of probation was entered; and

(vi) In cases when the court revokes probation, it shall enter a written statement as to the evidence relied on and the reasons for revocation.

**43-287. Repealed. Laws 1998, LB 1073, s. 179.**

**43-287.01. Dispositional review; purpose and intent.** The purpose of sections 43-287.01 to 43-287.06 is to provide for an expedited review of juvenile dispositions by the courts. It is the intent to allow such review only when a court orders the implementation of a plan different than the plan prepared by the Department of Health and Human Services for the care, placement, and services to be provided to such juvenile and the department or any other party believes such court-ordered plan not to be in the best interests of the juvenile.

It is the intent of sections 43-287.01 to 43-287.06 to remove contested dispositional plans from the appellate process for the purpose of expediting review by a juvenile review panel. Nothing in such sections shall otherwise limit the right of any party to appeal other final orders of a juvenile court pursuant to sections 25-2728, 25-2729, 25-2733, 43-2,106, and 43-2,126.

**43-287.02. 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 a county court or separate juvenile court.

(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.

**43-287.03. Juvenile review panel; review disposition; when.** A juvenile review panel shall review a disposition of a court when the court makes an order directing the implementation of a plan different from the plan prepared by the Department of Health and Human Services concerning the care, placement, or services to be provided to the juvenile and the department or any other party believes that the court's order is not in the best interests of the juvenile.

**43-287.04. Request for review; procedures.** If the Department of Health and Human Services or any other party desires to have a disposition described in section 43-287.03 reviewed, the department or other party shall have ten days after disposition 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 county court or separate juvenile court where the action was originally heard. Upon receipt of the request for review, the clerk of the county court or separate juvenile court shall forward a

copy of the request to the Clerk of the Supreme Court.

**43-287.05. Juvenile review panel; record; powers; decision, when; effect.** 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 which shall be requested and prepared as in appeals from the county court to the district court. 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 juvenile, in which case the panel may modify the court-ordered plan or the plan of the Department of Health and Human Services or may substitute the department's plan for the court-ordered plan and remand the case back to the court with directions to implement such plan. Such review shall stay the enforcement of any order entered by the court.

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. The panel's decision shall be final and binding on the parties, except that the decision may be appealed as provided in section 43-287.06.

**43-287.06. Juvenile review panel; decision; appeal.** The Department of Health and Human Services or any other party may appeal from any final order or judgment entered by the juvenile review panel. Such order or judgment 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 or judgment of the district court. The appellate court shall review the disposition of the juvenile review panel de novo on the record submitted to the panel. Any appeal made pursuant to this section shall not stay any order of a juvenile review panel.

**43-288. Order allowing juvenile to return or remain at home; conditions and requirements.** If the court's order of disposition permits the juvenile to remain in his or her own home as provided by section 43-284 or 43-286, the court may, as a condition or conditions to the juvenile's continuing to remain in his or her own home, or in cases under such sections when the juvenile is placed or detained outside his or her home, as a condition of the court allowing the juvenile to return home, require the parent, guardian, or other custodian to:

- (1) Eliminate the specified conditions constituting or contributing to the problems which led to juvenile court action;
- (2) Provide adequate food, shelter, clothing, and medical care and for other needs of the juvenile;
- (3) Give adequate supervision to the juvenile in the home;
- (4) Take proper steps to insure the juvenile's regular school attendance;
- (5) Cease and desist from specified conduct and practices which are injurious to the welfare of the juvenile; and
- (6) Resume proper responsibility for the care and supervision of the juvenile.

The terms and conditions imposed in any particular case shall relate to the acts or omissions of the juvenile, the parent, or other person responsible for the care of the juvenile which constituted or contributed to the problems which led to the juvenile court action in such case. The maximum duration of any such term or condition shall be one year unless the court finds that at the conclusion of that period exceptional circumstances require an extension of the period for an additional year.

**43-289. Juvenile committed; release from confinement upon reaching age of majority; hospital treatment; custody in state institutions; discharge.** In no case shall a juvenile committed under the terms of the Nebraska Juvenile Code be confined after he or she reaches the age of majority. The court may, when the health or condition of any juvenile adjudged to be within the terms of such code shall require it, cause the juvenile to be placed in a public hospital or institution for treatment or special care or in an accredited and suitable private hospital or institution which will receive the juvenile for like purposes. Whenever any juvenile has been committed to the

Department of Health and Human Services, the department shall follow the court's orders, if any, concerning the juvenile's specific needs for treatment or special care for his or her physical well-being and healthy personality. If the court finds any such juvenile to be a person with mental retardation, it may, upon attaching a physician's certificate and a report as to the mental capacity of such person, commit such juvenile directly to an authorized and appropriate state or local facility or home.

The marriage of any juvenile committed to a state institution under the age of nineteen years shall not make such juvenile of the age of majority.

A juvenile committed to any such institution shall be subject to the control of the superintendent thereof, and the superintendent, with the advice and consent of the Department of Health and Human Services, shall adopt and promulgate rules and regulations for the promotion, paroling, and final discharge of residents such as shall be considered mutually beneficial for the institution and the residents. Upon final discharge of any resident, such department shall file a certified copy of the discharge with the court which committed the resident.

**43-290. Costs of care and treatment; payment; procedure.** It is the purpose of this section to promote parental responsibility and to provide for the most equitable use and availability of public money.

Pursuant to the petition filed by the county attorney in accordance with section 43-274, whenever the care or custody of a juvenile is given by the court to someone other than his or her parent, which shall include placement with a state agency, or when a juvenile is given medical, psychological, or psychiatric study or treatment under order of the court, the court shall make a determination of support to be paid by a parent for the juvenile at the same proceeding at which placement, study, or treatment is determined or at a separate proceeding. Such proceeding, which may occur prior to, at the same time as, or subsequent to adjudication, shall be in the nature of a disposition hearing.

At such proceeding, after summons to the parent of the time and place of hearing served as provided in sections 43-262 to 43-267, the court may order and decree that the parent shall pay, in such manner as the court may direct, a reasonable sum that will cover in whole or part the support, study, and treatment of the juvenile, which amount ordered paid shall be the extent of the liability of the parent. The court in making such order shall give due regard to the cost of the support, study, and treatment of the juvenile, the ability of the parent to pay, and the availability of money for the support of the juvenile from previous judicial decrees, social security benefits, veterans benefits, or other sources. Support thus received by the court shall be transmitted to the person, agency, or institution having financial responsibility for such support, study, or treatment and, if a state agency or institution, remitted by such state agency or institution quarterly to the Director of Administrative Services for credit to the proper fund.

Whenever medical, psychological, or psychiatric study or treatment is ordered by the court, whether or not the juvenile is placed with someone other than his or her parent, or if such study or treatment is otherwise provided as determined necessary by the custodian of the juvenile, the court shall inquire as to the availability of insured or uninsured health care coverage or service plans which include the juvenile. The court may order the parent to pay over any plan benefit sums received on coverage for the juvenile. The payment of any deductible under the health care benefit plan covering the juvenile shall be the responsibility of the parent. If the parent willfully fails or refuses to pay the sum ordered or to pay over any health care plan benefit sums received, the court may proceed against him or her 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 shall issue at the request of any person, agency, or institution treating or maintaining such juvenile. The court may afterwards, because of a change in the circumstances of the parties, revise or alter the order of payment for support, study, or treatment.

If the juvenile has been committed to the care and custody of the Department of Health and Human Services, the department shall pay the costs for the support, study, or treatment of the juvenile which are not

otherwise paid by the juvenile's parent.

If no provision is otherwise made by law for the support or payment for the study or treatment of the juvenile, compensation for the study or treatment 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 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 not to exceed ten years from the nineteenth birthday of the youngest child for whom support was ordered.

**43-291. Termination of parental rights; proceedings.** Facts may also be set forth in the original petition, a supplemental petition, or motion filed with the court alleging that grounds exist for the termination of parental rights. After a petition, a supplemental petition, or motion has been filed, the court shall cause to be endorsed on the summons and notice that the proceeding is one to terminate parental rights, shall set the time and place for the hearing, and shall cause summons and notice, with a copy of the petition, supplemental petition, or motion attached, to be given in the same manner as required in other cases before the juvenile court.

**43-292. Termination of parental rights; grounds.** The court may terminate all parental rights between the parents or the mother of a juvenile born out of wedlock and such juvenile when the court finds such action to be in the best interests of the juvenile and it appears by the evidence that one or more of the following conditions exist:

- (1) The parents have abandoned the juvenile for six months or more immediately prior to the filing of the petition;
- (2) The parents have substantially and continuously or repeatedly neglected and refused to give the juvenile or a sibling of the juvenile necessary parental care and protection;
- (3) The parents, being financially able, have willfully neglected to provide the juvenile 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 legal custody of the juvenile is lodged with others and such payment ordered by the court;
- (4) The parents are unfit by reason of debauchery, habitual use of intoxicating liquor or narcotic drugs, or repeated lewd and lascivious behavior, which conduct is found by the court to be seriously detrimental to the health, morals, or well-being of the juvenile;
- (5) The parents are unable to discharge parental responsibilities because of mental illness or mental deficiency and there are reasonable grounds to believe that such condition will continue for a prolonged indeterminate period;
- (6) Following a determination that the juvenile is one as described in subdivision (3)(a) of section 43-247, reasonable efforts to preserve and reunify the family if required under 43-283.01, under the direction of the court, have failed to correct the conditions leading to the determination;
- (7) The juvenile has been in an out-of-home placement for fifteen or more months of the most recent twenty-two months;
- (8) The parent has inflicted upon the juvenile, by other than accidental means, serious bodily injury;
- (9) The parent of the juvenile has subjected the juvenile to aggravated circumstances, including, but not limited to, abandonment, torture, chronic abuse, or sexual abuse; or
- (10) The parent has (a) committed murder of another child of the parent, (b) committed voluntary manslaughter of another child of the parent, (c) aided or abetted, attempted, conspired, or solicited to commit murder, or aided or abetted voluntary manslaughter of the juvenile or another child of the parent, or (d) committed a felony assault that resulted in serious bodily injury to the juvenile or another minor child of the parent.

**43-292.01. Termination of parental rights; appointment of guardian ad litem; when.** When

termination of the parent-juvenile relationship is sought under subdivision (5) of section 43-292, the court shall appoint a guardian ad litem for the alleged incompetent parent. The court may, in any other case, appoint a guardian ad litem, as deemed necessary or desirable, for any party. The guardian ad litem shall be paid a reasonable fee set by the court and paid from the general fund of the county.

**43-292.02. Termination of parental rights; state; duty to file petition; when.**

(1) A petition shall be filed on behalf of the state to terminate the parental rights of the juvenile's parents or, if such a petition has been filed by another party, the state shall join as a party to the petition, and the state shall concurrently identify, recruit, process, and approve a qualified family for an adoption of the juvenile, if:

(a) A juvenile has been in foster care under the responsibility of the state for fifteen or more months of the most recent twenty-two months; or

(b) A court of competent jurisdiction has determined the juvenile to be an abandoned infant or has made a determination that the parent has committed murder of another child of the parent, committed voluntary manslaughter of another child of the parent, aided or abetted, attempted, conspired, or solicited to commit murder, or aided or abetted voluntary manslaughter of the juvenile or another child of the parent, or committed a felony assault that has resulted in serious bodily injury to the juvenile or another minor child of the parent. For purposes of this subdivision, infant means a child eighteen months of age or younger.

(2) A petition shall not be filed on behalf of the state to terminate the parental rights of the juvenile's parents or, if such a petition has been filed by another party, the state shall not join as a party to the petition if the sole factual basis for the petition is that (a) the parent or parents of the juvenile are financially unable to provide health care for the juvenile or (b) the parent or parents of the juvenile are incarcerated. The fact that a qualified family for an adoption of the juvenile has been identified, recruited, processed, and approved shall have no bearing on whether parental rights shall be terminated.

(3) The petition is not required to be filed on behalf of the state or if a petition is filed the state shall not be required to join in a petition to terminate parental rights or to concurrently find a qualified family to adopt the juvenile under this section if:

(a) The child is being cared for by a relative;

(b) The Department of Health and Human Services has documented in the case plan or permanency plan, which shall be available for court review, a compelling reason for determining that filing such a petition would not be in the best interests of the juvenile; or

(c) The family of the juvenile has not had a reasonable opportunity to avail themselves of the services deemed necessary in the case plan or permanency plan approved by the court if reasonable efforts to preserve and reunify the family are required under section 43-283.01

**43-292.03. Termination of parental rights; state; Department of Health and Human Services; duties.**

(1) Within thirty days after the fifteen-month period under subsection (1) of section 43-292.02, the court shall hold a hearing on the record and shall make a determination on the record as to whether there is an exception under subsection (3) of section 43-292.02 in this particular case. If there is no exception, the state shall proceed as provided in subsection (1) of section 43-292.02.

(2) The Department of Health and Human Services shall submit on a timely basis, to the court in which the petition to place the juvenile in an out-of-home placement was filed and to the county attorney who filed the petition, a list of the name of each juvenile who has been in an out-of-home placement for fifteen or more months of the most recent twenty-two months.

**43-293. Termination of parental rights; effect; adoption; consent.** When the parental rights have been

terminated under section 43-292 and the care of the juvenile is awarded to the Department of Health and Human Services, the department shall have authority to consent to the legal adoption of such juvenile and no other consent shall be required to authorize any court having jurisdiction to enter a legal decree of adoption of such juvenile. When the care of such juvenile is awarded to an individual or association and the parental rights have been terminated by the juvenile court, such individual or association may consent, only when authorized by order of such juvenile court, to the legal adoption of such juvenile and no other consent shall be required to authorize any court having jurisdiction to enter a legal decree of adoption of such juvenile. An order terminating the parent-juvenile relationship shall divest the parent and juvenile of all legal rights, privileges, duties, and obligations with respect to each other and the parents shall have no rights of inheritance with respect to such juvenile. The order terminating parental rights shall be final and may be appealed in the same manner as other final judgments of a juvenile court.

**43-294. Termination of parental rights; custodian; rights; obligations.** The custodian appointed by a juvenile court shall have charge of the person of the juvenile and the right to make decisions affecting the person of the juvenile, including medical, dental, surgical, or psychiatric treatment, except that consent to a juvenile marrying or joining the armed forces of the United States may be given by a custodian, other than the Department of Health and Human Services, with approval of the juvenile court, or by the department, as to juveniles in its custody, without further court authority. The authority of a custodian appointed by a juvenile court shall terminate when the individual under legal custody reaches nineteen years of age, is legally adopted, or the authority is terminated by order of the juvenile court. When an adoption has been granted by a court of competent jurisdiction as to any such juvenile, such fact shall be reported immediately by such custodian to the juvenile court. If the adoption is denied the jurisdiction over the juvenile shall immediately revert to the court which authorized placement of the juvenile for adoption. Any association or individual receiving the care or custody of any such juvenile shall be subject to visitation or inspection by the Department of Health and Human Services, or any probation officer of such court or any person appointed by the court for such purpose, and the court may at any time require from such association or person a report or reports containing such information or statements as the judge shall deem proper or necessary to be fully advised as to the care, maintenance, and moral and physical training of the juvenile, as well as the standing and ability of such association or individual to care for such juvenile. The custodian so appointed by the court shall have standing as a party in that case to file any pleading or motion, to be heard by the court with regard to such filings, and to be granted any review or relief requested in such filings consistent with Chapter 43, article 2.

**43-295. Juvenile court; continuing jurisdiction; exception.** Except when the juvenile has been legally adopted, the jurisdiction of the court shall continue over any juvenile brought before the court or committed under the Nebraska Juvenile Code and the court shall have power to order a change in the custody or care of any such juvenile if at any time it is made to appear to the court that it would be for the best interests of the juvenile to make such change.

**43-296. Associations receiving juveniles; supervision by Department of Health and Human Services; certificate; reports; statements.** All associations receiving juveniles under the Nebraska Juvenile Code shall be subject to the same visitation, inspection, and supervision by the Department of Health and Human Services as are public charitable institutions of this state, and it shall be the duty of the department to pass annually upon the fitness of every such association as may receive or desire to receive juveniles under the provisions of such code. Every such association shall annually, at such time as the department shall direct, make a report to the department showing its condition, management, and competency to adequately care for such juveniles as are or may be committed to it and such other facts as the department may require. Upon the department being satisfied that such association is competent and has adequate facilities to care for such juveniles, it shall issue to such association a certificate to that effect, which certificate shall continue in force for one year unless sooner revoked by the department. No juvenile shall be committed to any such association which has not received such a certificate within the fifteen months immediately preceding the commitment. The court may at any time require from any association receiving or

desiring to receive juveniles under the provisions of the Nebraska Juvenile Code such reports, information, and statements as the judge shall deem proper and necessary for his or her action, and the court shall in no case be required to commit a juvenile to any association whose standing, conduct, or care of juveniles or ability to care for the same is not satisfactory to the court.

**43-297. Juveniles in need of assistance; placement with association or institution; agreements; effect.**

It shall be lawful for the parent, guardian, or other person having the right to dispose of a juvenile defined in subdivision (3)(a) of section 43-247 to enter into an agreement with any association or institution incorporated under any public or private law of this state or any other state, for the purpose of aiding, caring for, or placing such juveniles in homes and, subject to approval as provided in this section, to surrender such juveniles to such association or institution, to be taken and cared for by such association or institution, or put into a family home. Such agreement may contain any and all proper stipulations to that end and may authorize the association or institution by its attorney or agent to appear in any proceeding for the legal adoption of such juvenile, and consent to such juvenile's adoption; and the order of the court, made upon such consent, shall be binding upon the juvenile and his or her parents or guardian, or other person, the same as if such person were personally in court and consented thereto, whether made party to the proceeding or not. All the publication or notice necessary for the adoption of any such juveniles shall be that the institution or parties having charge of such juveniles by court decree, or to whom a relinquishment of the juvenile was given, shall know that such legal adoption is being made.

**43-298. Commitment of juvenile; religious preference considered.** The court in committing juveniles under the Nebraska Juvenile Code shall place them as far as practicable in the care and custody of some individual holding the same religious belief as the parents of the juvenile or with some association which is controlled by persons of like religious faith of the parents of the juvenile.

**43-299. Code, how construed.** Nothing in the Nebraska Juvenile Code shall be construed to repeal any portion of the act to aid the youth rehabilitation and treatment centers for juveniles.

**43-2,100. Department of Health and Human Services; acceptance of juveniles for observation and treatment; authorized.** The Department of Health and Human Services may receive any juvenile for observation and treatment from any public institution other than a state institution or from any private or charitable institution or person having legal custody thereof upon such terms as such department may deem proper.

**43-2,101. Costs of transporting juvenile to department; payment by county; when.** Unless otherwise ordered by the court pursuant to section 43-290, each county shall bear all the expenses incident to the transportation of each juvenile from such county to the Department of Health and Human Services, together with such fees and costs as are allowed by law in similar cases. The fees, costs, and expenses shall be paid from the county treasury upon itemized vouchers certified by the judge of the juvenile court.

**43-2,102. Setting aside adjudication; when.** Whenever any juvenile is adjudged to be a juvenile as defined in subdivision (1), (2), (3)(b), or (4) of section 43-247 and has satisfactorily completed his or her probation and supervision, or the treatment program of his or her commitment, any interested party may request the court which entered the adjudication to set aside that adjudication.

**43-2,103. Setting aside adjudication; factors considered.** In determining whether to set aside the adjudication, the court shall consider:

- (1) The behavior of the juvenile after the adjudication and his or her response to treatment and

rehabilitation programs;

(2) Whether the setting aside of the adjudication will depreciate the seriousness of his or her conduct or promote disrespect for law; and

(3) Whether the failure to set aside the adjudication may result in disabilities disproportionate to the conduct upon which the adjudication was based.

**43-2,104. Setting aside adjudication; hearing; order.** After hearing, the court may grant the request and issue an order setting aside the adjudication under section 43-247 when in the opinion of the court the order will be in the best interest of the petitioner and consistent with the public welfare.

**43-2,105. Setting aside adjudication; records, sealed; notice of hearing; violation; contempt.** When the court issues an order setting aside the adjudication under section 43-247, the order shall also require that all records relevant to the adjudication be sealed. Thereafter, 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 institution, person, or agency 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, agency, or institution that may be affected by such order by delivering by hand or by mailing a copy of the request by registered or certified mail, together with the order of the court which states the time for hearing, to the last-known address of such person, agency, or institution at least ten days before the date for hearing. Any person who fails to comply with the order of the court as provided for in section 43-2,104 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.

**43-2,106. Proceeding in county court sitting as juvenile court; jurisdiction; appeals.** When a juvenile court proceeding has been instituted before a county court sitting as a juvenile court, the original jurisdiction of the county court shall continue until the final disposition thereof and no appeal shall stay the enforcement of any order entered in the county court. After appeal has been filed, the appellate court, upon application and hearing, may stay any order, judgment, or decree on appeal if suitable arrangement is made for the care and custody of the juvenile. The county court shall continue to exercise supervision over the juvenile until a hearing is had in the appellate court and the appellate court enters an order making other disposition. If the appellate court adjudges the juvenile to be a juvenile meeting the criteria established in subdivision (1), (2), (3), or (4) of section 43-247, the appellate court shall affirm the disposition made by the county court unless it is shown by clear and convincing evidence that the disposition of the county court is not in the best interest of such juvenile. Upon determination of the appeal, the appellate court shall remand the case to the county court for further proceedings consistent with the determination of the appellate court. In the event of an appeal of a proceeding for termination of parental rights, the matter 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 or judgment of the district court, except that such termination order or judgment shall be advanced for argument before the appellate court and the appellate court, in order to expedite the preferred disposition of the case and the juvenile, shall render the judgment and write an opinion as speedily as possible.

**43-2,106.01. Judgments or final orders; appeal; parties; cost.**

(1) Any final order or judgment entered by a juvenile court may be appealed to the Court of Appeals in the same manner as an appeal from 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 or judgment of the district court, except as provided in sections 43-287.01 to 43-287.06 and except that when appeal is taken from a finding by the juvenile court terminating parental rights, the cause shall be advanced for argument before the appellate court



and the appellate court shall, in order to expedite the preferred disposition of the case and the juvenile, render the judgment and write its opinion, if any, as speedily as possible.

(2) An appeal may be taken by:

- (a) The juvenile;
- (b) The guardian ad litem;
- (c) The juvenile's parent, custodian, or guardian. For purposes of this subdivision, custodian and guardian shall include, but not be limited to, the Department of Health and Human Services, an association, or an individual to whose care the juvenile has been awarded pursuant to the Nebraska Juvenile Code; or
- (d) The county attorney or petitioner, except that in any case determining delinquency issues in which the juvenile has been placed legally in jeopardy, an appeal of such issues may only be taken by exception proceedings pursuant to sections 29-2317 to 29-2319.

(3) In all appeals from the county court sitting as 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.

**43-2,106.02. Power of court to vacate or modify judgments or orders.** The separate juvenile court and the county court sitting as a juvenile court shall have the power to vacate or modify its own judgments or orders during or after the term at which such judgments or orders were made in the same manner as provided for actions filed in the district court.

**43-2,107. Court; 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 juvenile. 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 juvenile 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 shall be guilty of a Class II misdemeanor and may be proceeded against as described in sections 42-928 and 42-929.

**43-2,108. Juvenile court; files; how kept; certain reports and records not open to inspection without order of court; exception.**

(1) The juvenile court judge shall keep a minute book in which he or she shall enter minutes of all proceedings of the court in each case, including appearances, findings, orders, decrees, and judgments, and any evidence which he or she feels it is necessary and proper to record. Juvenile court legal records shall be deposited in files and shall include the petition, summons, notice, certificates or receipts of mailing, minutes of the court, findings, orders, decrees, judgments, and motions.

(2) Except as provided in subsection (3) of this section, the medical, psychological, psychiatric, and social welfare reports and the records of juvenile probation officers as they relate to individual proceedings in the juvenile court shall not be open to inspection, without order of the court. Such records shall be made available to a district court of this state or the District Court of the United States on the order of a judge thereof for the confidential use of such judge or his or her probation officer as to matters pending before such court but shall not be made available to parties or their counsel; and such district court records shall be made available to a county court or separate juvenile court upon request of the county judge or separate juvenile judge for the confidential use of such judge and his or

her probation officer as to matters pending before such court, but shall not be made available by such judge to the parties or their counsel.

(3) As used in this subsection, confidential record information shall mean all docket records, other than the pleadings, orders, decrees, and judgments; case files and records; reports and records of probation officers; and information supplied to the court of jurisdiction in such cases by any individual or any public or private institution, agency, facility, or clinic, which is compiled by, produced by, and in the possession of any court. In all cases under subdivision (3)(a) of section 43-247, access to all confidential record information in such cases shall be granted only as follows:

(a) The court of jurisdiction may, subject to applicable federal and state regulations, disseminate such confidential record information to any individual, or public or private agency, institution, facility, or clinic which is providing services directly to the juvenile and such juvenile's parents or guardian and his or her immediate family who are the subject of such record information;

(b) the court of jurisdiction may disseminate such confidential record information, with the consent of persons who are subjects of such information, or by order of such court after showing of good cause, to any law enforcement agency upon such agency's specific request for such agency's exclusive use in the investigation of any protective service case or investigation of allegations under subdivision (3)(a) of section 43-247, regarding the juvenile or such juvenile's immediate family, who are the subject of such investigation; and

(c) the court of jurisdiction may disseminate such confidential record information to any court, which has jurisdiction of the juvenile who is the subject of such information upon such court's request.

(4) Nothing in subsection (3) of this section shall be construed to restrict the dissemination of confidential record information between any individual or public or private agency, institute, facility, or clinic, except any such confidential record information disseminated by the court of jurisdiction pursuant to this section shall be for the exclusive and private use of those to whom it was released and shall not be disseminated further without order of such court.

(5) (a) Any records concerning a juvenile court petition filed pursuant to subdivision (3)(c) of section 43-247 shall remain confidential except as may be provided otherwise by law. Such records shall be accessible to (i) the juvenile except as provided in subdivision (b) of this subsection, (ii) the juvenile's counsel, (iii) the juvenile's parent or guardian, and (iv) persons authorized by an order of a judge or court.

(b) Upon application by the county attorney or by the director of the facility where the juvenile is placed and upon a showing of good cause therefor, a judge of the juvenile court having jurisdiction over the juvenile or of the county where the facility is located may order that the records shall not be made available to the juvenile if, in the judgment of the court, the availability of such records to the juvenile will adversely affect the juvenile's mental state and the treatment thereof.

**43-2,109. County board of visitors; appointment; duties; reports; expenses.** In each county, the judge presiding over the juvenile court may appoint a board of four reputable residents, who shall serve without compensation, to constitute a board of visitation, whose duty it shall be to visit at least once a year all institutions, societies, and associations within the county receiving juveniles under the Nebraska Juvenile Code. Visits shall be made by not less than two of the members of the board, who shall go together or make a joint report. The board of visitors shall report to the court, from time to time, the condition of juveniles received by or in the charge of such associations and institutions and shall make an annual report to the Department of Health and Human Services in such form as the department may prescribe. The county board may, in its discretion, make appropriations for the payment of the actual and necessary expenses incurred by the visitors in the discharge of their official duties.

**43-2,110. Detention homes; power of county boards to provide.** The several county boards of counties of Nebraska shall have the power and authority to appropriate the funds necessary to establish and maintain

detention homes in connection with the juvenile courts of this state.

**43-2,111. Establishment; when; court of record.** Each county of this state having a population of seventy-five thousand or more inhabitants shall constitute a separate juvenile court judicial district. There shall be established in each such juvenile court judicial district of this state a separate juvenile court whenever the establishment thereof shall be authorized by a majority of the electors of any such county voting thereon. The court so established shall be a court of record.

**43-2,112. Establishment; petition; election; transfer of dockets.** The question of whether or not there shall be established a separate juvenile court in any county having a population of seventy-five thousand or more inhabitants shall be submitted to the registered voters of any such county at the first statewide general election or at any special election held not less than four months after the filing with the Secretary of State of a petition requesting the establishment of such court signed by registered voters of such county in a number not less than five percent of the total votes cast for Governor in such county at the general state election next preceding the filing of the petition. The question shall be submitted to the registered voters of the county in the following form:

Shall there be established in ..... County a separate juvenile court?

..... Yes

..... No

The election shall be conducted and the ballots shall be counted and canvassed in the manner prescribed in the Election Act.

After a separate juvenile court has been established, the clerk of the county court shall forthwith transfer to the docket of the separate juvenile court all pending matters within the exclusive jurisdiction of the separate juvenile court for consideration and disposition by the judge thereof.

**43-2,113. Rooms and offices; jurisdiction; powers and duties.**

(1) In counties where a separate juvenile court is established, the county board of the county shall provide suitable rooms and offices for the accommodation of the judge of the separate juvenile court and the officers and employees appointed by such judge or by the probation administrator pursuant to subsection (4) of section 29-2253. Such separate juvenile court and the judge, officers, and employees of such court shall have the same and exclusive jurisdiction, powers, and duties that are prescribed in the Nebraska Juvenile Code, concurrent jurisdiction under section 83-223, and such other jurisdiction, powers, and duties as specifically provided by law.

(2) A juvenile court created in a separate juvenile court judicial district or a county court sitting as a juvenile court in all other counties shall have and exercise jurisdiction within such juvenile court judicial district or county court judicial district with the county court and district court in all matters arising under Chapter 42, article 3, when the care, support, custody, or control of minor children under the age of eighteen years is involved. Such cases shall be filed in the county court and district court and may, with the consent of the juvenile judge, be transferred to the docket of the separate juvenile court or county court.

(3) All orders issued by a separate juvenile court or a county court which provide for child support or spousal support as defined in section 42-347 shall be governed by sections 42-347 to 42-381 and 43-290 relating to such support. Certified copies of such orders shall be filed by the clerk of the separate juvenile or county court with the clerk of the district court who shall maintain a record as provided in subsection (4) of section 42-364. There shall

be no fee charged for the filing of such certified copies.

**43-2,114. Judge; nomination; appointment; retention; vacancy.** All judges of separate juvenile courts shall be nominated, appointed, and retained in office in accordance with the provisions of Article V, section 21, of the Constitution of Nebraska. Each of such judges shall hold office until his or her successor is selected and qualified. Any vacancy in the office of judge of the separate juvenile courts shall be filled by nomination and appointment as provided by Article V, section 21, of the Constitution of Nebraska.

**43-2,115. Judge; retention in office; how determined.** After May 6, 1963, the right of any judge of any separate juvenile court to continue in office for another term shall be determined by the electorate in the manner provided by Article V, section 21, of the Constitution of Nebraska and the laws of this state.

**43-2,116. Judge; term of office.** The term of office of judges of any separate juvenile court, who are approved by the electorate, shall be for six years beginning on the first Thursday after the first Tuesday in January following his or her approval by the electorate. Any judge of any separate juvenile court appointed to office after the expiration of the term of incumbent judges shall serve for three full years after his or her appointment and thereafter, if he or she desires to continue in office, shall cause his or her right to continue in office to be submitted to the electorate in the manner provided by law at the first general election held after he or she has served three full years as such judge, and the term of office for which he or she was appointed shall expire on the first Thursday after the first Tuesday of January following the general election at which his or her right to continue in office was subject to approval of the electorate.

**43-2,117. Judicial nominating commission; selection; provisions applicable.** Judicial nominating commissions for the office of judge of the separate juvenile court shall be selected in the manner and subject to all of the terms and provisions of law relating to judicial nominating commissions generally, as provided by the Constitution of Nebraska and the laws of this state.

**43-2,118. Judge; qualifications.** No person shall be eligible to the office of judge of a separate juvenile court unless he or she (1) is thirty years of age, (2) is a citizen of the United States, (3) has been engaged in the practice of law in the State of Nebraska for at least five years, which may include prior service as a judge, (4) is currently admitted to practice before the Nebraska Supreme Court, and (5) is, on the effective date of appointment, a resident of the district to be served, and remains a resident of such district during the period of service.

**43-2,119. Judges; number; presiding judge.**

(1) The number of judges of the separate juvenile court in counties which have established a separate juvenile court shall be:

- (a) Two judges in counties having seventy-five thousand inhabitants but less than two hundred thousand inhabitants;
- (b) Four judges in counties having at least two hundred thousand inhabitants but less than four hundred thousand inhabitants; and
- (c) Five judges in counties having four hundred thousand inhabitants or more.

(2) The senior judge in point of service as a juvenile court judge shall be the presiding judge. The judges shall rotate the office of presiding judge every three years unless the judges agree to another system.

**43-2,120. Judge; salary; source of payment.** The salary of a judge of a separate juvenile court shall be as provided in section 24-301.01 and shall be paid out of the General Fund of the state.

**43-2,121. Judge; salary increase; when effective.** Section 24-301.01 and 43-2,120 shall be so interpreted as to effectuate their general purpose to provide, in the public interest, adequate compensation for judges of the separate juvenile courts as soon as such change may become operative under the Constitution of Nebraska.

**43-2,122. Clerk; no additional compensation; custodian of seal.** The clerk of the district court in a county having a separate juvenile court shall serve ex officio as clerk of the separate juvenile court. Such clerk shall not receive any additional compensation for performing the duties of such office. He or she shall keep the seal of the court.

**43-2,123. Judge; personal staff; appointment; salary.** Each judge of a separate juvenile court shall appoint his or her own court reporter, bailiff, and other necessary personal staff. Each court reporter shall be well-skilled in the art of stenography and capable of reporting verbatim the oral proceedings had in court. The salaries of the bailiff and other necessary personal staff of the separate juvenile court shall be fixed by the presiding judge, subject to the approval of the board of county commissioners or supervisors, and shall be paid out of the general fund of the county.

**43-2,123.01. Probation officers; appointment prohibited.** Separate juvenile courts shall be prohibited from appointing juvenile probation officers after December 31, 1984.

**43-2,124. Repealed. Laws 1984, LB 13, s. 90.**

**43-2,125. Designation of alternative judge; when authorized.** Whenever any judge of a separate juvenile court is disabled or disqualified to act in any cause before him or her or is temporarily absent from the county or whenever it would be beneficial to the administration of justice, a judge of the district court may agree to serve as judge of the separate juvenile court during such period or the Chief Justice of the Supreme Court may designate and appoint a judge of the district court, a judge of another separate juvenile court, or a judge of the county court to serve as judge of the separate juvenile court during such period. The Chief Justice may also appoint a judge of a separate juvenile court to hear juvenile matters in a county court.

**43-2,126. Transferred to section 43-2,106.01.**

**43-2,127. Abolition; petition; election; transfer of dockets.** After a separate juvenile court has been established, the question of whether it should be abolished shall be submitted to the registered voters of any county having adopted same at the first general state election held not less than four months after the filing with the Secretary of State of a petition requesting the abolishment of such court signed by registered voters of such county in a number not less than five percent of the total vote cast for Governor in such county at the statewide general election next preceding the filing of the petition. The question shall be submitted to the registered voters of the county in the following form:

Shall the separate juvenile court in ..... County be abolished.

.....Yes  
.....No

The election shall be conducted, and the ballots shall be counted and canvassed in the manner prescribed by the Election Act.

If the proposition to abolish a separate juvenile court is carried by a majority of the registered voters voting on the proposition, the jurisdiction, powers, and duties of the separate juvenile court shall cease, and the powers and duties of the county court over juvenile matters shall be reestablished, at the end of the term of the incumbent juvenile judge. After a separate juvenile court has been abolished, the clerk of the county court shall forthwith transfer to the docket of the county court all pending matters theretofore within the exclusive jurisdiction of the separate juvenile court for consideration and disposition by the county court.

**43-2,128. Code, how construed.** The Nebraska Juvenile Code shall be liberally construed to the end that its purpose may be carried out as provided in section 43-246.

**43-2,129. Code, how cited.** Sections 43-245 to 43-2,129 shall be known and may be cited as the Nebraska Juvenile Code.

## IX. FOSTER CARE

**43-1301. Terms, defined.** For purposes of the Foster Care Review Act, unless the context otherwise requires:

- (1) Local board shall mean a local foster care review board created pursuant to section 43-1304;
- (2) State board shall mean the State Foster Care Review Board created pursuant to section 43-1302;
- (3) Foster care facility shall mean any foster home, group home, child care facility, public agency, private agency, or any other person or entity receiving and caring for foster children;
- (4) Foster care placements shall mean all placements of juveniles as described in subdivision (3)(b) of section 43-247, placements of neglected, dependent, or delinquent children, including those made directly by parents or by third parties, and placements of children who have been voluntarily relinquished pursuant to section 43-106.01 to the Department of Health and Human Services or any child placement agency licensed by the Department of Health and Human Services;
- (5) Person or court in charge of the child shall mean (a) the Department of Health and Human Services, an association, or an individual who has been made the guardian of a neglected, dependent, or delinquent child by the court and has the responsibility of the care of the child and has the authority by and with the assent of the court to place such a child in a suitable family home or institution or has been entrusted with the care of the child by a voluntary placement made by a parent or legal guardian, (b) the court which has jurisdiction over the child, or (c) the entity having jurisdiction over the child pursuant to the Nebraska Indian Child Welfare Act;
- (6) Voluntary placement shall mean the placement by a parent or legal guardian who relinquishes the possession and care of a child to a third party, individual, or agency;
- (7) Family unit shall mean the social unit consisting of the foster child and the parent or parents or any person in the relationship of a parent, including a grandparent, and any siblings with whom the foster child legally resided prior to placement in foster care;
- (8) Child-caring agency shall have the definition found in section 71-1902; and
- (9) Child-placing agency shall have the definition found in section 71-1902.

**43-1301.01. Entering foster care; determination of time.** For the purpose of determining the timing of review hearings, permanency hearings, and other requirements under the Foster Care Review Act, a child is deemed to have entered foster care on 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.

**43-1302. State Foster Care Review Board; established; members; terms; expenses.**

(1) (a) Until January 1, 2006, the State Foster Care Review Board shall be comprised of nine members to be appointed by the Governor, subject to confirmation by a majority of the members elected to the Legislature. At least one member shall be an attorney with legal expertise in child welfare. Two members shall be from each of the three congressional districts as they existed on January 1, 1982. In addition to the six members representative of the congressional districts, three members shall be appointed by the Governor from a group consisting of all the chairpersons of the local boards, and one such chairperson shall be appointed from each such congressional district. The appointment of a member of a local board to the state board shall not create a vacancy on the local board. Members other than those appointed from the group consisting of all the chairpersons of the local boards shall be appointed to three-year terms, and those members appointed from the group consisting of all the chairpersons of local boards shall be appointed to two-year terms. No person shall serve on the state board for more than six consecutive years. No person employed by a child-caring agency, a child-placing agency, or a court shall be appointed to the state board.

(b) On and after January 1, 2006, the State Foster Care Review Board shall be comprised of eleven members appointed by the Governor with the approval of a majority of the members elected to the Legislature, consisting of: Three members of local foster care review boards, one from each congressional district; one practitioner of pediatric medicine, licensed under the Uniform Credentialing Act; one practitioner of child clinical psychology, licensed under the Uniform Credentialing Act; one social worker certified under the Uniform Credentialing Act, with expertise in the area of child welfare; one attorney who is or has been a guardian ad litem; one representative of a statewide child advocacy group; one director of a child advocacy center; one director of a court appointed special advocate program; and one member of the public who has a background in business or finance.

The terms of members appointed pursuant to this subdivision shall be three years, except that of the initial members of the state board, one-third shall be appointed for terms of one year, one-third for terms of two years, and one-third for terms of three years, as determined by the Governor. No person appointed by the Governor to the state board shall serve more than two consecutive three-year terms. An appointee to a vacancy occurring from an unexpired term shall serve out the term of his or her predecessor. Members whose terms have expired shall continue to serve until their successors have been appointed and qualified. Members serving on the state board on December 31, 2005, shall continue in office until the members appointed under this subdivision take office. The members of the state board shall, to the extent possible, represent the three congressional districts equally.

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

**43-1303. State board; meetings; registry; reports required; rules and regulations; visitation of facilities.**

(1) The state board shall meet at least twice per year. The state board shall establish a statewide register of all foster care placements occurring within the state, and there shall be a monthly report made to the state board registry of all foster care placements by the Department of Health and Human Services, any child-placing agency, or any court in a form as developed by the state board in consultation with representatives of entities required to make such reports. For each child entering and leaving foster care, such monthly report shall consist of identifying



information, placement information, and the plan or permanency plan developed by the person or court in charge of the child pursuant to section 43-1312. The department and every court and child-placing agency shall report any foster care placement within three working days. The report shall contain the following information:

- (a) Child identification information, including name, social security number, date of birth, gender, race, and religion;
- (b) Identification information for parents and stepparents, including name, social security number, address, and status of parental rights;
- (c) Placement information, including initial placement date, current placement date, and the name and address of the foster care provider;
- (d) Court status information, including which court has jurisdiction, initial custody date, court hearing date, and results of the court hearing;
- (e) Agency or other entity having custody of the child;
- (f) Case worker; and
- (g) Permanency Plan Objective.

(2) The state board shall review the activities of local boards and may adopt and promulgate its own rules and regulations. Such rules and regulations shall provide for the following:

- (a) Establishment of training programs for local board members which shall include an initial training program and periodic inservice training programs;
- (b) Development of procedures for local boards;
- (c) Establishment of a central record-keeping facility for all local board files, including individual case reviews;
- (d) Accumulation of data and the making of annual reports on children in foster care. Such reports shall include (i) personal data on length of time in foster care, (ii) number of placements, (iii) frequency and results of court review, and (iv) number of children supervised by the foster care programs in the state annually;
- (e) To the extent not prohibited by section 43-1310, evaluation of the judicial and administrative data collected on foster care and the dissemination of such data to the judiciary, public and private agencies, the department, and members of the public; and
- (f) Manner in which the state board shall determine the appropriateness of requesting a review hearing as provided for in section 43-1313.

(3) The state board, upon completion of a review of local board activities, shall report and make recommendations to the department and county welfare offices. Such reports and recommendations shall include, but not be limited to, the annual judicial and administrative data collected on foster care pursuant to subdivision (2) of this section and the annual evaluation of such data. In addition the state board shall provide copies of such reports and recommendations to each court having the authority to make foster care placements. The state board may visit and observe foster care facilities in order to ascertain whether the individual physical, psychological, and sociological needs of each foster child are being met.

**43-1304. Local foster care review boards; established; members.** The state board shall establish local foster care review boards for the review of cases of children in foster care placement. The state board shall select members to serve on local boards from a list of applications submitted to the state board. Each local board shall consist of not less than four and not more than ten members. The members of the board shall reasonably represent the various social, economic, racial, and ethnic groups of the county or counties from which its members may be appointed. A person employed by the state board, the Department of Health and Human Services, a child-caring agency, a child-placing agency, or a court shall not be appointed to a local board. A list of the members of each local board shall be sent to the department.

**43-1305. Local board; terms; vacancy.** All local board members shall be appointed for terms of three years. If a vacancy occurs on a local board, the state board shall appoint another person to serve the unexpired portion of the term. Appointments to fill vacancies on the local board shall be made in the same manner and subject to the same conditions as the initial appointments to such board. The term of each member shall expire on the second Monday in July of the appropriate year. Members shall continue to serve until a successor is appointed.

**43-1306. State board; assign cases.** The state board shall assign cases of children in foster care placement to a local board.

**43-1307. Child placed in foster care; court; duties.** Each court which has placed a child in foster care shall send to the state board or designated local board (1) a copy of the plan or permanency plan, prepared by the person or court in charge of the child in accordance with section 43-1312, to effectuate rehabilitation of the foster child and family unit or permanent placement of the child and (2) a copy of the progress reports as they relate to the plan or permanency plan, including, but not limited to, the court order and the report and recommendations of the guardian ad litem.

**43-1308. State or local board; powers and duties.**

(1) Except as otherwise provided in the Nebraska Indian Child Welfare Act, the state board or designated local board shall:

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

(b) Submit to the court having jurisdiction over such child for the purposes of foster care placement, within thirty days after the review, its findings and recommendations regarding the efforts and progress made to carry out the plan or permanency plan established pursuant to section 43-1312 together with any other recommendations it chooses to make regarding the child. The findings and recommendations shall include whether there is a need for continued out-of-home placement, whether the current placement is safe and appropriate, the specific reasons for the findings and recommendations, including factors, opinions, and rationale considered in its review, whether the grounds for termination of parental rights under section 43-292 appear to exist, and the date of the next review by the state board or designated local board;

(c) If the return of the child to his or her parents is not likely, recommend referral for adoption and termination of parental rights, guardianship, placement with a relative, or, as a last resort, another planned, permanent living arrangement; and

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

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

**43-1309. Records; release; when.** Upon the request of the state board or the designated local board, any records pertaining to a case assigned to such board, or upon the request of the Department of Health and Human Services, any records pertaining to a case assigned to the department, shall be furnished to the requesting board or department by the agency charged with the child or any public official or employee of a political subdivision having relevant contact with the child. Upon the request of the state board or designated local board, and if such information is not obtainable elsewhere, the court having jurisdiction of the foster child shall release such information to the state board or designated local board as the court deems necessary to determine the physical, psychological, and sociological circumstances of such foster child.

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

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

- (1) Conduct or cause to be conducted an investigation of the child's circumstances designed to establish a safe and appropriate plan for the rehabilitation of the foster child and family unit or permanent placement of the child;
- (2) Require that the child receive a medical examination within two weeks of his or her removal from his or her home; and
- (3) Subject the child to such further diagnosis and evaluation as is necessary.

**43-1312. Plan or permanency plan for foster child; contents; investigation; hearing.**

(1) Following the investigation conducted pursuant to section 43-1311 and immediately following the initial placement of the child, the person or court in charge of the child shall cause to be established a safe and appropriate plan for the child. The plan shall contain at least the following:

- (a) The purpose for which the child has been placed in foster care;
- (b) The estimated length of time necessary to achieve the purposes of the foster care placement;
- (c) A description of the services which are to be provided in order to accomplish the purposes of the foster care placement;
- (d) The person or persons who are directly responsible for the implementation of such plan; and
- (e) A complete record of the previous placements of the foster child.

(2) If the return of the child to his or her parents is not likely based upon facts developed as a result of the investigation, the Department of Health and Human Services shall recommend termination of parental rights and referral for adoption, guardianship, placement with a relative, or, as a last resort, another planned living arrangement.

(3) Each child in foster care under the supervision of the state shall have a permanency hearing by a court, no later than twelve months after the date the child enters foster care and annually thereafter during the continuation of foster care. The court's order shall include a finding regarding the appropriateness of the permanency plan determined for the child and shall include whether, and if applicable when, the child will be:

- (a) Returned to the parent;
- (b) Referred to the state for filing of a petition for termination of parental rights;
- (c) Placed for adoption;
- (d) Referred for guardianship; or
- (e) In cases where the state agency has documented to the court a compelling reason for determining that it would not be in the best interests of the child to return home, (i) referred for termination of parental rights, (ii) placed for adoption with a fit and willing relative, or (iii) placed with a guardian.

**43-1313. Review of dispositional order; when; procedure.** When a child is in foster care, the court having jurisdiction over such child for the purposes of foster care placement shall review the dispositional order for

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

**43-1314. Review of dispositional order; right to participate; notice.** Except as otherwise provided in the Nebraska Indian Child Welfare Act, notice of the court review and the right of participation in all court reviews pertaining to a child in a foster care placement shall be provided by the court having jurisdiction over such child for the purposes of foster care placement either in court, by mail, or in such other manner as the court may direct. Such notice shall be provided to all of the following that are applicable to the case:

- (1) The person charged with the care of such child;
- (2) the child's parents or guardian unless the parental rights of the parents have been terminated by court action as provided in section 43-292 or 43-297;
- (3) the foster child if age fourteen or over;
- (4) the foster parent or parents of the foster child;
- (5) the guardian ad litem of the foster child;
- (6) the state board ;
- (7) the preadoptive parent ; and
- (8) the relative providing care for the child.

Notice to the foster parent, preadoptive parent, or relative providing care shall not be construed to require that such foster parent, preadoptive parent, or relative is a necessary party to the review . The court may inquire into the well-being of the foster child by asking questions of the foster parent, preadoptive parent, or relative providing care for the child.

**43-1314.01. Six-month case reviews; state board; duties.**

(1) The State Foster Care Review Board shall be responsible for the conduct of periodic reviews which shall be identified as reviews which meet the federal requirements for six-month case reviews pursuant to the federal Adoption Assistance and Child Welfare Act of 1980, Public Law 96-272. The state board shall be fiscally responsible for any noncompliance sanctions imposed by the federal government related to the requirements for review outlined in the federal Adoption Assistance and Child Welfare Act of 1980, Public Law 96-272. It is the intent of the Legislature that beginning October 1, 1996, the state board shall be the only state agency with the responsibility to conduct six-month case reviews pursuant to the federal Adoption Assistance and Child Welfare Act of 1980, Public Law 96-272.

(2) It is the intent of the Legislature that any six-month court review of a juvenile pursuant to sections 43-278 and 43-1313 shall be identified as a review which meets the federal requirements for six-month case reviews pursuant to the federal Adoption Assistance and Child Welfare Act of 1980, Public Law 96-272.

(3) The state board may assist the Department of Health and Human Services as to eligibility under Title IV-E for state wards and eligibility for Supplemental Security Income, Supplemental Security Disability Income, Veterans Administration, or aid to families with dependent children benefits, for child support orders of the court, and for medical insurance other than medicaid.

(4) Between January 1, 1998, and August 1, 1998, a review of the state board shall be completed by the

Executive Board of the Legislative Council or its designee. This review shall include a determination of the state board's timely performance in meeting federal guidelines, a cost analysis of its case reviews, an analysis as to the quality of reviews, and the effectiveness of such reviews on the children within the state foster care system.

(5) On or before November 1, 1998, the Executive Board of the Legislative Council or its designee shall make findings and recommendations to the Legislature as to the areas noted in subsection (4) of this section.

(6) On July 1, 1996, seven full-time employees shall be added to the state board. On September 30, 1996, three full-time employees shall be added to the state board.

**43-1314.02. Caregiver information form; development; provided to caregiver.**

(1) The court shall provide a caregiver information form to the foster parent, preadoptive parent, guardian, or relative providing care for the child when giving notice of a court review described in section 43-1314. The form is to be dated and signed by the caregiver and shall, at a minimum, request the following:

- (a) The child's name, age, and date of birth;
- (b) The name of the caregiver, his or her telephone number and address, and whether the caregiver is a foster parent, preadoptive parent, guardian, or relative;
- (c) How long the child has been in the caregiver's care;
- (d) A current picture of the child;
- (e) The current status of the child's medical, dental, and general physical condition;
- (f) The current status of the child's emotional condition;
- (g) The current status of the child's education;
- (h) Whether or not the child is a special education student and the date of the last individualized educational plan;
- (i) A brief description of the child's social skills and peer relationships;
- (j) A brief description of the child's special interests and activities;
- (k) A brief description of the child's reactions before, during, and after visits;
- (l) Whether or not the child is receiving all necessary services;
- (m) The date and place of each visit by the caseworker with the child;
- (n) A description of the method by which the guardian ad litem has acquired information about the child; and
- (o) Whether or not the caregiver can make a permanent commitment to the child if the child does not return home.

(2) A caregiver information form shall be developed by the Supreme Court. Such form shall be made a part of the record in each court that reviews the child's foster care proceedings.

**43-1315. Status and permanency plan review; placement order.** In reviewing the foster care status and permanency plan of a child and in determining its order for disposition, the court shall continue placement outside the home upon a written determination that return of the child to his or her home would be contrary to the welfare of such child and that reasonable efforts to preserve and reunify the family, if required under section 43-283.01, have been made. In making this determination, the court shall consider the goals of the foster care placement and the safety and appropriateness of the foster care plan or permanency plan established pursuant to section 43-1312.

**43-1316. Status review; child's needs; determination.** The court shall, when reviewing the foster care status of a child, determine whether the individual physical, psychological, and sociological needs of the child are being met. The health and safety of the child are of paramount concern in such review.

**43-1317. Training for local board members.** The state board shall establish compulsory training for local board members which shall consist of initial training programs followed by periodic inservice training programs.

**43-1318. Act, how cited.** Sections 43-1301 to 43-1318 shall be known and may be cited as the Foster Care Review Act.

**43-1319. Funds of Department of Health and Human Services; use.** Funds of the Department of Health and Human Services shall be used to defray the reasonable expenses incurred in the recruitment, training, and recognition of foster care providers and volunteers, including expenses incurred for community forums, public information sessions, and similar administrative functions.

**43-1320. Foster parents; liability protection; Foster Parent Liability and Property Damage Fund; created; use; investment; unreimbursed liability and damage; claim.**

(1) The Legislature finds and declares that foster parents are a valuable resource providing an important service to the citizens of Nebraska. The Legislature recognizes that the current insurance crisis has adversely affected some foster parents in several ways. Foster parents have been unable to obtain liability insurance coverage over and above homeowner's or tenant's coverage for actions filed against them by the foster child, the child's parents, or the child's legal guardian. In addition, the monthly payment made to foster parents is not sufficient to cover the cost of obtaining extended coverage and there is no mechanism in place by which foster parents can recapture the cost. Foster parents' personal resources are at risk, and therefor the Legislature desires to provide relief to address these problems.

(2) The Department of Health and Human Services shall provide for self-insuring the foster parent program pursuant to section 81-8,239.01 or shall provide and pay for liability and property damage insurance for participants in a family foster parent program who have been licensed or approved to provide care or who have been licensed or approved by a legally established Indian tribal council operating within the state to provide care.

(3) There is hereby created the Foster Parent Liability and Property Damage Fund. The fund shall be administered by the Department of Health and Human Services and shall be used to provide funding for self-insuring the foster parent program pursuant to section 81-8,239.01 or to purchase any liability and property damage insurance policy provided pursuant to subsection (2) of this section and reimburse foster parents for unreimbursed liability and property damage incurred or caused by a foster child as the result of acts covered by the insurance policy. Claims for unreimbursed liability and property damage incurred or caused by a foster child may be submitted in the manner provided in the State Miscellaneous Claims Act. Each claim shall be limited to the amount of any deductible applicable to the insurance policy provided pursuant to subsection (2) of this section, and there may be a fifty-dollar deductible payable by the foster parent per claim. The department shall adopt and promulgate rules and regulations to carry out this section. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

**43-1321. Foster Care Review Board Cash Fund; created; use; investment.** There is hereby created the Foster Care Review Board Cash Fund. The fund shall be administered by the State Foster Care Review Board. The board shall remit revenue from the following sources to the State Treasurer for credit to the fund:

(1) Registration and other fees received for training, seminars, or conferences fully or partially sponsored or hosted by the board;

(2) Payments to offset printing, postage, and other expenses for books, documents, or other materials printed or published by the board; and

(3) Money received by the board as gifts, grants, reimbursements, or appropriations from any source intended for the purposes of the fund.

The fund shall be used for the administration of the Foster Care Review Act. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

## X. NEBRASKA INDIAN CHILD WELFARE ACT

**43-1501. Act, how cited.** Sections 43-1501 to 43-1516 shall be known and may be cited as the Nebraska Indian Child Welfare Act.

**43-1502. Purpose of act.** The purpose of the Nebraska Indian Child Welfare Act is to clarify state policies and procedures regarding the implementation by the State of Nebraska of the Federal Indian Child Welfare Act, 25 U.S.C. 1901 et seq. It shall be the policy of the state to cooperate fully with Indian tribes in Nebraska in order to ensure that the intent and provisions of the Federal Indian Child Welfare Act are enforced.

**43-1503. Terms, defined.** For the purposes of the Nebraska Indian Child Welfare Act, except as may be specifically provided otherwise, the term:

- (1) Child custody proceeding shall mean and include:
  - (a) Foster care placement which shall mean any action removing an Indian child from its parent or Indian custodian for temporary placement in a foster home or institution or the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated;
  - (b) Termination of parental rights which shall mean any action resulting in the termination of the parent-child relationship;
  - (c) Preadoptive placement which shall mean the temporary placement of an Indian child in a foster home or institution after the termination of parental rights, but prior to or in lieu of adoptive placement; and
  - (d) Adoptive placement which shall mean the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption. Such term or terms shall not include a placement based upon an act which, if committed by an adult, would be deemed a crime or upon an award, in a divorce proceeding, of custody to one of the parents;
- (2) Extended family member shall be as defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, shall be a person who has reached the age of eighteen and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent;
- (3) Indian means any person who is a member of an Indian tribe, or who is an Alaska Native and a member of a regional corporation defined in section 7 of the Alaska Native Claims Settlement Act, 43 U.S.C. 1606;
- (4) Indian child means any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe;
- (5) Indian child's tribe means (a) the Indian tribe in which an Indian child is a member or eligible for membership or (b) in the case of an Indian child who is a member of or eligible for membership in more than one tribe, the Indian tribe with which the Indian child has the more significant contacts;
- (6) Indian custodian means any Indian person who has legal custody of an Indian child under tribal law or custom or under state law or to whom temporary physical care, custody, and control has been transferred by the parent of such child;
- (7) Indian organization means any group, association, partnership, limited liability company, corporation, or other legal entity owned or controlled by Indians, or a majority of whose members are Indians;



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

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

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

(11) Secretary means the Secretary of the Interior;

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

(13) Tribal service area means a geographic area in which tribal services and programs are provided to Native American people.

**43-1504. Custody proceeding; jurisdiction of tribe; transfer of proceedings; rights of tribe; tribal proceedings; effect.**

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

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

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

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

**43-1505. Foster care placement; termination of parental rights; procedures; rights.**

(1) In any involuntary proceeding in a state court, when the court knows or has reason to know that an Indian child is involved, the party seeking the foster care placement of, or termination of parental rights to, an Indian child shall notify the parent or Indian custodian and the Indian child's tribe, by certified or registered mail with return receipt requested, of the pending proceedings and of their right of intervention. If the identity or location of

the parent or Indian custodian and the tribe cannot be determined, such notice shall be given to the secretary in like manner, who may provide the requisite notice to the parent or Indian custodian and the tribe. No foster care placement or termination of parental rights proceedings shall be held until at least ten days after receipt of notice by the parent or Indian custodian and the tribe or the secretary. The parent or Indian custodian or the tribe shall, upon request, be granted up to twenty additional days to prepare for such proceeding.

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

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

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

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

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

**43-1506. Voluntary proceeding; consent; when valid; withdrawal of consent.**

(1) When any parent or Indian custodian voluntarily consents to a foster care placement or to termination of parental rights, such consent shall not be valid unless executed in writing and recorded before a judge of a court of competent jurisdiction and accompanied by the presiding judge's certificate that the terms and consequences of the consent were fully explained in detail and were fully understood by the parent or Indian custodian. The court shall also certify that either the parent or Indian custodian fully understood the explanation in English or that it was interpreted into a language that the parent or Indian custodian understood. Any consent given prior to, or within ten days after, birth of the Indian child shall not be valid.

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

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

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

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

**43-1507. Petition to invalidate actions in violation of law.** Any Indian child who is the subject of any action for foster care placement or termination of parental rights under state law, any parent or Indian custodian from whose custody such child was removed, and the Indian child's tribe may petition any court of competent jurisdiction to invalidate such action upon a showing that such action violated any provision of sections 43-1504 to 43-1506.

**43-1508. Placement guidelines; records.**

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

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

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

- (a) A member of the Indian child's extended family;
- (b) A foster home licensed, approved, or specified by the Indian child's tribe;
- (c) An Indian foster home licensed or approved by an authorized non-Indian

licensing authority; or

- (d) An institution for children approved by an Indian tribe or operated by an Indian

organization which has a program suitable to meet the Indian child's needs.

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

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

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

**43-1509. Return of custody; removal from foster care; procedures.**

(1) Notwithstanding any other state law to the contrary, whenever a final decree of adoption of an Indian child has been vacated or set aside or the adoptive parents voluntarily consent to the termination of their parental rights to the child, a biological parent or prior Indian custodian may petition for return of custody and the court shall grant such petition unless there is a showing, in a proceeding subject to the provisions of section 43-1505, that such

return of custody is not in the best interests of the child.

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

**43-1510. Adopted individual; access to information.** Upon application by an Indian individual who has reached the age of eighteen and who was the subject of an adoptive placement, the court which entered the final decree shall inform such individual of the tribal affiliation, if any, of the individual's biological parents and provide such other information as may be necessary to protect any rights flowing from the individual's tribal relationship.

**43-1511. Agreements with state agencies; authorized.**

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

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

**43-1512. Improper removal from custody; effect.** When any petitioner in an Indian child custody proceeding before a state court has improperly removed the child from custody of the parent or Indian custodian or has improperly retained custody after a visit or other temporary relinquishment of custody, the court shall decline jurisdiction over such petition and shall forthwith return the child to his or her parent or Indian custodian unless returning the child to his or her parent or custodian would subject the child to a substantial and immediate danger or threat of such danger.

**43-1513. Higher federal standard of protection; when applicable.** In any case when federal law applicable to a child custody proceeding provides a higher standard of protection to the rights of the parent or Indian custodian of an Indian child than the rights provided under the Nebraska Indian Child Welfare Act, the state court shall apply the federal standard.

**43-1514. Emergency removal or placement of child; appropriate action.** Nothing in the Nebraska Indian Child Welfare Act shall be construed to prevent the emergency removal of an Indian child who is a resident of or is domiciled on a reservation, but temporarily located off the reservation, from his or her parent or Indian custodian or the emergency placement of such child in a foster home or institution, under applicable state law, in order to prevent imminent physical damage or harm to the child. The state authority, official, or agency involved shall insure that the emergency removal or placement terminates immediately when such removal or placement is no longer necessary to prevent imminent physical damage or harm to the child and shall expeditiously initiate a child custody proceeding subject to the provisions of the Nebraska Indian Child Welfare Act, transfer the child to the jurisdiction of the appropriate Indian tribe, or restore the child to the parent or Indian custodian, as may be appropriate.

**43-1515. Applicability of act; exceptions.** None of the provisions of the Nebraska Indian Child Welfare Act, except subsection (1) of section 43-1504 and section 43-1511, shall affect a proceeding under state law for foster care placement, termination of parental rights, preadoptive placement, or adoptive placement which was initiated or completed prior to one hundred and eighty days after November 8, 1978, but shall apply to any subsequent proceeding in the same matter or subsequent proceedings affecting the custody or placement of the same child.

**43-1516. Adoptive placement; information made available.** Any state court entering a final decree or order in any Indian child adoptive placement after September 6, 1985, shall provide the secretary with a copy of such decree or order together with such other information as may be necessary to show:

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

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

## **XI. THE INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN**

**43-1101. Enactment; form.** The Interstate Compact on the Placement of Children is hereby enacted into law and entered into with all other jurisdictions legally joining therein in the form substantially as follows:

### **ARTICLE I. Purpose and Policy**

It is the purpose and policy of the party states to cooperate with each other in the interstate placement of children to the end that:

- (a) Each child requiring placement shall receive the maximum opportunity to be placed in a suitable environment and with persons or institutions having appropriate qualifications and facilities to provide a necessary and desirable degree and type of care.
- (b) The appropriate authorities in a state where a child is to be placed may have full opportunity to ascertain the circumstances of the proposed placement, thereby promoting full compliance with applicable requirements for the protection of the child.
- (c) The proper authorities of the state from which the placement is made may obtain the most complete information on the basis of which to evaluate a projected placement before it is made.
- (d) Appropriate jurisdictional arrangements for the care of children will be promoted.

### **ARTICLE II. Definitions**

As used in this compact:

- (a) Child means a person who, by reason of minority, is legally subject to parental, guardianship or similar control.
- (b) Sending agency means a party state, officer or employee thereof; a subdivision of a party state, or officer or employee thereof; a court of a party state; a person, corporation, association, charitable agency or other entity which sends, brings, or causes to be sent or brought any child to another party state.
- (c) Receiving state means the state to which a child is sent, brought, or caused to be sent or brought, whether by public authorities or private persons or agencies, and whether for placement with state or local public authorities or for placement with private agencies or persons.
- (d) Placement means the arrangement for the care of a child in a family free or boarding home or in a child-caring agency or institution but does not include any institution caring for the mentally ill, mentally defective or epileptic or any institution primarily educational in character, and any hospital or other medical facility.

### **ARTICLE III. Conditions for Placement**

- (a) No sending agency shall send, bring, or cause to be sent or brought into any other party state any child for placement in foster care or as a preliminary to a possible adoption unless the sending agency shall comply with each and every requirement set forth in this article and with the applicable laws of the receiving state governing the placement of children therein.
- (b) Prior to sending, bringing or causing any child to be sent or brought into a receiving state for placement in foster care or as a preliminary to a possible adoption, the sending agency shall furnish the appropriate public authorities in the receiving state written notice of the intention to send, bring, or place the child in the receiving state. The notice shall contain:
  - (1) The name, date and place of birth of the child.
  - (2) The identity and address or addresses of the parents or legal guardian.
  - (3) The name and address of the person, agency or institution to or with which the sending agency proposes to send, bring, or place the child.
  - (4) A full statement of the reasons for such proposed action and evidence of the authority pursuant to which the placement is proposed to be made.
- (c) Any public officer or agency in a receiving state which is in receipt of a notice pursuant to paragraph (b) of this article may request of the sending agency, or any other appropriate officer or agency of or in the sending agency's state, and shall be entitled to receive therefrom, such supporting or additional information as it may deem necessary under the circumstances to carry out the purpose and policy of this compact.
- (d) The child shall not be sent, brought, or caused to be sent or brought into the receiving state until the

appropriate public authorities in the receiving state shall notify the sending agency, in writing, to the effect that the proposed placement does not appear to be contrary to the interest of the child.

#### **ARTICLE IV. Penalty for Illegal Placement**

The sending, bringing, or causing to be sent or brought into any receiving state of a child in violation of the terms of this compact shall constitute a violation of the laws respecting the placement of children of both the state in which the sending agency is located or from which it sends or brings the child and of the receiving state. Such violation may be punished or subjected to penalty in either jurisdiction in accordance with its laws. In addition to liability for any such punishment or penalty, any such violation shall constitute full and sufficient grounds for the suspension or revocation of any license, permit, or other legal authorization held by the sending agency which empowers or allows it to place, or care for children.

#### **ARTICLE V. Retention of Jurisdiction**

(a) The sending agency shall retain jurisdiction over the child sufficient to determine all matters in relation to the custody, supervision, care, treatment and disposition of the child which it would have had if the child had remained in the sending agency's state, until the child is adopted, reaches majority, becomes self-supporting or is discharged with the concurrence of the appropriate authority in the receiving state. Such jurisdiction shall also include the power to effect or cause the return of the child or its transfer to another location and custody pursuant to law. The sending agency shall continue to have financial responsibility for support and maintenance of the child during the period of the placement. Nothing contained herein shall defeat a claim of jurisdiction by a receiving state sufficient to deal with an act of delinquency or crime committed therein.

(b) When the sending agency is a public agency, it may enter into an agreement with an authorized public or private agency in the receiving state providing for the performance of one or more services in respect of such case by the latter as agent for the sending agency.

(c) Nothing in this compact shall be construed to prevent a private charitable agency authorized to place children in the receiving state from performing services or acting as agent in that state for a private charitable agency of the sending state; nor to prevent the agency in the receiving state from discharging financial responsibility for the support and maintenance of a child who has been placed on behalf of the sending agency without relieving the responsibility set forth in paragraph (a) hereof.

#### **ARTICLE VI. Institutional Care of Delinquent Children**

A child adjudicated delinquent may be placed in an institution in another party jurisdiction pursuant to this compact but no such placement shall be made unless the child is given a court hearing on notice to the parent or guardian with opportunity to be heard, prior to his being sent to such other party jurisdiction for institutional care and the court finds that:

1. Equivalent facilities for the child are not available in the sending agency's jurisdiction; and
2. Institutional care in the other jurisdiction is in the best interest of the child and will not produce undue hardship.

#### **ARTICLE VII. Compact Administrator**

The executive head of each jurisdiction party to this compact shall designate an officer who shall be general coordinator of activities under this compact in his jurisdiction and who, acting jointly with like officers of other party jurisdictions, shall have power to promulgate rules and regulations to carry out more effectively the terms and provisions of this compact.

#### **ARTICLE VIII. Limitations**

This compact shall not apply to:

(a) The sending or bringing of a child into a receiving state by his parent, stepparent, grandparent, adult brother or sister, adult uncle or aunt, or his guardian and leaving the child with any such relative or nonagency guardian in the receiving state.

(b) Any placement, sending or bringing of a child into a receiving state pursuant to any other interstate compact to which both the state from which the child is sent or brought and the receiving state are party, or to any other agreement between said states which has the force of law.

#### **ARTICLE IX. Enactment and Withdrawal**

This compact shall be open to joinder by any state, territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and, with the consent of Congress, the Government of Canada or any province thereof. It shall become effective with respect to any such jurisdiction when such jurisdiction has enacted the same into law. Withdrawal from this compact shall be by the enactment of a statute repealing the same, but shall not take effect until two years after the effective date of such statute and until written notice of the withdrawal has been given by the withdrawing state to the Governor of each other party jurisdiction. Withdrawal of a party state shall not affect the rights, duties and obligations under this compact of any sending agency therein with respect to a placement made prior to the effective date of withdrawal.

#### **ARTICLE X. Construction and Severability**

(a) The provisions of this compact shall be liberally construed to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

(b) Financial responsibility for any child placed pursuant to the provisions of the Interstate Compact on the Placement of Children shall be determined in accordance with the provisions of Article V thereof in the first instance. However, in the event of partial or complete default of performance thereunder, the provisions of Article 7 of Chapter 42 or of any other applicable state law fixing responsibility for the support of children also may be invoked.

(c) The appropriate public authorities as used in Article III of the Interstate Compact on the Placement of Children shall, with reference to this state, mean the Department of Social Services, and said Department shall receive and act with reference to notices required by Article III.

(d) As used in paragraph (a) of Article V of the Interstate Compact on the Placement of Children, the phrase appropriate authority in the receiving state with reference to this state shall mean the Department of Social Services.

(e) The officers and agencies of this state and its subdivisions having authority to place children are hereby empowered to enter into agreements with appropriate officers or agencies of or in other party states pursuant to paragraph (b) of Article V of the Interstate Compact on the Placement of Children. Any such agreement which contains a financial commitment or imposes a financial obligation on this state or subdivision or agency thereof shall not be binding unless it has the approval in writing of the Director of Administrative Services in the case of the state and of the chief local fiscal officer in the case of a subdivision of the state.

(f) Any requirements for visitation, inspection or supervision of children, homes, institutions or other agencies in another party state which may apply under the provisions of this chapter shall be deemed to be met if performed pursuant to an agreement entered into by appropriate officers or agencies of this state or a subdivision thereof as contemplated by paragraph (b) of Article V of the Interstate Compact on the Placement of Children.

(g) The provisions of section 43-704, shall not apply to placements made pursuant to the Interstate Compact on the Placement of Children.

(h) Any court having jurisdiction to place delinquent children may place such a child in an institution or in



another state pursuant to Article V of the Interstate Compact on the Placement of Children and shall retain jurisdiction as provided in Article V thereof.

(i) As used in Article VII of the Interstate Compact on the Placement of Children, the term executive head means the Governor. The Governor is hereby authorized to appoint a compact administrator in accordance with the terms of said Article VII.

**43-1102. Department of Health and Human Services; successor agency.** The Department of Health and Human Services is the successor to the Department of Social Services for purposes of Article X of the Interstate Compact on the Placement of Children found in section 43-1101.

## XII. THE INTERSTATE COMPACT ON JUVENILES.

**43-1001. Declaration of policy.** It is hereby found and declared: (1) That juveniles who are not under proper supervision and control, or who have absconded, escaped or run away, are likely to endanger their own health, morals and welfare, and the health, morals and welfare of others; and (2) that the cooperation of this state with other states is necessary to provide for the welfare and protection of juveniles and of the people of this state.

It shall therefor be the policy of this state, in adopting the Interstate Compact on Juveniles, to cooperate with other states (a) in returning juveniles to such other states whenever their return is sought; and (b) in accepting the return of juveniles whenever a juvenile residing in this state is found or apprehended in another state and in taking all measures to initiate proceedings for the return of such juveniles.

**43-1002. Authorization; form.** The Governor is hereby authorized and directed to execute a compact on behalf of this state with any other state or states legally joining therein in the form substantially as follows:

The contracting states solemnly agree:

### ARTICLE I -- FINDINGS AND PURPOSES

That juveniles who are not under proper supervision and control, or who have absconded, escaped or run away, are likely to endanger their own health, morals and welfare, and the health, morals and welfare of others. The cooperation of the states party to this compact is therefor necessary to provide for the welfare and protection of juveniles and of the public with respect to (1) cooperative supervision of delinquent juveniles on probation or parole; (2) the return, from one state to another, of delinquent juveniles who have escaped or absconded; (3) the return, from one state to another, of nondelinquent juveniles who have run away from home; and (4) additional measures for the protection of juveniles and of the public, which any two or more of the party states may find desirable to undertake cooperatively. In carrying out the provisions of this compact the party states shall be guided by the noncriminal, performative and protective policies which guide their laws concerning delinquent, neglected or dependent juveniles generally. It shall be the policy of the states party to this compact to cooperate and observe their respective responsibilities for the prompt return and acceptance of juveniles and delinquent juveniles who become subject to the provisions of this compact. The provisions of this compact shall be reasonably and liberally construed to accomplish the foregoing purposes.

### ARTICLE II -- EXISTING RIGHTS AND REMEDIES

That all remedies and procedures provided by this compact shall be in addition to and not in substitution for other rights, remedies and procedures, and shall not be in derogation of parental rights and responsibilities.

### ARTICLE III -- DEFINITIONS

That, for the purposes of this compact, delinquent juvenile means 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 court that has made such adjudication or to the jurisdiction or supervision of an agency or institution pursuant to an order of such court; probation or parole means any kind of conditional release of juveniles authorized under the laws of the states party hereto; court means any court having jurisdiction over delinquent, neglected or dependent children; state means any state, territory or possessions of the United States, the District of Columbia and the Commonwealth of Puerto Rico; and residence or any variant thereof means a place at which a home or regular place of abode is maintained.

#### ARTICLE IV -- RETURN OF RUNAWAYS

That, the parent, guardian, person or agency entitled to legal custody of a juvenile who has not been adjudged delinquent but who has run away without the consent of such parent, guardian, person or agency may petition the appropriate court in the demanding state for the issuance of a requisition for his return. The petition shall state the name and age of the juvenile, the name of the petitioner and the basis of entitlement to the juvenile's custody. The circumstances of his running away, his location if known at the time application is made and such other facts as may tend to show that the juvenile who has run away is endangering his own welfare or the welfare of others and is not an emancipated minor. The petition shall be verified by affidavit, shall be executed in duplicate and shall be accompanied by two certified copies of the documents on which the petitioner's entitlement to the juvenile's custody is based, such as birth certificates, letters of guardianship, or custody decrees. Such further affidavits and other documents as may be deemed proper may be submitted with such petition. The judge of the court to which this application is made may hold a hearing thereon to determine whether for the purposes of this compact, the petitioner is entitled to the legal custody of the juvenile, whether or not it appears that the juvenile has in fact run away without consent, whether or not he is an emancipated minor, and whether or not it is in the best interest of the juvenile to compel his return to the state. If the judge determines, either with or without a hearing, that the juvenile should be returned, he shall present to the appropriate court or to the executive authority of the state where the juvenile is alleged to be located a written requisition for the return of such juvenile. Such requisition shall set forth the name and age of the juvenile, the determination of the court that the juvenile has run away without the consent of a parent, guardian, person or agency entitled to his legal custody, and that it is in the best interest and for the protection of such juvenile that he be returned. In the event that a proceeding for the adjudication of the juvenile as a delinquent, neglected or dependent juvenile is pending in the court at the time when such juvenile runs away, the court may issue a requisition for the return of such juvenile upon its own motion, regardless of the consent of the parent, guardian, person or agency entitled to legal custody, reciting therein the nature and circumstances of the pending proceeding. The requisition shall in every case be executed in duplicate and shall be signed by the judge. One copy of the requisition shall be filed with the compact administrator of the demanding state, there to remain on file subject to the provisions of law governing records of such court. Upon the receipt of a requisition demanding the return of a juvenile who has run away, the court or the executive authority to whom the requisition is addressed shall issue an order to any peace officer or other appropriate person directing him to take into custody and detain such juvenile. Such detention order must substantially recite the facts necessary to the validity of its issuance hereunder. No juvenile detained upon such order shall be delivered over to the officer whom the court demanding him shall have appointed to receive him, unless he shall first be taken forthwith before a judge of a court in the state, who shall inform him of the demand made for his return, and who may appoint counsel or guardian ad litem for him. If the judge of such court shall find that the requisition is in order, he shall deliver such juvenile over to the officer whom the court demanding him shall have appointed to receive him. The judge, however, may fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding.

Upon reasonable information that a person is a juvenile who has run away from another state party to this compact without the consent of a parent, guardian, person or agency entitled to his legal custody, such juvenile may be taken into custody without a requisition and brought forthwith before a judge of the appropriate court who may appoint counsel or guardian ad litem for such juvenile and who shall determine after a hearing whether sufficient cause exists to hold the person, subject to the order of the court, for his own protection and welfare, for such a time not exceeding ninety days as will enable his return to another state party to this compact pursuant to a requisition for his return from a court of that state. If, at the time when a state seeks the return of a juvenile who has run away, there is pending in the state wherein he is found any criminal charge, or any proceeding to have him adjudicated a delinquent juvenile for an act committed in such state, or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of such state until discharged from prosecution or other form of proceeding, imprisonment, detention or supervision for such offense or juvenile delinquency. The duly accredited officers of any state party to this compact, upon the establishment of their

authority and the identity of the juvenile being returned, shall be permitted to transport such juvenile through any and all states party to this compact, without interference. Upon his return to the state from which he ran away, the juvenile shall be subject to such further proceedings as may be appropriate under the laws of that state.

(b) That the state to which a juvenile is returned under this article shall be responsible for payment of the transportation costs of such return.

(c) That juvenile as used in this article means any person who is a minor under the law of the state of residence of the parent, guardian, person or agency entitled to the legal custody of such minor.

#### **ARTICLE V -- RETURN OF ESCAPEES AND ABSCONDERS**

That the appropriate person or authority from whose probation or parole supervision a delinquent juvenile has absconded or from whose institutional custody he has escaped shall present to the appropriate court or to the executive authority of the state where the delinquent juvenile is alleged to be located a written requisition for the return of such delinquent juvenile. Such requisition shall state the name and age of the delinquent juvenile, the particulars of his adjudication as a delinquent juvenile, the circumstances of the breach of the terms of his probation or parole or of his escape from an institution or agency vested with his legal custody or supervision, and the location of such delinquent juvenile, if known, at the time the requisition is made. The requisition shall be verified by affidavit, shall be executed in duplicate, and shall be accompanied by two certified copies of the judgment, formal adjudication, or order of commitment which subjects such delinquent juvenile to probation or parole or to the legal custody of the institution or agency concerned. Such further affidavits and other documents as may be deemed proper may be submitted with such requisition. One copy of the requisition shall be filed with the compact administrator of the demanding state, there to remain on file subject to the provisions of law governing records of the appropriate court. Upon the receipt of a requisition demanding the return of a delinquent juvenile who has absconded or escaped, the court or the executive authority to whom the requisition is addressed shall issue an order to any peace officer or other appropriate person directing him to take into custody and detain such delinquent juvenile. Such detention order must substantially recite the facts necessary to the validity of its issuance hereunder. No delinquent juvenile detained upon such order shall be delivered over to the officer whom the appropriate person or authority demanding him shall have appointed to receive him, unless he shall first be taken forthwith before a judge of an appropriate court in the state, who shall inform him of the demand made for his return and who may appoint counsel or guardian ad litem for him. If the judge of such court shall find that the requisition is in order, he shall deliver such delinquent juvenile over to the officer whom the appropriate person or authority demanding him shall have appointed to receive him. The judge, however, may fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding.

Upon reasonable information that a person is a delinquent juvenile who has absconded while on probation or parole, or escaped from an institution or agency vested with his legal custody or supervision in any state party to this compact, such person may be taken into custody in any other state party to this compact without a requisition. But in such event, he must be taken forthwith before a judge of the appropriate court, who may appoint counsel or guardian ad litem for such person and who shall determine, after a hearing, whether sufficient cause exists to hold the person subject to the order of the court for such a time, not exceeding ninety days, as will enable his detention under a detention order issued on a requisition pursuant to this article. If, at the time when a state seeks the return of a delinquent juvenile who has either absconded while on probation or parole or escaped from an institution or agency vested with his legal custody or supervision, there is pending in the state wherein he is detained any criminal charge or any proceeding to have him adjudicated a delinquent juvenile for an act committed in such state, or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of such state until discharged from prosecution or other form of proceeding, imprisonment, detention or supervision for such offense or juvenile delinquency. The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the delinquent juvenile being

returned, shall be permitted to transport such delinquent juvenile through any and all states party to this compact, without interference. Upon his return to the state from which he escaped or absconded, the delinquent juvenile shall be subject to such further proceedings as may be appropriate under the laws of that state.

(b) That the state to which a delinquent juvenile is returned under this article shall be responsible for the payment of the transportation costs of such return.

#### **ARTICLE VI -- VOLUNTARY RETURN PROCEDURE**

That any delinquent juvenile who has absconded while on probation or parole, or escaped from an institution or agency vested with his legal custody or supervision in any state party to this compact, and any juvenile who has run away from any state party to this compact, who is taken into custody without a requisition in another state party to this compact under the provisions of Article IV (a) or of Article V (a), may consent to his immediate return to the state from which he absconded, escaped or ran away. Such consent shall be given by the juvenile or delinquent juvenile and his counsel or guardian ad litem if any, by executing or subscribing a writing, in the presence of a judge of the appropriate court, which states that the juvenile or delinquent juvenile and his counsel or guardian ad litem, if any, consent to his return to the demanding state. Before such consent shall be executed or subscribed, however, the judge, in the presence of counsel or guardian ad litem, if any, shall inform the juvenile or delinquent juvenile of his rights under this compact. When the consent has been duly executed, it shall be forwarded to and filed with the compact administrator of the state in which the court is located and the judge shall direct the officer having the juvenile or delinquent juvenile in custody to deliver him to the duly accredited officer or officers of the state demanding his return, and shall cause to be delivered to such officer or officers a copy of the consent. The court may, however, upon the request of the state to which the juvenile or delinquent juvenile is being returned, order him to return unaccompanied to such state and shall provide him with a copy of such court order; in such event a copy of the consent shall be forwarded to the compact administrator of the state to which the juvenile or delinquent juvenile is ordered to return.

#### **ARTICLE VII -- COOPERATIVE SUPERVISION OF PROBATIONERS AND PAROLEES**

That the duly constituted judicial and administrative authorities of a state party to this compact (herein called sending state) may permit any delinquent juvenile within such state, placed on probation or parole, to reside in any other state party to this compact (herein called receiving state) while on probation or parole, and the receiving state shall accept such delinquent juvenile, if the parent, guardian or person entitled to the legal custody of such delinquent juvenile is residing or undertakes to reside within the receiving state. Before granting such permission, opportunity shall be given to the receiving state to make such investigations as it deems necessary. The authorities of the sending state shall send to the authorities of the receiving state copies of pertinent court orders, social case studies and all other available information which may be of value to and assist the receiving state in supervising a probationer or parolee under this compact. A receiving state, in its discretion, may agree to accept supervision of a probationer or parolee in cases where the parent, guardian or person entitled to the legal custody of the delinquent juvenile is not a resident of the receiving state, and if so accepted the sending state may transfer supervision accordingly.

(b) That each receiving state will assume the duties of visitation and of supervision over any such delinquent juvenile and in the exercise of those duties will be governed by the same standards of visitation and supervision that prevail for its own delinquent juveniles released on probation or parole.

That, after consultation between the appropriate authorities of the sending state and of the receiving state as to the desirability and necessity of returning such a delinquent juvenile, the duly accredited officers of a sending state may

enter a receiving state and there apprehend and retake any such delinquent juvenile on probation or parole. For that purpose, no formalities will be required, other than establishing the authority of the officer and the identity of the delinquent juvenile to be returned. The decision of the sending state to retake a delinquent juvenile on probation or parole shall be conclusive upon and not reviewable within the receiving state, but if, at the time the sending state seeks to retake a delinquent juvenile on probation or parole, there is pending against him within the receiving state any criminal charge or any proceeding to have him adjudicated a delinquent juvenile for any act committed in such state or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment, detention or supervision for such offense or juvenile delinquency. The duly accredited officers of the sending state shall be permitted to transport delinquent juveniles being so returned through any and all states party to this compact, without interference.

(d) That the sending state shall be responsible under this article for paying the costs of transporting any delinquent juvenile to the receiving state or of returning any delinquent juvenile to the sending state.

#### **ARTICLE VIII -- RESPONSIBILITY FOR COSTS**

(a) That the provisions of Article IV (b), V (b) and VII (d) of this compact shall not be construed to alter or affect any internal relationship among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

(b) That nothing in this compact shall be construed to prevent any party state or subdivision thereof from asserting any right against any person, agency or other entity in regard to costs for which such party state or subdivision thereof may be responsible pursuant to Articles IV (b), V (b) or VII (d) of this compact.

#### **ARTICLE IX -- DETENTION PRACTICES**

That, to every extent possible, it shall be the policy of states party to this compact that no juvenile or delinquent juvenile shall be placed or detained in any prison, jail or lockup nor be detained or transported in association with criminal, vicious or dissolute persons.

#### **ARTICLE X -- SUPPLEMENTARY AGREEMENTS**

That the duly constituted administrative authorities of a state party to this compact may enter into supplementary agreements with any other state or states party hereto for the cooperative care, treatment and rehabilitation of delinquent juveniles whenever they shall find that such agreements will improve the facilities or programs available for such care, treatment and rehabilitation. Such care, treatment and rehabilitation may be provided in an institution located within any state entering into such supplementary agreement. Such supplementary agreements shall (1) provide the rates to be paid for the care, treatment and custody of such delinquent juveniles, taking into consideration the character of facilities, services and subsistence furnished; (2) provide that the delinquent juvenile shall be given a court hearing prior to his being sent to another state for care, treatment and custody; (3) provide that the state receiving such a delinquent juvenile in one of its institutions shall act solely as agent for the state sending such delinquent juvenile; (4) provide that the sending state shall at all times retain jurisdiction over delinquent juveniles sent to an institution in another state; (5) provide for reasonable inspection of such institutions by the sending state; (6) provide that the consent of the parent, guardian, person or agency entitled to the legal custody of said delinquent juvenile shall be secured prior to his being sent to another state; and (7) make provision for such other matters and details as shall be necessary to protect the rights and equities of such delinquent juveniles and of the cooperating states.

#### **ARTICLE XI -- ACCEPTANCE OF FEDERAL AND OTHER AID**

That any state party to this compact may accept any and all donations, gifts and grants of money, equipment and services from the federal or any local government, or any agency thereof and from any person, firm or corporation, for any of the purposes and functions of this compact, and may receive and utilize the same subject to the terms, conditions and regulations governing such donations, gifts and grants.

#### **ARTICLE XII -- COMPACT ADMINISTRATORS**

That the Governor of each state party to this compact shall designate an officer who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this compact.

#### **ARTICLE XIII -- EXECUTION OF COMPACT**

That this compact shall become operative immediately upon its execution by any state as between it and any other state or states so executing. When executed it shall have the full force and effect of law within such state, the form of execution to be in accordance with the laws of the executing state.

#### **ARTICLE XIV -- RENUNCIATION**

That this compact shall continue in force and remain binding upon each executing state until renounced by it. Renunciation of this compact shall be by the same authority which executed it by sending six-months' notice in writing of its intention to withdraw from the compact to the other states party hereto. The duties and obligations of a renouncing state under Article VII hereof shall continue as to parolees and probationers residing therein at the time of withdrawal until retaken or finally discharged. Supplementary agreements entered into under Article X hereof shall be subject to renunciation as provided by such supplementary agreements, and shall not be subject to the six-months' renunciation notice of the present article.

#### **ARTICLE XV -- SEVERABILITY**

That the provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstances shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

**43-1003. Administrator; designation; powers and duties.** Pursuant to the compact, the Governor is hereby authorized and empowered to designate an officer who shall be the compact administrator and who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms of the compact. The compact administrator shall serve subject to the pleasure of the Governor. The compact administrator is hereby authorized, empowered and directed to cooperate with all departments, agencies and officers of and in the government of this state and its subdivisions in facilitating the proper administration of the compact or

of any supplementary agreement or agreements entered into by this state hereunder.

**43-1004. Supplementary agreements; authorization.** The compact administrator is hereby authorized and empowered to enter into supplementary agreements with appropriate officials of other states pursuant to the compact. In the event that such supplementary agreement shall require or contemplate the use of any institution or facility of this state or the provision of any service by this state, said supplementary agreement shall have no force or effect until approved by the head of the department or agency under whose jurisdiction the institution or facility is operated or whose department or agency will be charged with the rendering of such service.

**43-1005. Expense of returning juvenile to state; how paid.** The expense of returning juveniles to this state pursuant to the Interstate Compact on Juveniles shall be paid as follows:

(1) In the case of a runaway under Article IV, the court making the requisition shall inquire summarily regarding the financial ability of the petitioner to bear the expense and if it finds he or she is able to do so shall order that he or she pay all such expenses; otherwise the court shall arrange for the transportation at the expense of the county and order that the county reimburse the person, if any, who returns the juvenile for his or her actual and necessary expenses; and the court may order that the petitioner reimburse the county for so much of said expense as the court finds he or she is able to pay. If the petitioner fails, without good cause, or refuses to pay such sum, he or she may be proceeded against for contempt.

(2) In the case of an escapee or absconder under Article V or Article VI, if the juvenile is in the legal custody of the Department of Health and Human Services it shall bear the expense of his or her return; otherwise the appropriate court shall, on petition of the person entitled to his or her custody or charged with his or her supervision, arrange for the transportation at the expense of the county and order that the county reimburse the person, if any, who returns the juvenile, for his or her actual and necessary expenses. In this subdivision appropriate court means the juvenile court which adjudged the juvenile to be delinquent or, if the juvenile is under supervision for another state under Article VII of the compact, then the juvenile court of the county of the juvenile's residence during such supervision.

In the case of a voluntary return of a runaway without requisition under Article VI, the person entitled to his or her legal custody shall pay the expense of transportation and the actual and necessary expenses of the person, if any, who returns such juvenile; but if he or she is financially unable to pay all the expenses he or she may petition the juvenile court of the county of the petitioner's residence for an order arranging for the transportation as provided in subdivision (1) of this section. The court shall inquire summarily into the financial ability of the petitioner, and, if it finds he or she is unable to bear any or all of the expense, the court shall arrange for such transportation at the expense of the county and shall order the county to reimburse the person, if any, who returns the juvenile, for his or her actual and necessary expenses. The court may order that the petitioner reimburse the county for so much of said expense as the court finds he or she is able to pay. If the petitioner fails, without good cause, or refuses to pay such sum, he or she may be proceeded against for contempt.

**43-1006. Responsibilities of state courts; departments, agencies, officers, and subdivisions.** The courts, departments, agencies and officers of this state and its subdivisions shall enforce this compact and shall do all things appropriate to the effectuation of its purposes and intent which may be within their respective jurisdictions.

**43-1007. Additional procedures not precluded; agreements.** In addition to any procedure provided in Articles IV and VI of the compact for the return of any runaway juvenile, the particular states, the juvenile or his parents, the courts, or other legal custodian involved may agree upon and adopt any other plan or procedure legally



authorized under the laws of this state and the other respective party states for the return of any such runaway juvenile.

**43-1008. Out-of-State Confinement Amendment; contents.** The Out-of-State Confinement Amendment to the Interstate Compact on Juveniles, sections 43-1001 to 43-1007, is hereby enacted into law and entered into by this state with all other states legally joining therein in the form substantially as follows:

(1) Whenever the duly constituted judicial or administrative authorities in a sending state shall determine that confinement of a probationer or reconfinement of a parolee is necessary or desirable, said officials may direct that the confinement or reconfinement be in an appropriate institution for delinquent juveniles within the territory of the receiving state, such receiving state to act in that regard solely as agent for the sending state.

(2) Escapees and absconders who would otherwise be returned pursuant to Article V of the Compact may be confined or reconfined in the receiving state pursuant to this amendment. In any such case the information and allegations required to be made and furnished in a requisition pursuant to such article shall be made and furnished, but in place of the demand pursuant to Article V, the sending state shall request confinement or reconfinement in the receiving state. Whenever applicable, detention orders as provided in Article V may be employed pursuant to this paragraph preliminary to disposition of the escapee or absconder.

(3) The confinement or reconfinement of a parolee, probationer, escapee, or absconder pursuant to this amendment shall require the concurrence of the appropriate judicial or administrative authorities of the receiving state.

(4) As used in this amendment: (a) Sending state means sending state as that term is used in Article VII of the Compact or the state from which a delinquent juvenile has escaped or absconded within the meaning of Article V of the Compact; (b) receiving state means any state, other than the sending state, in which a parolee, probationer, escapee, or absconder may be found, provided that said state is a party to this amendment.

(5) Every state which adopts this amendment shall designate at least one of its institutions for delinquent juveniles as a Compact Institution and shall confine persons therein as provided in paragraph (1) hereof unless the sending and receiving state in question shall make specific contractual arrangements to the contrary. All states party to this amendment shall have access to Compact Institutions at all reasonable hours for the purpose of inspecting the facilities thereof and for the purpose of visiting such of said state's delinquents as may be confined in the institution.

(6) Persons confined in Compact Institutions pursuant to the terms of this compact shall at all times be subject to the jurisdiction of the sending state and may at any time be removed from said Compact Institution for transfer to an appropriate institution within the sending state, for return to probation or parole, for discharge, or for any purpose permitted by the laws of the sending state.

All persons who may be confined in a Compact Institution pursuant to the provisions of this amendment shall be treated in a reasonable and humane manner. The fact of confinement or reconfinement in a receiving state shall not deprive any person so confined or reconfined of any rights which said person would have had if confined or reconfined in an appropriate institution of the sending state; nor shall any agreement to submit to confinement or reconfinement pursuant to the terms of this amendment be construed as a waiver of any rights which the delinquent would have had if he had been confined or reconfined in any appropriate institution of the sending state except that the hearing or hearings, if any, to which a parolee, probationer, escapee, or absconder may be entitled (prior to confinement or reconfinement) by the laws of the sending state may be had before the appropriate judicial or administrative officers of the receiving state. In this event, said judicial and administrative officers shall act as agents of the sending state after consultation with appropriate officers of the sending state.

(7) Any receiving state incurring costs or other expenses under this amendment shall be reimbursed in the

amount of such costs or other expenses by the sending state unless the states concerned shall specifically otherwise agree. Any two or more states party to this amendment may enter into supplementary agreements determining a different allocation of costs as among themselves.

(8) This amendment shall take initial effect when entered into by any two or more states party to the compact and shall be effective as to those states which have specifically enacted this amendment. Rules and regulations necessary to effectuate the terms of this amendment may be promulgated by the appropriate officers of those states which have enacted this amendment.

**43-1009. Out-of-State Confinement Amendment; confinement of delinquent juvenile; order.** In addition to any institution in which the authorities of this state may otherwise confine or order the confinement of a delinquent juvenile, such authorities may, pursuant to the Out-of-State Confinement Amendment to the Interstate Compact on Juveniles, sections 43-1001 to 43-1007, confine or order the confinement of a delinquent juvenile in a compact institution within another party state.

**43-1010. Out-of-State Rendition Amendment; contents.**

(1) This Out-of-State Rendition Amendment to the Interstate Compact on Juveniles, sections 43-1001 to 43-1007, shall provide additional remedies and shall be binding only as among and between those party states which specifically execute the same.

(2) All provisions and procedures of Articles V and VI of the Interstate Compact on Juveniles shall be construed to apply to any juvenile charged with being a delinquent by reason of a violation of any criminal law. Any juvenile charged with being a delinquent by reason of violating any criminal law shall be returned to the requesting state upon a requisition to the state where the juvenile may be found. A petition in such case shall be filed in a court of competent jurisdiction in the requesting state where the violation of criminal law is alleged to have been committed. The petition may be filed regardless of whether the juvenile has left the state before or after the filing of the petition. The requisition described in Article V of the compact shall be forwarded by the judge of the court in which the petition has been filed.

### XIII. COURT APPOINTED SPECIAL ADVOCATE ACT

**43-3701. Act, how cited.** Sections 43-3701 to 43-3716 shall be known and may be cited as the Court Appointed Special Advocate Act.

**43-3702. Definitions, where found.** For purposes of the Court Appointed Special Advocate Act, the definitions in sections 43-3703 to 43-3705 apply.

**43-3703. Child, defined.** Child means an individual under nineteen years of age.

**43-3704. Court appointed special advocate program, defined.** Court appointed special advocate program means a program established pursuant to the Court Appointed Special Advocate Act.

**43-3705. Court appointed special advocate volunteer, defined.** Court appointed special advocate volunteer or volunteer means an individual appointed by a court pursuant to the Court Appointed Special Advocate Act.

**43-3706. Court appointed special advocate programs; authorized; requirements.**

(1) Court appointed special advocate programs may be established and shall operate pursuant to the Court Appointed Special Advocate Act.

(2) A court appointed special advocate program shall:

(a) Be an organization that screens, trains, and supervises court appointed special advocate volunteers to advocate for the best interests of children when appointed by a court as provided in section 43-3710. Each court may be served by a court appointed special advocate program. One program may serve more than one court;

(b) Hold regular case conferences with volunteers to review case progress and conduct annual performance reviews for all volunteers;

(c) Provide staff and volunteers with written program policies, practices, and procedures; and

(d) Provide the training required pursuant to section 43-3708.

**43-3707. Program director; duties.** The program director of the court appointed special advocate program shall be responsible for the administration of the program, including recruitment, selection, training, supervision, and evaluation of staff and court appointed special advocate volunteers.

**43-3708. Volunteers; requirements.**

(1) All court appointed special advocate volunteers shall participate fully in preservice training, including, but not limited to, instruction on recognizing child abuse and neglect, cultural awareness, socioeconomic issues, child development, the juvenile court process, permanency planning, volunteer roles and responsibilities, advocacy, information gathering, and documentation. Volunteers shall be required to participate in observation of court proceedings prior to appointment.

(2) All volunteers shall receive a training manual that includes guidelines for service and duties.

(3) Each court appointed special advocate program shall provide a minimum of ten hours of inservice training per year to volunteers.

**43-3709. Volunteers; minimum qualifications.**

(1) The minimum qualifications for any prospective court appointed special advocate volunteer are that he or she shall:

(a) Be at least twenty-one years of age or older and have demonstrated an interest in children and their welfare;

(b) Be willing to commit to the court for a minimum of one year of service to a child;

(c) Complete an application, including providing background information required pursuant to subsection (2) of this section;

(d) Participate in a screening interview; and

(e) Participate in the training required pursuant to section 43-3708.

(2) As required background screening, the program director shall obtain the following information regarding a volunteer applicant:

(a) A check of the applicant's criminal history record information maintained by the Identification Division of the Federal Bureau of Investigation through the Nebraska State Patrol;

(b) A check of his or her record with the central register of child protection cases maintained under section 28-718;

(c) A check of his or her driving record; and

(d) At least three references who will attest to the applicant's character, judgment, and suitability for the position of a court appointed special advocate volunteer.

(3) If the applicant has lived in Nebraska for less than twelve months, the program director shall obtain the records required in subdivisions (2)(a) through (2)(c) of this section from all other jurisdictions in which the applicant has lived during the preceding year.

**43-3710. Appointment of volunteer; procedure.**

(1) A judge may appoint a court appointed special advocate volunteer in any proceeding brought pursuant to section 43-247 or 43-292 when, in the opinion of the judge, a child who may be affected by such proceeding requires services that a volunteer can provide and the court finds that the appointment is in the best interests of the child.

(2) A volunteer shall be appointed pursuant to a court order. The court order shall specify the volunteer as a friend of the court acting on the authority of the judge. The volunteer acting as a friend of the court may offer as evidence a written report with recommendations consistent with the best interests of the child, subject to all pertinent objections.

(3) A memorandum of understanding between a court and a court appointed special advocate program is required in any county where a program is established and shall set forth the roles and responsibilities of the court appointed special advocate volunteer.

(4) The volunteer's appointment shall conclude:

(a) When the court's jurisdiction over the child terminates;

- (b) Upon discharge by the court on its own motion;
- (c) With the approval of the court, at the request of the program director of the court appointed special advocate program to which the volunteer is assigned; or
- (d) Upon successful motion of a party to the action for the removal of the volunteer because the party believes the volunteer has acted inappropriately, is unqualified, or is unsuitable for the appointment.

**43-3711. Volunteer; prohibited acts.** A court appointed special advocate volunteer shall not:

- (1) Accept any compensation for the duties and responsibilities of his or her appointment;
- (2) Have any association that creates a conflict of interest with his or her duties;
- (3) Be related to any party or attorney involved in a case;
- (4) Be employed in a position that could result in a conflict of interest or give rise to the appearance of a conflict; or
- (5) Use the position to seek or accept gifts or special privileges.

**43-3712. Volunteer; duties.**

- (1) Upon appointment in a proceeding, a court appointed special advocate volunteer shall:
  - (a) Conduct an independent examination regarding the best interests of the child that will provide factual information to the court regarding the child and the child's family. The examination may include interviews with and observations of the child, interviews with other appropriate individuals, and the review of relevant records and reports; and
  - (b) Determine if an appropriate permanency plan has been created for the child, whether appropriate services are being provided to the child and the child's family, and whether the treatment plan is progressing in a timely manner.
- (2) The volunteer, with the support and supervision of the court appointed special advocate program staff, shall make recommendations consistent with the best interests of the child regarding placement, visitation, and appropriate services for the child and the child's family and shall prepare a written report to be distributed to the court and the parties to the proceeding.
- (3) The volunteer shall monitor the case to which he or she has been appointed to assure that the child's essential needs are being met.
- (4) The volunteer shall make every effort to attend all hearings, meetings, and any other proceeding concerning the case to which he or she has been appointed.
- (5) The volunteer may be called as a witness in a proceeding by any party or the court.

**43-3713. Cooperation; notice required.**

- (1) All government agencies, service providers, professionals, parents, and families shall cooperate with all reasonable requests of the court appointed special advocate volunteer. The volunteer shall cooperate with all government agencies, service providers, professionals, parents, and families.
- (2) The volunteer shall be notified in a timely manner of all hearings, meetings, and any other proceeding concerning the case to which he or she has been appointed. The court in its discretion may proceed notwithstanding failure to notify the volunteer or failure of the volunteer to appear.

**43-3714. Confidentiality; violation; penalty.** The contents of any document, record, or other information relating to a case to which the court appointed special advocate volunteer has access are confidential, and the volunteer shall not disclose such information to persons other than the court, the parties to the action, and other persons authorized by the court. A violation of this section is a Class III misdemeanor.

**43-3715. Attorney-client privilege; applicability.** Nothing in the Court Appointed Special Advocate Act affects the attorney- client privilege.

**43-3716. Volunteer; immunity.** A court appointed special advocate volunteer shall be immune from civil liability to the full extent provided in the federal Volunteer Protection Act of 1997.

#### **XIV. JUVENILE SERVICES PROVISIONS**

**A. HEALTH AND HUMAN SERVICES, OFFICE OF JUVENILE SERVICES ACT**

**43-401. Act, how cited.** Sections 43-401 to 43-423 shall be known and may be cited as the Health and Human Services, Office of Juvenile Services Act.

**43-402. Legislative intent; juvenile justice system; goal.** It is the intent of the Legislature that the juvenile justice system provide individualized accountability and individualized treatment for juveniles in a manner consistent with public safety to those juveniles who violate the law. The juvenile justice system shall also promote prevention efforts which are community-based and involve all sectors of the community. Prevention efforts shall be provided through the support of programs and services designed to meet the needs of those juveniles who are identified as being at risk of violating the law and those whose behavior is such that they endanger themselves or others. The goal of the juvenile justice system shall be to provide a range of programs and services which:

- (1) Retain and support juveniles within their homes whenever possible and appropriate;
- (2) Provide the least restrictive and most appropriate setting for juveniles while adequately protecting them and the community;
- (3) Are community-based and are provided in as close proximity to the juvenile's community as possible and appropriate;
- (4) Provide humane, secure, and therapeutic confinement to those juveniles who present a danger to the community;
- (5) Provide follow-up and aftercare services to juveniles when returned to their families or communities to ensure that progress made and behaviors learned are integrated and continued;
- (6) Hold juveniles accountable for their unlawful behavior in a manner consistent with their long-term needs, stressing the offender's responsibility to victims and the community;
- (7) Base treatment planning and service provision upon an individual evaluation of the juvenile's needs recognizing the importance of meeting the educational needs of the juvenile in the juvenile justice system;
- (8) Are family focused and include the juvenile's family in assessment, case planning, treatment, and service provision as appropriate and emphasize parental involvement and accountability in the rehabilitation of their children;
- (9) Provide supervision and service coordination, as appropriate, to implement and monitor treatment plans and to prevent reoffending;
- (10) Provide integrated service delivery through appropriate linkages to other human service agencies; and
- (11) Promote the development and implementation of community-based programs designed to prevent unlawful behavior and to effectively minimize the depth and duration of the juvenile's involvement in the juvenile justice system.

**43-403. Terms, defined.** For purposes of the Health and Human Services, Office of Juvenile Services Act:

- (1) Aftercare means the control, supervision, and care exercised over juveniles who have been paroled;
- (2) Committed means an order by a court committing a juvenile to the care and custody of the Office of Juvenile Services for treatment;
- (3) Community supervision means the control, supervision, and care exercised over juveniles committed to the Office of Juvenile Services when a commitment to the level of treatment of a youth rehabilitation and treatment center has not been ordered by the court;

(4) Evaluation means assessment of the juvenile's social, physical, psychological, and educational development and needs, including a recommendation as to an appropriate treatment plan;

(5) Parole means a conditional release of a juvenile from a youth rehabilitation and treatment center to aftercare or transferred to Nebraska for parole supervision by way of interstate compact;

(6) Placed for evaluation means a placement with the Office of Juvenile Services or the Department of Health and Human Services for purposes of an evaluation of the juvenile; and

(7) Treatment means type of supervision, care, confinement, and rehabilitative services for the juvenile.

**43-404. Office of Juvenile Services; created; power and duties.** There is created within the Department of Health and Human Services the Office of Juvenile Services. The office shall have oversight and control of state juvenile correctional facilities and programs other than the secure youth confinement facility which is under the control of the Department of Correctional Services. The Administrator of the Office of Juvenile Services shall be appointed by the chief executive officer of the department or his or her designee and shall be responsible for the administration of the facilities and programs of the office. The department may contract with a state agency or private provider to operate any facilities and programs of the Office of Juvenile Services.

**43-405. Office of Juvenile Services; administrative duties.** The administrative duties of the Office of Juvenile Services are to:

(1) Manage, establish policies for, and administer the office, including all facilities and programs operated by the office or provided through the office by contract with a provider;

(2) Supervise employees of the office, including employees of the facilities and programs operated by the office;

(3) Have separate budgeting procedures and develop and report budget information separately from the Department of Health and Human Services;

(4) Adopt and promulgate rules and regulations for the levels of treatment and for management, control, screening, evaluation, treatment, rehabilitation, parole, transfer, and discharge of juveniles placed with or committed to the Office of Juvenile Services;

(5) Ensure that statistical information concerning juveniles placed with or committed to facilities or programs of the office is collected, developed, and maintained for purposes of research and the development of treatment programs;

(6) Monitor commitments, placements, and evaluations at facilities and programs operated by the office or through contracts with providers and report its findings annually to the Legislature. The report shall include an assessment of the administrative costs of operating the facilities, the cost of programming, and the savings realized through reductions in commitments, placements, and evaluations;

(7) Coordinate the programs and services of the juvenile justice system with other governmental agencies and political subdivisions;



- (8) Coordinate educational, vocational, and social counseling;
- (9) Coordinate community-based services for juveniles and their families;
- (10) Supervise and coordinate juvenile parole and aftercare services; and
- (11) Exercise all powers and perform all duties necessary to carry out its responsibilities under the Health and Human Services, Office of Juvenile Services Act.

**43-406. Office of Juvenile Services; treatment programs, services, and systems; requirements.** The Office of Juvenile Services shall utilize:

- (1) Risk and needs assessment instruments for use in determining the level of treatment for the juvenile;
- (2) A case classification process to include levels of treatment defined by rules and regulations and case management standards for each level of treatment. The process shall provide for a balance of accountability, public safety, and treatment;
- (3) Case management for all juveniles committed to the office;
- (4) A purchase-of-care system which will facilitate the development of a statewide community-based array of care with the involvement of the private sector and the local public sector. Care services may be purchased from private providers to provide a wider diversity of services. This system shall include accessing existing Title IV-E funds of the federal Social Security Act, as amended, medicaid funds, and other funding sources to support eligible community-based services. Such services developed and purchased shall include, but not be limited to, evaluation services. Services shall be offered and delivered on a regional basis;
- (5) Community-based evaluation programs, supplemented by one or more residential evaluation programs. A residential evaluation program shall be provided in a county containing a city of the metropolitan class. Community-based evaluation services shall replace the residential evaluation services available at the Youth Diagnostic and Rehabilitation Center by December 31, 1999; and
- (6) A management information system. The system shall be a unified, interdepartmental client information system which supports the management function as well as the service function.

**43-407. Office of Juvenile Services; programs and treatment services; case management and coordination process; funding utilization; intent.** The Office of Juvenile Services shall design and make available programs and treatment services through the Youth Rehabilitation and Treatment Center-Kearney and Youth Rehabilitation and Treatment Center-Geneva. The programs and treatment services shall be based upon the individual or family evaluation process and treatment plan.

The treatment plan shall be developed within fourteen days after admission. If a juvenile placed at the Youth Rehabilitation and Treatment Center-Kearney or Youth Rehabilitation and Treatment Center-Geneva is assessed as needing inpatient or subacute substance abuse or behavioral health residential treatment, the juvenile may be transferred to a program or facility if the treatment and security needs of the juvenile can be met. The assessment process shall include involvement of both private and public sector behavioral health providers. The selection of the treatment venue for each juvenile shall include individualized case planning and incorporate the goals of the juvenile justice system pursuant to section 43-402. Juveniles committed to the Youth Rehabilitation and Treatment Center-

Kearney or Youth Rehabilitation and Treatment Center-Geneva who are transferred to alternative settings for treatment remain committed to the Department of Health and Human Services and the Office of Juvenile Services until discharged from such custody.

Programs and treatment services shall address:

(1) Behavioral impairments, severe emotional disturbances, sex offender behaviors, and other mental health or psychiatric disorders;

(2) Drug and alcohol addiction;

(3) Health and medical needs;

(4) Education, special education, and related services;

(5) Individual, group, and family counseling services as appropriate with any treatment plan related to subdivisions (1) through (4) of this section. Services shall also be made available for juveniles who have been physically or sexually abused;

(6) A case management and coordination process, designed to assure appropriate reintegration of the juvenile to his or her family, school, and community. This process shall follow individualized planning which shall begin at intake and evaluation. Structured programming shall be scheduled for all juveniles. This programming shall include a strong academic program as well as classes in health education, living skills, vocational training, behavior management and modification, money management, family and parent responsibilities, substance abuse awareness, physical education, job skills training, and job placement assistance. Participation shall be required of all juveniles if such programming is determined to be age and developmentally appropriate. The goal of such structured programming shall be to provide the academic and life skills necessary for a juvenile to successfully return to his or her home and community upon release; and

(7) The design and delivery of treatment programs through the youth rehabilitation and treatment centers as well as any licensing or certification requirements, and the office shall follow the requirements as stated within Title XIX and Title IV-E of the federal Social Security Act, as such act existed on May 25, 2007, the Special Education Act, or other funding guidelines as appropriate. It is the intent of the Legislature that these funding sources shall be utilized to support service needs of eligible juveniles.

**43-408. Office of Juvenile Services; committing court; determination of placement and treatment services.**

(1) Whenever any juvenile is committed under any provision of law to the Office of Juvenile Services, to any facility operated by the Office of Juvenile Services, or to the custody of the Administrator of the Office of Juvenile Services, a superintendent of a facility, or an administrator of a program, the juvenile is deemed committed to the Office of Juvenile Services. Juveniles committed to the Office of Juvenile Services shall also be considered committed to the care and custody of the Department of Health and Human Services for the purpose of obtaining health care and treatment services.

(2) The committing court shall order the initial level of treatment for a juvenile committed to the Office of Juvenile Services. Prior to determining the initial level of treatment for a juvenile, the court may solicit a recommendation regarding the initial level of treatment from the Office of Juvenile Services. Under this section, the committing court shall not order a specific placement for a juvenile. The court shall continue to maintain jurisdiction over any juvenile committed to the Office of Juvenile Services until such time that the juvenile is discharged from the Office of Juvenile Services. The court shall conduct review hearings every six months, or at the request of the juvenile, for any juvenile committed to the Office of Juvenile Services who is placed outside his or her home, except for a juvenile residing at a youth rehabilitation and treatment center. The court shall determine whether an out-of-home placement made by the Office of Juvenile Services is in the best interests of the juvenile, with due consideration being given by the court to public safety. If the court determines that the out-of-home placement is not in the best interests of the juvenile, the court may order other treatment services for the juvenile.

(3) After the initial level of treatment is ordered by the committing court, the Office of Juvenile Services shall provide treatment services which conform to the court's level of treatment determination. Within thirty days after making an actual placement, the Office of Juvenile Services shall provide the committing court with written notification of where the juvenile has been placed. At least once every six months thereafter, until the juvenile is discharged from the care and custody of the Office of Juvenile Services, the office shall provide the committing court with written notification of the juvenile's actual placement and the level of treatment that the juvenile is receiving.

(4) For transfer hearings, the burden of proof to justify the transfer is on the Office of Juvenile Services, the standard of proof is clear and convincing evidence, and the strict rules of evidence do not apply. Transfers of juveniles from one place of treatment to another are subject to section 43-251.01 and to the following:

(a) Except as provided in subdivision (b) of this subsection, if the Office of Juvenile Services proposes to transfer the juvenile from a less restrictive to a more restrictive place of treatment, a plan outlining the proposed change and the reasons for the proposed change shall be presented to the court which committed the juvenile. Such change shall occur only after a hearing and a finding by the committing court that the change is in the best interests of the juvenile, with due consideration being given by the court to public safety. At the hearing, the juvenile has the right to be represented by counsel;

(b) The Office of Juvenile Services may make an immediate temporary change without prior approval by the committing court only if the juvenile is in a harmful or dangerous situation, is suffering a medical emergency, is exhibiting behavior which warrants temporary removal, or has been placed in a non-state-owned facility and such facility has requested that the juvenile be removed. Approval of the committing court shall be sought within fifteen days of making an immediate temporary change, at which time a hearing shall occur before the court. The court shall determine whether it is in the best interests of the juvenile to remain in the new place of treatment, with due consideration being given by the court to public safety. At the hearing, the juvenile has the right to be represented by counsel; and

(c) If the proposed change seeks to transfer the juvenile from a more restrictive to a less restrictive place of treatment or to transfer the juvenile from the juvenile's current place of treatment to another which has the same level of restriction as the current place of treatment, the Office of Juvenile Services shall notify the juvenile, the juvenile's parents, custodian, or legal guardian, the committing court, the county attorney, the counsel for the juvenile, and the guardian ad litem of the proposed change. The juvenile has fifteen days after the date of the notice to request an administrative hearing with the Office of Juvenile Services, at which time the Office of Juvenile Services shall determine whether it is in the best interests of the juvenile for the proposed change to occur, with due consideration being given by the office to public safety. The juvenile may be represented by counsel at the juvenile's own expense. If the juvenile is aggrieved by the administrative decision of the Office of Juvenile Services, the juvenile may appeal that decision to the committing court within fifteen days after the Office of Juvenile Services' decision. At the hearing before the committing court, the juvenile has the right to be represented by counsel.

(5) If a juvenile is placed in detention after the initial level of treatment is determined by the committing court, the committing court shall hold a hearing every fourteen days to review the status of the juvenile. Placement of a juvenile in detention shall not be considered as a treatment service.

(6) The committing court's review of a change of place of treatment pursuant to this section does not apply to parole revocation hearings.

**43-409. Office of Juvenile Services; access to records; immunity.** The Office of Juvenile Services shall have access to and may obtain copies of all records pertaining to a juvenile committed to it or placed with it, including, but not limited to, school records, medical records, juvenile court records, probation records, test results, treatment records, evaluations, and examination reports. Any person who, in good faith, furnishes any records or

information to the Office of Juvenile Services shall be immune from any liability, civil or criminal, that might otherwise be incurred or imposed. The owners, officers, directors, employees, or agents of such medical office, school, court, office, corporation, partnership, or other such entity shall not be liable for furnishing such records or information.

**43-410. Juvenile absconding; authority to apprehend.** Any peace officer, juvenile parole officer, or direct care staff member of the Office of Juvenile Services has the authority to apprehend and detain a juvenile who has absconded or is attempting to abscond from a placement for evaluation or commitment to the Office of Juvenile Services and shall cause the juvenile to be returned to the facility or program or an appropriate juvenile detention facility. For purposes of this section, direct care staff member means any staff member charged with the day-to-day care and supervision of juveniles housed at a facility or program operated directly by the office or security staff who has received training in apprehension techniques and procedures.

**43-411. Detainers for apprehension and detention; authorized; detention; limitations.** The chief executive officer of the Department of Health and Human Services shall have the authority, and may delegate the authority only to the Administrator of the Office of Juvenile Services and the superintendents of the youth rehabilitation and treatment centers, to issue detainers for the apprehension and detention of juveniles who have absconded from a placement with or commitment to the office. Any peace officer who detains a juvenile on such a detainer shall hold the juvenile in an appropriate facility or program for juveniles until the office can take custody of the juvenile.

**43-412. Commitment to Office of Juvenile Services; discharge of juvenile; effect of discharge.**

(1) Every juvenile committed to the Office of Juvenile Services pursuant to the Nebraska Juvenile Code or pursuant to subsection (3) of section 29-2204 shall remain committed until he or she attains the age of nineteen or is legally discharged.

(2) The discharge of any juvenile pursuant to the rules and regulations or upon his or her attainment of the age of nineteen shall be a complete release from all penalties incurred by conviction or adjudication of the offense for which he or she was committed.

**43-413. Evaluations authorized; costs.**

(1) A court may, pursuant to section 43-281, place a juvenile with the Office of Juvenile Services or the Department of Health and Human Services for an evaluation to aid the court in the disposition.

(2) A juvenile convicted as an adult shall be placed with the Office of Juvenile Services for evaluation prior to sentencing as provided by subsection (3) of section 29-2204.

(3) All juveniles shall be evaluated prior to commitment to the Office of Juvenile Services. The court shall not commit such juvenile to the temporary custody of the Office of Juvenile Services prior to disposition. The office may place a juvenile in residential or nonresidential community-based evaluation services for purposes of evaluation to assist the court in determining the initial level of treatment for the juvenile.

(4) During any period of detention or evaluation prior to disposition:

(a) Except as provided in subdivision (4)(b) of this section, the county in which the case is pending is responsible for all detention costs incurred before and after an evaluation period prior to disposition, the cost of delivering the juvenile to the facility or institution for an evaluation, and the cost of returning the juvenile to the court for disposition; and

(b) The state is responsible for (i) the costs incurred during an evaluation unless otherwise ordered by the court pursuant to section 43-290 and (ii) the preevaluation detention costs for any days over the first ten days from the date the evaluation is ordered by the court.

(5) The Office of Juvenile Services and the Department of Health and Human Services are not responsible for predisposition costs except as provided in subdivision (4)(b) of this section.

**43-414. Office of Juvenile Services; evaluation powers.** Each juvenile placed for evaluation with the Office of Juvenile Services shall be subjected to medical examination and evaluation as directed by the office.

**43-415. Evaluation; time limitation; extension.** A juvenile placed for evaluation with the Office of Juvenile Services shall be returned to the court upon the completion of the evaluation or at the end of thirty days, whichever comes first. When the office finds that an extension of the thirty-day period is necessary to complete the evaluation, the court may order an extension not to exceed an additional thirty days.

**43-416. Office of Juvenile Services; parole powers.** The Office of Juvenile Services shall have administrative authority over the parole function for juveniles committed to a youth rehabilitation and treatment center and may (1) determine the time of release on parole of committed juveniles eligible for such release, (2) fix the conditions of parole, revoke parole, issue or authorize the issuance of detainers for the apprehension and detention of parole violators, and impose other sanctions short of revocation for violation of conditions of parole, and (3) determine the time of discharge from parole.

**43-417. Juvenile parole; considerations.** In administering juvenile parole, the Office of Juvenile Services shall consider whether (1) the juvenile has completed the goals of his or her individual treatment plan or received maximum benefit from institutional treatment, (2) the juvenile would benefit from continued services under community supervision, (3) the juvenile can function in a community setting, (4) there is reason to believe that the juvenile will not commit further violations of law, and (5) there is reason to believe that the juvenile will comply with the conditions of parole.

**43-418. Parole violations; apprehension and detention; when.**

(1) Any juvenile parole officer or peace officer may apprehend and detain a juvenile who is on parole if the officer has reasonable cause to believe that a juvenile has violated or is about to violate a condition of his or her parole and that the juvenile will attempt to leave the jurisdiction or will place lives or property in danger unless the juvenile is detained. A juvenile parole officer may call upon a peace officer to assist him or her in apprehending and detaining a juvenile pursuant to this section. Such juvenile may be held in an appropriate juvenile facility pending hearing on the allegations.

(2) Juvenile parole officers may search for and seize contraband and evidence related to possible parole violations by a juvenile.

(3) Whether or not a juvenile is apprehended and detained by a juvenile parole officer or peace officer, if there is reason to believe that a juvenile has violated a condition of his or her parole, the Office of Juvenile Services may issue the juvenile written notice of the alleged parole violations and notice of a hearing on the alleged parole violations.

**43-419. Parole violation; preliminary hearing.**

(1) When a juvenile is apprehended and detained for an alleged violation of juvenile parole, he or she shall have a preliminary hearing as soon as practicable and no later than within seventy-two hours of being apprehended and detained. An impartial hearing officer shall conduct the preliminary hearing. The impartial hearing officer shall not be the juvenile parole officer alleging the violation of parole or a witness to the alleged violation. The impartial hearing officer may be an employee of the Office of Juvenile Services, including a supervisor or a juvenile parole officer, other than the parole officer filing the allegations.

(2) The juvenile parolee shall receive notice of the preliminary hearing, its purpose, and the alleged violations prior to the commencement of the hearing. The juvenile parolee may present relevant information, question adverse witnesses, and make a statement regarding the alleged parole violations. The rules of evidence shall not apply at such hearings and the hearing officer may rely upon any available information.

(3) The hearing officer shall determine whether there is probable cause to believe that the juvenile has violated a term or condition of his or her parole and shall issue that decision in writing. The decision shall either indicate there is not probable cause to believe that the juvenile parolee has violated the terms of his or her parole and dismiss the allegations and return the juvenile to parole supervision, or it shall indicate there is probable cause to believe that the juvenile has violated a condition of parole and state where the juvenile will be held pending the revocation hearing. The preliminary hearing officer shall consider the seriousness of the alleged violation, the public safety, and the best interests of the juvenile in determining where the juvenile shall be held pending the revocation hearing.

**43-420. Hearing officer; requirements.** Any hearing required or permitted for juveniles in the custody of the Office of Juvenile Services, except a preliminary parole revocation hearing, shall be conducted by a hearing officer who is an attorney licensed to practice law in the State of Nebraska and may be an employee of the Department of Health and Human Services or an attorney who is an independent contractor. If the hearing officer is an employee of the department, he or she shall not be assigned to any duties requiring him or her to give ongoing legal advice to any person employed by or who is a contractor with the office.

**43-421. Parole violations; rights of juvenile.** When a juvenile is charged with being in violation of a condition of his or her parole, the juvenile is entitled to:

(1) Notice of the alleged violations of parole at least twenty-four hours prior to a hearing on the allegations. Such notice shall contain a concise statement of the purpose of the hearing and the factual allegations upon which evidence will be offered;

(2) A prompt hearing, within fourteen days after the preliminary hearing, if the juvenile is being held pending the hearing;

(3) Reasonable continuances granted by the hearing officer for the juvenile to prepare for the hearing;

(4) Have his or her parents notified of the hearing and allegations and have his or her parents attend the hearing;

(5) Be represented by legal counsel at the expense of the Department of Health and Human Services unless retained legal counsel is available to the juvenile. The department may contract with attorneys to provide such representation to juveniles charged with parole violations;

(6) Compel witnesses to attend, testify on his or her own behalf, present evidence, and cross-examine

witnesses against him or her; and

(7) Present a statement on his or her own behalf.

**43-422. Parole violation; waiver and admission.** After receiving notice of the allegations of a violation of parole, being notified of the possible consequences, being informed of his or her rights pertaining to the hearing, and having an opportunity to confer with his or her parents or precommitment custodian and legal counsel, if desired, the juvenile may waive his or her right to a hearing and admit to the allegations. Such waiver and admission shall be in writing and submitted, together with a recommended disposition by the hearing officer, to the Administrator of the Office of Juvenile Services or his or her designee.

**43-423. Parole violation hearing; requirements; appeal.** At the parole violation hearing, the hearing officer shall again advise the juvenile of his or her rights and ensure that the juvenile has received the notice of allegations and the possible consequences. Strict rules of evidence shall not be applied. The hearing officer shall determine whether the detention of the juvenile or other restrictions are necessary for the safety of the juvenile or for the public safety and shall indicate to what extent the juvenile will continue to be detained or restricted pending a final decision and administrative appeal. The hearing officer shall issue a written recommended disposition to the Administrator of the Office of Juvenile Services or his or her designee who shall promptly affirm, modify, or reverse the recommended disposition. The final decision of the administrator or his or her designee may be appealed pursuant to the Administrative Procedure Act. The Department of Health and Human Services shall be deemed to have acted within its jurisdiction if its action is in the best interests of the juvenile with due consideration being given to public safety. The appeal shall in all other respects be governed by the Administrative Procedure Act.

## B. JUVENILE SERVICES ACT

### **43-2401. Act, how cited.**

Sections 43-2401 to 43-2413 shall be known and may be cited as the Juvenile Services Act.

### **43-2402. Terms, defined.** For purposes of the Juvenile Services Act:

- (1) Coalition means the Nebraska Coalition for Juvenile Justice established pursuant to section 43-2411;
- (2) Commission means the Nebraska Commission on Law Enforcement and Criminal Justice;
- (3) Commission Grant Program means grants provided to eligible applicants under section 43-2406;
- (4) County Juvenile Services Aid Program means aid to counties provided under section 43-2404.02;
- (5) Eligible applicant means a community-based agency or organization, political subdivision, school district, federally recognized or state-recognized Indian tribe, or state agency necessary to comply with the federal act;
- (6) Federal act means the Juvenile Justice and Delinquency Prevention Act of 1974, 42 U.S.C. 5601 et seq., as the act existed on July 1, 2001;
- (7) Juvenile means a person who is under eighteen years of age; and
- (8) Office of Juvenile Services means the Office of Juvenile Services created in section 43-404.

**43-2403. Legislative findings; purposes of act.** The Legislature hereby finds that the incarceration of juveniles in adult jails, lockups, and correctional facilities is contrary to the best interests and well-being of juveniles and frequently inconsistent with state and federal law requiring intervention by the least restrictive method. The Legislature further finds that the lack of available alternatives within local communities is a significant factor in the incarceration of juveniles in such adult jails, lockups, and correctional facilities.

To address such lack of available alternatives to the incarceration of juveniles, the Legislature declares it to be the policy of the State of Nebraska to aid in the establishment of programs or services for juveniles under the jurisdiction of the juvenile or criminal justice system and to finance such programs or services with appropriations from the General Fund and with funds acquired by participation in the federal act. The purposes of the Juvenile Services Act shall be to (1) assist in the provision of appropriate preventive, diversionary, and dispositional alternatives for juveniles, (2) encourage coordination of the elements of the juvenile services system, and (3) provide an opportunity for local involvement in developing community programs for juveniles so that the following objectives may be obtained:

- (a) Preservation of the family unit whenever the best interests of the juvenile are served and such preservation does not place the juvenile at imminent risk;
- (b) Limitation on intervention to those actions which are necessary and the utilization of the least restrictive yet most effective and appropriate resources;
- (c) Encouragement of active family participation in whatever treatment is afforded a juvenile whenever the best interests of the juvenile require it;
- (d) Treatment in the community rather than commitment to a youth rehabilitation and treatment center whenever the best interests of the juvenile require it; and



(e) Assistance in the development of alternatives to secure temporary custody for juveniles who do not require secure detention.

**43-2404. Grants; use.** The coalition shall make award recommendations to the commission, at least annually, in accordance with the Juvenile Services Act and the federal act for grants made under the Commission Grant Program. Such grants shall be used to assist communities in the implementation and operation of programs or services identified in their comprehensive juvenile services plan, including, but not limited to, programs for assessment and evaluation, the prevention of delinquent behavior, diversion, detention, shelter care, intensive juvenile probation services, restitution, family support services, and community centers for the care and treatment of juveniles in need of services.

**43-2404.01. Comprehensive juvenile services plan; statewide system to evaluate fund recipients.**

(1) To be eligible for participation in either the Commission Grant Program or the County Juvenile Services Aid Program, counties shall develop and adopt a comprehensive juvenile services plan and submit such plan to the commission in accordance with the federal act and rules and regulations adopted and promulgated by the commission in consultation with the Office of Juvenile Services. Such plan may be developed by individual counties or by multiple counties. Any portion of the comprehensive juvenile services plan dealing with administration, procedures, and programs of the juvenile court shall not be submitted to the commission without the concurrence of the presiding judge or judges of the court or courts having jurisdiction in juvenile cases for the geographic area to be served. Programs or services established by such plans shall conform to the family policy tenets prescribed in sections 43-532 to 43-534.

(2) The commission, in consultation with the Office of Juvenile Services and the coalition, shall develop or contract for the development of a statewide system to monitor and evaluate the effectiveness of plans and programs receiving funds from: (a) The Commission Grant Program and (b) the County Juvenile Services Aid Program in preventing persons from entering the juvenile justice system and in rehabilitating juvenile offenders.

**43-2404.02 County Juvenile Services Aid Program; created; use; reports.**

(1) There is created a separate and distinct budgetary program within the commission to be known as the County Juvenile Services Aid Program. Funding acquired from participation in the federal act, state General Funds, and funding acquired from other sources which may be used for purposes consistent with the Juvenile Services Act and the federal act shall be used to aid counties in the establishment and provision of community-based services for accused and adjudicated juvenile offenders and to increase capacity for community-based services to juveniles.

(2) The annual General Fund appropriation to the County Juvenile Services Aid Program shall be apportioned to the counties as aid in accordance with a formula established in rules and regulations adopted and promulgated by the commission. The formula shall be based on the total number of residents per county who are twelve years of age through eighteen years of age and other relevant factors as determined by the commission. The commission may require a local match of up to forty percent from counties receiving aid under such program. Any local expenditures for community-based programs for juveniles may be applied toward such match requirement.

(3) Funds provided to counties under the County Juvenile Services Aid Program shall be used exclusively to assist counties in implementation and operation of programs or services identified in their comprehensive juvenile services plan, including, but not limited to, programs for assessment and evaluation, prevention of delinquent behavior, diversion, shelter care, intensive juvenile probation services, restitution, family support services, and family group conferencing. No funds appropriated or distributed under the County Juvenile Services Aid Program shall be used for construction of secure detention facilities, secure youth treatment facilities,

or secure youth confinement facilities. Aid received under this section shall not be used for capital construction or the lease or acquisition of facilities and shall not be used to replace existing funding for programs or services.

(4) Any county receiving funding under the County Juvenile Services Aid Program shall file an annual report as required by rules and regulations adopted and promulgated by the commission. The report shall include, but not be limited to, information on the total number of juveniles served, the units of service provided, a listing of the county's annual juvenile justice budgeted and actual expenditures, and a listing of expenditures for detention, residential treatment, and nonresidential treatment.

(5) The commission shall report annually to the Governor and the Legislature on the distribution and use of funds appropriated under the County Juvenile Services Aid Program.

(6) The commission shall adopt and promulgate rules and regulations to implement this section.

**43-2405. Grants under Commission Grant Program; application; requirements.**

(1) An eligible applicant may apply to the coalition for a grant under the Commission Grant Program in a manner and form prescribed by the commission for funds made available from the Commission Grant Program or the federal act. The application shall include a comprehensive juvenile services plan. Grants shall be awarded to eligible applicants at least annually within the limits of available funds until programs are available statewide.

(2) Eligible applicants may give consideration to contracting with private nonprofit agencies for the provision of programs.

**43-2406. Grants; criteria.** From amounts appropriated to the commission for the Commission Grant Program or funds available through the federal act, the commission shall award grants on a competitive basis to eligible applicants based upon criteria determined by the commission.

**43-2407. Repealed. Laws 2000, LB 1167, s. 56.**

**43-2408. Grants; use.**

(1) Grants provided under the Commission Grant Program may be used for developing programs under the Juvenile Services Act.

(2) No grants from the Commission Grant Program shall be used to acquire, develop, build, or improve local correctional facilities.

**43-2409. Eligible applicants; performance review; commission; powers; use of grants; limitation.**

(1) The coalition shall review periodically the performance of eligible applicants participating under the Commission Grant Program and the federal act to determine if substantial compliance criteria are being met. The commission shall establish criteria for defining substantial compliance.

(2) Grants received by an eligible applicant under the Commission Grant Program shall not be used to replace or supplant any funds currently being used to support existing programs for juveniles.

(3) Grants received under the Commission Grant Program shall not be used for capital construction or the lease or acquisition of facilities.

**43-2410. Repealed. Laws 2000, LB 1167, s. 56.**

**43-2411. Nebraska Coalition for Juvenile Justice; created; members; terms; expenses; task forces or subcommittee; authorized.**

(1) The Nebraska Coalition for Juvenile Justice is created. As provided in the federal act, there shall be no less than fifteen nor more than thirty-three members of the coalition. The coalition members shall be appointed by the Governor and shall include:

- (a) The Administrator of the Office of Juvenile Services;
- (b) The chief executive officer of the Department of Health and Human Services or his or her designee;
- (c) The Commissioner of Education or his or her designee;
- (d) The executive director of the Nebraska Commission on Law Enforcement and Criminal Justice or his or her designee;
- (e) The Executive Director of the Nebraska Association of County Officials or his or her designee;
- (f) The probation administrator of the Office of Probation Administration or his or her designee;
- (g) One county commissioner or supervisor;
- (h) One police chief;
- (i) One sheriff;
- (j) One separate juvenile court judge;
- (k) One county court judge;
- (l) One representative of mental health professionals who works directly with juveniles;
- (m) Three representatives, one from each congressional district, from community-based, private nonprofit organizations who work with juvenile offenders and their families;
- (n) One volunteer who works with juvenile offenders or potential juvenile offenders;
- (o) One person who works with an alternative to incarceration program for juveniles;
- (p) The director or his or her designee from a youth rehabilitation and treatment center;
- (q) The director or his or her designee from a secure youth confinement facility;
- (r) The director or his or her designee from a staff secure youth confinement facility;
- (s) At least five members who are under twenty-four years of age when appointed;
- (t) One person who works directly with juveniles who have learning or emotional difficulties or are abused or neglected;
- (u) One member of the Nebraska Commission on Law Enforcement and Criminal Justice;
- (v) One county attorney; and
- (w) One public defender.

(2) The terms of members appointed pursuant to subdivisions (1)(g) through (1)(w) of this section shall be three years, except that the terms of the initial members of the coalition shall be staggered so that one-third of the members are appointed for terms of one year, one-third for terms of two years, and one-third for terms of three years, as determined by the Governor. A majority of the coalition members, including the chairperson, shall not be full-time employees of federal, state, or local government. At least one-fifth of the coalition members shall be under the age of twenty-four at the time of appointment. Any vacancy on the coalition shall be filled by appointment by the Governor. The coalition shall select a chairperson, a vice-chairperson, and such other officers as it deems necessary.

(3) Members of the coalition shall be reimbursed for their actual and necessary expenses pursuant to sections 81-1174 to 81-1177.

(4) The coalition may appoint task forces or subcommittees to carry out its work. Task force and subcommittee members shall have knowledge of, responsibility for, or interest in an area related to the duties of the coalition.

**43-2412. Coalition; powers and duties.**

(1) Consistent with the purposes and objectives of the Juvenile Services Act and the federal act, the coalition shall:

- (a) Make recommendations to the commission on the awarding of grants under the Commission Grant Program to eligible applicants;
- (b) Identify juvenile justice issues, share information, and monitor and evaluate programs in the juvenile justice system;
- (c) Recommend guidelines and supervision procedures to the Office of Juvenile Services to be used to develop or expand local diversion programs for juveniles from the juvenile justice system;
- (d) Prepare an annual report to the Governor, the Legislature, and the Office of Juvenile Services including recommendations on administrative and legislative actions which would improve the juvenile justice system;
- (e) Ensure widespread citizen involvement in all phases of its work; and
- (f) Meet at least four times each year.

(2) Consistent with the purposes and objectives of the acts and within the limits of available time and appropriations, the coalition may:

- (a) Recommend criteria to the Office of Juvenile Services for administrative procedures, including, but not limited to, procedures for intake, detention, petition filing, and probation supervision;
- (b) Recommend to the Office of Juvenile Services minimum professional standards, including requirements for continuing professional training, for employees of community-based, youth-serving agencies;
- (c) Recommend to the Office of Juvenile Services curricula for and cause to have conducted training sessions for juvenile court judges and employees of other community-based, youth-serving agencies;
- (d) Assist and advise state and local agencies in the establishment of volunteer training programs and the utilization of volunteers;
- (e) Apply for and receive funds from federal and private sources for carrying out its powers and duties; and
- (f) Provide technical assistance to eligible applicants.

(3) In formulating, adopting, and promulgating the standards, recommendations, and guidelines provided for in this section, the coalition shall consider the differences among counties in population, in geography, and in the availability of local resources.

**43-2413. Coordinator; position established; duties.** There is established within the commission the position of coordinator for the Nebraska Coalition for Juvenile Justice. The coordinator shall assist the commission in the administration of the Juvenile Services Act and the federal act and shall serve as staff to the coalition.

**C. NEBRASKA COUNTY JUVENILE SERVICES PLAN ACT**

**43-3501. Act, how cited.**

Sections 43-3501 to 43-3507 shall be known and may be cited as the Nebraska County Juvenile

Services Plan Act.

**43-3502. Definitions.**

For purposes of the Nebraska County Juvenile Services Plan Act, the definitions shall be the same as those in sections 43-245 and 43-403.

**43-3503. Legislative intent; county powers and duties.**

(1) It is the intent of the Legislature to encourage counties to develop a continuum of nonsecure detention services for the purpose of enhancing, developing, and expanding the availability of such services to juveniles requiring nonsecure detention.

(2) A county may enhance, develop, or expand nonsecure detention services as needed with private or public providers. Grants from the Commission Grant Program and aid from the County Juvenile Services Aid Program under the Juvenile Services Act and the federal Juvenile Justice and Delinquency Prevention Act of 1974 may be used to fund nonsecure detention services. Each county shall routinely review services provided by contract providers and modify services as needed.

**43-3504. County juvenile services plan; multi county plan; regional plan.**

(1) Each county shall develop a county juvenile services plan by January 1, 2003. Two or more counties may establish a multi county juvenile services plan. Such plan should include input from individuals comprising a local juvenile justice advisory committee as provided for in subdivision (1) of section 43-3505 or a similar committee or group of individuals. The plan shall be submitted to the Nebraska Commission on Law Enforcement and Criminal Justice and shall include:

(a) Identification of the risk factors for delinquency that exist in the county or counties and service needs;

(b) Identification of juvenile services available within the county or counties, including, but not limited to, programs for assessment and evaluation, the prevention of delinquent behavior, diversion, detention, shelter care, intensive juvenile probation services, restitution, family support services, and community centers for the care and treatment of juveniles in need of services;

(c) Identification of juvenile services within close proximity of the county or counties that may be utilized if community-based programs are not available within the county or counties;

(d) Identification of the facilities the county primarily uses for juvenile secure detention and for nonsecure detention, including the costs associated with use of such facilities; and

(e) A coordination plan and an enhancement, development, and expansion plan of community services within the county, counties, or region to help prevent delinquency by providing intervention services when behavior that leads to delinquency is first exhibited. Examples of intervention services include, but are not limited to, alternative schools, school truancy programs, volunteer programs, family preservation and counseling, drug and alcohol counseling, diversion programs, and Parents Anonymous.

(2) Following or in conjunction with the development of a county juvenile services plan, each county may develop regional service plans and establish regional juvenile services boards when appropriate. The regional service plan shall be submitted to the Nebraska Commission on Law Enforcement and Criminal Justice.

(3) Plans developed under this section shall be updated no less than every five years after the date the plan is submitted to the commission.

**43-3505. County; powers; local juvenile justice advisory committee.** Each county may:

(1) Establish a local juvenile justice advisory committee for the purpose of meeting quarterly to discuss trends and issues related to juvenile offenders and service needs. Such committee should include representation from the courts, law enforcement, community service providers, schools, detention or shelter care, county elected and administrative officials, probation officials, health and human services representatives, and state officials or agency representatives. The committee should discuss state and local policy initiatives, use of detention and other regional services, commitment to state custody, and impacts of policy initiatives and trends on county juvenile justice systems. Notwithstanding any other provision of law regarding the confidentiality of records, information from the various representative agencies can be shared about juveniles under their supervision for the purposes of this subdivision. The information shared shall be in the form of statistical data which does not disclose the identity of any particular individual;

(2) Collect and review data on an ongoing basis to understand the service needs of the juvenile offender population; and

(3) Compile, review, and forward county level data collected pursuant to section 43-3506.

**43-3506. County level data on juveniles.** County level data on juveniles shall be maintained and compiled by the Nebraska Commission on Law Enforcement and Criminal Justice on arrest rates; petition rates; detention rates and utilization; offender profile data, such as offense, race, age, and sex; and admissions to staff secure and temporary holdover facilities.

**43-3507. Legislative findings.**

(1) The Legislature finds that there is a need for additional secure detention and detention services, including transportation services, for juveniles in the state. The need can be met by enhancing and expanding the existing secure detention facilities and detention services as needed in the future and by constructing new juvenile detention facilities to serve the southeastern, central, and west central areas of the state.

(2) The Legislature further finds that in order for probation officers to adequately perform the function of providing juvenile intake services statewide, existing probation staff resources need to be expanded and, additionally, program services that enhance a juvenile's successful reintegration into the community need to readily be available and at the disposal of juvenile probation.

(3) The Legislature further finds that juvenile diversion programs should be available throughout the state as a means of providing consequences without the formal involvement of the courts.

**XV. ASSISTANCE AND SERVICES FOR DELINQUENT, DEPENDENT, AND MEDICALLY HANDICAPPED CHILDREN**

**43-501. Sections, how construed.** Sections 43-501 to 43-526 shall be construed to be new, supplemental, and independent legislation upon the subjects of assistance and services for delinquent, dependent, and medically handicapped children, and all provisions of law in regard thereto shall be and remain in full force and effect.

**43-502. Repealed. Laws 1953, c. 237, s. 11.**

**43-503. Department of Health and Human Services; duty to cooperate with other departments and bureaus.** The Department of Health and Human Services shall cooperate and coordinate its child and maternal welfare activities with those of state institutions, vocational rehabilitation division of the State Department of Education, courts, county boards, charities and all other organizations, societies and agencies, state and national, to promote child welfare and health.

**43-504. Terms, defined; pregnancy; effect.**

(1) The term dependent child shall mean 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.

(2) In awarding aid to dependent children payments, the term dependent child shall include an unborn child but only during the last three months of pregnancy. A pregnant woman may be eligible but only (a) if it has been medically verified that the child is expected to be born in the month such payments are made or expected to be born within the three-month period following such month of payment and (b) if such child had been born and was living with her in the month of payment, she would be eligible for aid to families with dependent children. As soon as it is medically determined that pregnancy exists, a pregnant woman who meets the other requirements for aid to dependent children shall be eligible for medical assistance.

(3) A physically or medically handicapped child shall mean a child who, by reason of a physical defect or infirmity, whether congenital or acquired by accident, injury, or disease, is or may be expected to be totally or partially incapacitated for education or for remunerative occupation.

**43-504.01. Conditions of eligibility; partially or totally unemployed parent or needy caretaker.** As a condition of eligibility for aid for children included in section 43-504, a partially or totally unemployed parent or needy caretaker shall participate in the employment preparation or training program for aid to dependent children, unless considered exempt under rules and regulations adopted and promulgated by the Department of Health and Human Services, and any totally or partially unemployed parent or needy caretaker who fails or refuses without good cause to participate in the employment preparation or training program or who refuses without good cause to accept employment in which he or she is able to engage which will increase his or her ability to maintain himself or herself and his or her family shall be deemed by such refusal to have rendered his or her children ineligible for further aid until he or she has complied with this section. The requirements of this section shall also apply to any

dependent child unless he or she is under age sixteen or attending, full time, an elementary, secondary, or vocational school.

**43-504.02. Repealed. Laws 1967, c. 250, s. 1.**

**43-505. Repealed. Laws 1982, LB 522, s. 46.**

**43-506. Repealed. Laws 1982, LB 522, s. 46.**

**43-507. Mentally and physically handicapped children; Department of Health and Human Services; duties.** The Department of Health and Human Services, on behalf of mentally and physically handicapped children, shall (1) obtain admission to state and other suitable schools, hospitals, or other institutions or care in their own homes or in family, free, or boarding homes for such children in accordance with the provisions of the existing law, (2) maintain medical supervision over such mentally or physically handicapped children, and (3) provide necessary medical or surgical care in a suitable hospital, sanitarium, preventorium, or other institution or in the child's own home or a home for any medically handicapped child needing such care and pay for such care from public funds, if necessary.

**43-508. Department of Health and Human Services; cooperation with state institutions.** The Department of Health and Human Services shall cooperate with the state institutions for delinquent and mentally and physically handicapped children to ascertain the conditions of the home and the character and habits of the parents of a child, before his or her discharge from a state institution, and make recommendations as to the advisability of returning the child to his or her home. In case the department deems it unwise to have any such child returned to his or her former home, such state institution may, with the consent of the department, place such child into the care of the department.

**43-509. Religious faith of children; preservation.** The religious faith of children coming under the jurisdiction of public welfare officials shall be preserved and protected.

**43-510. Children eligible for assistance.** In order to be eligible for assistance, a child must be a bona fide resident of the State of Nebraska.

**43-511. Benefits extended to children in rural districts.** The Department of Health and Human Services shall extend the assistance and services herein provided for to all children in rural districts throughout this state, in order that the same benefits and facilities shall be available to children in such districts as in urban areas.

**43-512. Application for assistance; procedure; maximum monthly allowance; payment; transitional benefits; terms, defined.**

(1) Any dependent child as defined in section 43-504 or any relative or eligible caretaker of such a dependent child may file with the Department of Health and Human Services a written application for financial assistance for such child on forms furnished by the department.



(2) The department, through its agents and employees, shall make such investigation pursuant to the application as it deems necessary or as may be required by the county attorney or authorized attorney. If the investigation or the application for financial assistance discloses that such child has a parent or stepparent who is able to contribute to the support of such child and has failed to do so, a copy of the finding of such investigation and a copy of the application shall immediately be filed with the county attorney or authorized attorney.

(3) The department shall make a finding as to whether the application referred to in subsection (1) of this section should be allowed or denied. If the department finds that the application should be allowed, the department shall further find the amount of monthly assistance which should be paid with reference to such dependent child. Except as may be otherwise provided, payments shall be made by state warrant, and the amount of payments shall not exceed three hundred dollars per month when there is but one dependent child and one eligible caretaker in any home, plus an additional seventy-five dollars per month on behalf of each additional eligible person. No payments shall be made for amounts totaling less than ten dollars per month except in the recovery of overpayments.

(4) The amount which shall be paid as assistance with respect to a dependent child shall be based in each case upon the conditions disclosed by the investigation made by the department. An appeal shall lie from the finding made in each case to the chief executive officer of the department or his or her designated representative. Such appeal may be taken by any taxpayer or by any relative of such child. Proceedings for and upon appeal shall be conducted in the same manner as provided for in section 68-1016.

(5)(a) For the purpose of preventing dependency, the department shall adopt and promulgate rules and regulations providing for services to former and potential recipients of aid to dependent children and medical assistance benefits. The department shall adopt and promulgate rules and regulations establishing programs and cooperating with programs of work incentive, work experience, job training, and education. The provisions of this section with regard to determination of need, amount of payment, maximum payment, and method of payment shall not be applicable to families or children included in such programs.

(b) If a recipient of aid to dependent children becomes ineligible for aid to dependent children as a result of increased hours of employment or increased income from employment after having participated in any of the programs established pursuant to subdivision (a) of this subsection, the recipient may be eligible for the following benefits, as provided in rules and regulations of the department in accordance with sections 402, 417, and 1925 of the federal Social Security Act, as amended, Public Law 100-485, in order to help the family during the transition from public assistance to independence:

(i) An ongoing transitional payment that is intended to meet the family's ongoing basic needs which may include food, clothing, shelter, utilities, household goods, personal care items, and general incidental expenses during the five months following the time the family becomes ineligible for assistance under the aid to dependent children program, if the family's earned income is at or below one hundred eighty-five percent of the federal poverty level at the time the family becomes ineligible for the aid to dependent children program. Payments shall be made in five monthly payments, each equal to one-fifth of the aid to dependent children payment standard for the family's size at the time the family becomes ineligible for the aid to dependent children program. If during the five-month period, (A) the family's earnings exceed one hundred eighty-five percent of the federal poverty level, (B) the family members are no longer working, (C) the family ceases to be Nebraska residents, (D) there is no longer a minor child in the family's household, or (E) the family again becomes eligible for the aid to dependent children program, the family shall become ineligible for any remaining transitional benefits under this subdivision;

(ii) Child care as provided in subdivision (1)(c) of section 68-1724; and

(iii) Except as may be provided in accordance with subsection (2) of section 68-1713 and subdivision (1)(c) of section 68-1724, medical assistance for up to twelve months after the month the recipient

becomes employed and is no longer eligible for aid to dependent children.

(6) For purposes of sections 43-512 to 43-512.10 and 43-512.12 to 43-512.18:

(a) Authorized attorney shall mean an attorney, employed by the county subject to the approval of the county board, employed by the department, or appointed by the court, who is authorized to investigate and prosecute child, spousal, and medical support cases. An authorized attorney shall represent the state as provided in section 43-512.03;

(b) Child support shall be defined as provided in section 43-1705;

(c) Medical support shall include all expenses associated with the birth of a child and, if required pursuant to section 42-369 or 43-290, medical and hospital insurance coverage or membership in a health maintenance organization or preferred provider organization;

(d) Spousal support shall be defined as provided in section 43-1715;

(e) State Disbursement Unit shall be defined as provided in section 43-3341; and

(f) Support shall be defined as provided in section 43-3313.

**43-512.01. County attorney or authorized attorney; duty to take action against nonsupporting parent or stepparent when.** It shall be the duty of the county attorney or authorized attorney when a copy of the finding of investigation or the application for financial assistance has been filed with him or her as provided in section 43-512, or when an application has been made pursuant to section 43-512.02, to immediately take action against the nonsupporting parent or stepparent of the dependent child. It shall be the duty of the county attorney or authorized attorney to initiate a child support enforcement action. If the county attorney initiates an action, he or she shall file either a criminal complaint for nonsupport under section 28-706 or a civil complaint against the nonsupporting parent or stepparent under section 43-512.03. If the attorney who initiates a child support enforcement action is an authorized attorney, he or she shall file a civil complaint against the nonsupporting parent or stepparent pursuant to section 43-512.03.

**43-512.02. Child, spousal, and medical support collection; paternity determination; services available; application; fees; costs.**

(1) Any child or any relative, lawful custodian, guardian, or next friend of a child may file with the county attorney, authorized attorney, or other office designated by the Department of Health and Human Services an application for the same child, spousal, and medical support collection or paternity determination services as are provided to dependent children and their relatives under sections 43-512 to 43-512.10 by the department, the county attorney, the authorized attorney, and the clerk of the district court.

(2) If an office other than the office of the county attorney or authorized attorney is authorized by the department to accept such applications and if the application discloses that such child has a parent or stepparent who is able to contribute to the support of such child and has failed to do so, a copy of the application shall immediately be filed with the county attorney or authorized attorney.

(3) (a) The department shall determine an application fee to be charged to each individual who applies for services available in this section which shall not exceed the fee amount allowed by Title IV-D of the federal Social Security Act, as amended. The fee shall be collected from the individual or paid by the department on the individual's behalf. The county attorney or authorized attorney may recover the fee from the parent or stepparent who owes child, spousal, or medical support and reimburse the applicant. The governmental entity which is actually

collecting the delinquent support payments shall collect the fee and send it to the department.

(b) The department may establish a schedule of amounts to be charged to recover any costs incurred in excess of any fees collected to cover administrative costs of providing the full scope of services required by state law. The department shall by regulation establish a schedule of amounts to be paid for such services based upon the actual costs incurred in providing such services. The schedule shall be made available to all applicants for such services. Any amount charged to recover costs may be collected from the parent or stepparent who owes child, spousal, or medical support or from the individual who has applied for enforcement services, either directly from such individual or from the child or spousal support collected, but only if the individual has been notified that the county attorney or authorized attorney will recover costs from an individual who receives enforcement services. The department shall not impose an application fee for services in any case in which the department is authorized to continue to collect and distribute support payments after a family ceases to receive aid to dependent children payments.

**43-512.03. County attorney or authorized attorney; duties; enumerated; department; powers; actions; real party in interest; representation; section, how construed.**

(1) The county attorney or authorized attorney shall:

(a) On request by the Department of Health and Human Services as described in subsection (2) of this section or when the investigation or application filed under section 43-512 or 43-512.02 justifies, file a complaint against a nonsupporting parent or stepparent in the district, county, or separate juvenile court praying for an order for child or medical support in cases when there is no existing child or medical support order. After notice and hearing, the court shall adjudicate child and medical support liability of the nonsupporting parent or stepparent and enter an order accordingly;

(b) Enforce child, spousal, and medical support orders by an action for income withholding pursuant to the Income Withholding for Child Support Act;

(c) In addition to income withholding, enforce child, spousal, and medical support orders by other civil actions or administrative actions, citing the defendant for contempt, or filing a criminal complaint;

(d) Establish paternity and collect child and medical support on behalf of children born out of wedlock; and

(e) Carry out sections 43-512.12 to 43-512.18.

(2) The department may periodically review cases of individuals receiving enforcement services and make referrals to the county attorney or authorized attorney.

(3) In any action brought by or intervened in by a county attorney or authorized attorney under the Income Withholding for Child Support Act, the License Suspension Act, the Uniform Interstate Family Support Act, or sections 42-347 to 42-381, 43-290, 43-512 to 43-512.10, 43-512.12 to 43-512.18, and 43-1401 to 43-1418, and 43-3328 to 43-3339, such attorneys shall represent the State of Nebraska.

(4) The State of Nebraska shall be a real party in interest in any action brought by or intervened in by a county attorney or authorized attorney for the purpose of establishing paternity or securing, modifying, suspending, or terminating child or medical support or in any action brought by or intervened in by a county attorney or authorized attorney to enforce an order for child, spousal, or medical support.

(5) Nothing in this section shall be construed to interpret representation by a county attorney or an authorized attorney as creating an attorney-client relationship between the county attorney or authorized attorney and any party or witness to the action, other than the State of Nebraska, regardless of the name in which the action is brought.

**43-512.04. Child support or medical support; separate action allowed; procedure; presumption; decree; contempt.**

(1) An action for child support or medical support may be brought separate and apart from any action for dissolution of marriage. The complaint initiating the action shall be filed with the clerk of the district court and may be heard by the county court or the district court as provided in section 25-2740. Such action for support may be filed on behalf of a child:

(a) Whose paternity has been established (i) by prior judicial order in this state, (ii) by a prior determination of paternity made by any other state as described in subsection (1) of section 43-1406, or (iii) by the marriage of his or her parents as described in section 42-377 or subsection (2) of section 43-1406;

(b) Whose paternity is presumed as described in section 43-1409 or subsection (2) of section 43-1415.

(2) The father, not having entered into a judicially approved settlement or being in default in the performance of the same, may be made a respondent in such action. The mother of the child may also be made a respondent in such an action. Such action shall be commenced by a complaint of the mother of the child, the father of the child whose paternity has been established, the guardian or next friend of the child, the county attorney, or an authorized attorney.

(3) The complaint shall set forth the basis on which paternity was previously established or presumed, if the respondent is the father, and the fact of non-support and shall ask that the father, the mother, or both parents be ordered to provide for the support of the child. Summons shall issue against the father, the mother, or both parents and be served as in other civil proceedings, except that such summons may be directed to the sheriff of any county in the state and may be served in any county. The method of trial shall be the same as in actions formerly cognizable in equity, and jurisdiction to hear and determine such actions for support is hereby vested in the district court of the district or the county court of the county where the child is domiciled or found or, for cases under the Uniform Interstate Family Support Act if the child is not domiciled or found in Nebraska, where the parent of the child is domiciled.

(4) In such proceeding, if the defendant is the presumed father as described in subdivision (1)(b) of this section, the court shall make a finding whether or not the presumption of paternity has been rebutted. The presumption of paternity created by acknowledgment as described in section 43-1409 may be rebutted as part of an equitable proceeding to establish support by genetic testing results which exclude the alleged father as being the biological father of the child. A court in such a proceeding may order genetic testing as provided in sections 43-1414 to 43-1418.

(5) If the court finds that the father, the mother, or both parents have failed adequately to support the child, the court shall issue a decree directing him, her, or them to do so, specifying the amount of such support, the manner in which it shall be furnished, and the amount, if any, of any court costs and attorney's fees to be paid by the father, the mother, or both parents. Income withholding shall be ordered pursuant to the Income Withholding for Child Support Act. The court may require the furnishing of bond to insure the performance of the decree in the same manner as is provided for in section 42-358.05 or 43-1405. Failure on the part of the defendant to perform the terms of such decree shall constitute contempt of court and may be dealt with in the same manner as other contempts. The court may also order medical support and the payment of expenses as described in section 43-1407.

**43-512.05. Child, spousal, and medical support payments; district court clerks; furnish information; cooperative agreements; reimbursement for costs incurred.**

(1) It shall be the duty of the clerks of the district courts to furnish the Department of Health and Human Services monthly statistical information and any other information required by the department to properly account for child, spousal, and medical support payments. The clerk of each district court shall negotiate and enter into a written agreement with the department in order to receive reimbursement for the costs incurred in carrying out sections 43-512 to 43-512.10 and 43-512.12 to 43-512.18.

(2) The department and the governing board of the county, county attorney, or authorized attorney may enter into a written agreement regarding the determination of paternity and child, spousal, and medical support enforcement for the purpose of implementing such sections. Paternity shall be established when it can be determined that the collection of child support is feasible.

(3) The department shall adopt and promulgate rules and regulations regarding the rate and manner of reimbursement for costs incurred in carrying out such sections, taking into account relevant federal law, available federal funds, and any appropriations made by the Legislature. Any reimbursement funds shall be added to the budgets of those county officials who have performed the services as called for in the cooperative agreements and carried over from year to year as required by law.

**43-512.06. Locating absent parents; determining income and employer; access to information; assistance; purpose.**

(1) Notwithstanding any other provisions of law regarding confidentiality of records, every department and agency of state, county, and city government and every employer or other payor as defined in section 43-1709 shall assist and cooperate with the Department of Health and Human Services in locating absent parents, determining an absent parent's income and health insurance information, and identifying an absent parent's employer only for the purposes of establishing and collecting child, spousal, and medical support and of conducting reviews under sections 43-512.12 to 43-512.18. Such information shall be used for no other purpose. An action may be filed in district court to enforce this subsection.

(2) Notwithstanding any other provision of law regarding confidentiality of records, every public, private, or municipal utility shall, upon request, furnish to any county attorney, authorized attorney, or the Department of Health and Human Services a subscriber's name, social security number, and mailing and residence addresses only for the purposes of establishing and collecting child, spousal, and medical support and of conducting reviews under sections 43-512.12 to 43-512.18. Such information shall be used for no other purpose. An action may be filed in district court to enforce this subsection. For purposes of this subsection, utility shall mean any entity providing electrical, gas, water, telephone, garbage disposal, or waste disposal service, including, but not limited to, any district or corporation organized under Chapter 70.

**43-512.07 Assignment of child, spousal, or medical support payments; when; duration; notice; unpaid court-ordered support; how treated.**

(1) Any action, payment, aid, or assistance listed in subdivisions (a) through (c) of this subsection shall constitute an assignment by operation of law to the Department of Health and Human Services of any right to spousal or medical support when ordered by the court and to child support whether or not ordered by the court which a recipient may have in his or her own behalf or on behalf of any other person for whom an applicant receives such payments, aid, or assistance, including any accrued arrearages as of the time of the assignment:

- (a) Application for and acceptance of one or more aid to dependent children payments by a parent, another relative, or a custodian;
- (b) Receipt of aid by or on behalf of any dependent child as defined in section 43-504; or
- (c) Receipt of aid from child welfare funds.

The department shall be entitled to retain such child, spousal, or other support up to the amount of payments, aid, or assistance provided to a recipient. For purposes of this section, the right to receive current and past-due child support shall belong to the child and the assignment shall be effective as to any such support even if the recipient of the payments, aid, or assistance is not the same as the payee of court-ordered support.

(2) After notification of the State Disbursement Unit receiving the child, spousal, or other support payments made pursuant to a court order that the person for whom such support is ordered is a recipient of

payments, aid, or assistance listed in subsection (1) of this section, the department shall also give notice to the payee named in the court order at his or her last-known address.

(3) Upon written or other notification from the department or from another state of such assignment of child, spousal, or other support payments, the State Disbursement Unit shall transmit the support payments received to the department or the other state without the requirement of a subsequent order by the court. The State Disbursement Unit shall continue to transmit the support payments for as long as the payments, aid, or assistance listed in subsection (1) of this section continues.

(4) Any court-ordered child, spousal, or other support remaining unpaid during the period of the assignment shall constitute a debt and a continuing assignment at the termination of payments, aid, or assistance listed in subsection (1) of this section, collectible by the department or other state as reimbursement for such payments, aid, or assistance. However, any assignment pursuant to subdivisions (1)(b) and (1)(c) of this section shall be limited to the amount of child support due for any months during which such payments, aid, or assistance was made. The continuing assignment shall only apply to support payments made during a calendar period which exceed the specific amount of support ordered for that period. When payments, aid, or assistance listed in subsection (1) of this section have ceased and upon notice by the department or the other state, the State Disbursement Unit shall continue to transmit to the department or the other state any support payments received on arrearages in excess of the amount of support ordered for that specific calendar period until notified by the department or the other state that the debt has been paid in full, except that any amount of support arrearages that has accrued or accrues after termination of payments, aid, or assistance listed in subsection (1) of this section shall be paid first by the unit to the person to whom support is due before any reimbursement is made to the department or the other state.

**43-512.08. Intervention in matters relating to child, spousal, or medical support; when authorized.** The county attorney or authorized attorney, acting for or on behalf of the State of Nebraska, may intervene without leave of the court in any proceeding for dissolution of marriage, paternity, separate maintenance, or child, spousal, or medical support for the purpose of securing an order for child, spousal, or medical support, modifying an order for child or medical support, or modifying an order for child support as the result of a review of such order under sections 43-512.12 to 43-512.18. Such proceedings shall be limited only to the determination of child or medical support. Except in cases in which the intervention is the result of a review under such sections, the county attorney or authorized attorney shall so act only when it appears that the children are not otherwise represented by counsel.

**43-512.09. Garnishment for collection of child support or medical support; where filed.** A garnishment for the collection of child support or medical support may be filed in any jurisdiction where any property or credits of the defendant may be found irrespective of the residence of the creditors or the place where the debt is payable.

**43-512.10. Sections, how construed.** Sections 43-512 to 43-512.10 and 43-512.12 to 43-512.18 shall be interpreted so as to facilitate the determination of paternity, child, spousal, and medical support enforcement, and the conduct of reviews under such sections.

**43-512.11. Work and education programs; department; report.** The Department of Health and Human Services shall report annually, not later than February 1 of each year, to the Legislature regarding the effectiveness of programs established pursuant to subdivision (5)(a) of section 43-512. The report shall include, but not be limited to:

- (1) The number of program participants;
- (2) The number of program participants who become employed, whether such employment is full time or part time or subsidized or unsubsidized, and whether the employment was retained for at least thirty days;
- (3) Supportive services provided to participants in the program;
- (4) Grant reductions realized; and
- (5) A cost and benefit statement for the program.

**43-512.12. Title IV-D child support order; review by Department of Health and Human Services;**  
**when.** Child support orders in cases in which a party has applied for services under Title IV-D of the federal Social Security Act, as amended, shall be reviewed by the Department of Health and Human Services to determine whether to refer such orders to the county attorney or authorized attorney for filing of an application for modification. An order shall be reviewed by the department upon its own initiative or at the request of either parent when such review is required by Title IV-D of the federal Social Security Act, as amended. After review the department shall refer an order to a county attorney or authorized attorney when the verifiable financial information available to the department indicates:

- (1) The present child support obligation varies from the Supreme Court child support guidelines pursuant to section 42-364.16 by more than the percentage, amount, or other criteria established by Supreme Court rule, and the variation is due to financial circumstances which have lasted at least three months and can reasonably be expected to last for an additional six months; or
- (2) Health insurance is available to the obligor as provided in subsection (2) of section 42-369 and the children are not covered by health insurance other than the medical assistance program under the Medical Assistance Act.

An order shall not be reviewed by the department if it has not been three years since the present child support obligation was ordered. An order shall not be reviewed by the department more than once every three years unless the requesting party demonstrates a substantial change in circumstances, and an order may be reviewed after one year if the department's determination after the previous review was not to refer to the county attorney or authorized attorney for filing of an application for modification because financial circumstances had not lasted or were not expected to last for the time periods established by subdivision (1) of this section.

**43-512.13. Title IV-D child support order; review; notice requirements; additional review.**

- (1) When review of a child support order pursuant to section 43-512.12 has been requested by one of the parents or initiated by the Department of Health and Human Services, the department shall send notice of the pending review to each parent affected by the order at the parent's last-known mailing address thirty days before the review is conducted. Such review shall require the parties to submit financial information as provided in sections 43-512.14 and 43-512.17.
- (2) After the department completes the review of the child support order in accordance with section 43-512.12, it shall send notice to each parent of the determination to refer or not refer the order to the county attorney or authorized attorney for filing of an application for modification of the order in the district court. Each parent shall be allowed thirty days to submit to the department a written request for a review of such determination. The parent requesting review shall submit the request in writing to the department, stating the reasons for the request and providing written evidence to support the request. The department shall review the available verifiable financial information and make a final determination whether or not to refer the order to the county attorney or authorized attorney for filing of an application for modification of the child support order. Written notice of such final

determination shall be sent to each parent affected by the order at the parent's last-known mailing address. A final determination under this subsection shall not be considered a contested case for purposes of the Administrative Procedure Act.

**43-512.14. Title IV-D child support order; financial information; duty to provide; failure; effect; referral of order; effect.** Each parent requesting review shall provide the financial information as provided in section 43-512.17 to the Department of Health and Human Services upon request of the department. The parent requesting review shall also provide an affidavit regarding the financial circumstances of the nonrequesting parent upon the request of the department. Failure by a nonrequesting parent to provide adequate financial information shall create a rebuttable presumption that such parent's income has changed for purposes of section 43-512.12.

Referral of an order to a county attorney or authorized attorney under this section shall create a rebuttable presumption that there has been a material change in financial circumstances of one of the parents such that the child support obligation shall be increased at least ten percent if there is inadequate financial information regarding the noncustodial parent or that the child support obligation shall be decreased at least ten percent if there is inadequate financial information regarding the custodial parent. Such referral shall also be sufficient to rebut the presumption specified in section 42-364.16, and the court, after notice and an opportunity to be heard, may order a decrease or an increase of at least ten percent in the child support obligation as provided in this section.

**43-512.15. Title IV-D child support order; modification; when; procedures.**

(1) The county attorney or authorized attorney, upon referral from the Department of Health and Human Services, shall file a complaint to modify a child support order unless the attorney determines in the exercise of independent professional judgment that:

(a) The variation from the Supreme Court child support guidelines pursuant to section 42-364.16 is based on material misrepresentation of fact concerning any financial information submitted to the attorney;

(b) The variation from the guidelines is due to a voluntary reduction in net monthly income. For purposes of this section, a person who has been incarcerated for a period of one year or more in a county or city jail or a federal or state correctional facility shall be considered to have an involuntary reduction of income unless (i) the incarceration is a result of a conviction for criminal nonsupport pursuant to section 28-706 or a conviction for a violation of any federal law or law of another state substantially similar to section 28-706 or (ii) the incarcerated individual has a documented record of willfully failing or neglecting to provide proper support which he or she knew or reasonably should have known he or she was legally obligated to provide when he or she had sufficient resources to provide such support; or

(c) When the amount of the order is considered with all the other undisputed facts in the case, no variation from the criteria set forth in subdivisions (1) and (2) of section 43-512.12 exists.

(2) The proceedings to modify a child support order shall comply with section 42-364, and the county attorney or authorized attorney shall represent the state in the proceedings.

(3) After a complaint to modify a child support order is filed, any party may choose to be represented personally by private counsel. Any party who retains private counsel shall so notify the county attorney or authorized attorney in writing.

**43-512.16. Title IV-D child support order; review of health insurance provisions.** The county attorney or authorized attorney shall review the health insurance provisions contained in any child support order which is subject to review under section 43-512.12 and shall include in any application for modification a request that the court order health insurance as provided in subsection (2) of section 42-369.



**43-512.17. Title IV-D child support order; financial information; disclosure; contents.** Any financial information provided to the Department of Health and Human Services, the county attorney, or the authorized attorney by either parent for the purpose of facilitating a modification proceeding under sections 43-512.12 to 43-512.18 may be disclosed to the other parties to the case or to the district court. Financial information shall include the following:

- (1) An affidavit of financial status provided by the party requesting review;
- (2) An affidavit of financial status of the nonrequesting party provided by the nonrequesting party or by the requesting party at the request of the county attorney or authorized attorney;
- (3) Supporting documentation such as state and federal income tax returns, paycheck stubs, W-2 forms, 1099 forms, bank statements, and other written evidence of financial status; and
- (4) Information relating to health insurance as provided in subsection(2) of section 42-369.

**43-512.18. Title IV-D child support order; communication technology; use authorized.** A court may use any available technology that would allow the parties to communicate with each other to conduct a hearing or any proceeding required pursuant to sections 43-512.12 to 43-512.17.

**43-513. Aid to dependent children; standard of need; adjustment; limitation.** The standard of need for aid to dependent children payments shall be adjusted on July 1 of every second year beginning July 1, 1997. The adjustment shall be made on the basis of the rate of growth of the Consumer Price Index as determined by the United States Department of Labor, Bureau of Labor Statistics, for the two previous calendar years. The aid to dependent children payment shall not be greater than the amount specified by section 43-512.

**43-513.01. Judgment for child support; death of judgment debtor.** A judgment for child support shall not abate upon the death of the judgment debtor.

**43-514. Payments; to whom made.** Payments of assistance with respect to any dependent child shall be made to any person or persons in whose home the residence of such child is maintained.

**43-515. Department of Health and Human Services; investigations; approval or disapproval of application; notice.** In each case the Department of Health and Human Services shall make such investigation and reinvestigations as may be necessary to determine family circumstances and eligibility for assistance payments. Each applicant and recipient shall be notified in writing as to the approval or disapproval of any application, as to the amount of payments awarded, as to any change in the amount of payments awarded, and as to the discontinuance of payments.

**43-516. Repealed. Laws 1967, c. 253, s. 4.**

**43-517. Repealed. Laws 1965, c. 394, s. 6.**

**43-518. Repealed. Laws 1965, c. 394, s. 6.**

**43-519. Repealed. Laws 1965, c. 394, s. 6.**

**43-520. Repealed. Laws 1965, c. 394, s. 6.**

**43-521. Repealed. Laws 1965, c. 394, s. 6.**

**43-522. State assistance funds; how expended; medical care.** The Department of Health and Human Services shall expend state assistance funds allocated for medically handicapped children to supplement other state, county, and municipal, benevolent, fraternal, and charitable expenditures, to extend and improve, especially in rural areas and in areas suffering from severe economic distress, services for locating physically and medically handicapped children and for providing medical, surgical, correction, and other services and care, and facilities for diagnosis, hospitalization, and aftercare, for children who are physically or medically handicapped or who are suffering from conditions which lead to medical handicaps. Expenditures and services shall be uniformly distributed so far as possible or practicable under conditions and circumstances which may be found to exist.

**43-523. Department of Health and Human Services; reports.** The Department of Health and Human Services shall make such reports to the Department of Health and Human Services of the United States in such form and containing such information as such department may from time to time require, and the department shall comply with such provisions as necessary to assure the correctness of such reports.

**43-524. Department of Health and Human Services; duty to cooperate with other welfare agencies.** The Department of Health and Human Services shall cooperate with medical, health, nursing, and welfare groups and organizations and with any agency in the state charged with providing for local rehabilitation of physically handicapped children.

**43-525. Child welfare services; state assistance funds; expenditure.** The Department of Health and Human Services shall expend state assistance funds allocated for child welfare services in establishing, extending, and strengthening, especially in rural areas, child welfare services mentioned in sections 43-501 to 43-526, for which other funds are not specifically or sufficiently made available by such sections or other laws of this state.

**43-526. State agencies; distribution of funds; uniformity; assumption of obligations; limit.** The state agencies provided for herein shall distribute and cause said funds to be used in as uniform and equal a manner as practicable for the benefit of the children to be assisted by such services, taking into consideration the health, moral surroundings, sanitary conditions, parental responsibility, mentality and other circumstances of each case. Obligations assumed shall not exceed income of the fund for child welfare for any given month, plus any balance remaining from a preceding month in such fund.

**43-527. Repealed. Laws 1982, LB 522, s. 46.**

**43-528. Repealed. Laws 1982, LB 522, s. 46.**

**43-529. Aid to dependent children; needs of persons with whom child is living; payment; requirements.**

(1) Payments with respect to any dependent child, including payments to meet the needs of the relative with whom such child is living, such relative's spouse, and the needs of any other individual living in the same home as such child and relative if such needs are taken into account in making the determination for eligibility of such child to receive aid to families with dependent children, may be made on behalf of such child, relative, and other person to either (a) another individual who, in accordance with standards set by the Department of Health and Human Services, is interested in or concerned with the welfare of such child or relative, or (b) directly to a person or entity furnishing food, living accommodations, or other goods, services, or items to or for such child, relative, or other person, or (c) both such individual and such person or entity.

(2) No such payments shall be made unless all of the following conditions are met: (a) The department has determined that the relative of such child with respect to whom such payments are made has such inability to manage funds that making payments to him or her would be contrary to the welfare of the child and that it is therefore necessary to provide such aid with respect to such child and relative through payments described above to another interested individual, (b) the department has made arrangements for undertaking and continuing special efforts to develop greater ability on the part of the relative to manage funds in such a manner as to protect the welfare of the family, and (c) the department has approved a plan that provides for a periodic review to ascertain whether conditions justifying such payments still exist, with provision for termination of such payments if such conditions no longer exist and for judicial appointment of a guardian or conservator if it appears that the need for such special payments is continuing or is likely to continue beyond a period specified by the department.

**43-530 and 43-531 [Repealed]**

**43-532 through 43-534 (See Table of Contents for "Family Policy Act.")**

**43-535 [Intentionally not included.]**

**43-536. Child care reimbursement; market rate survey; adjustment of rate.** In determining the rate of reimbursement for child care, the Department of Health and Human Services shall conduct a market rate survey of the child care providers in the state. The department shall adjust the reimbursement rate for child care every odd-numbered year at a rate not less than the sixtieth percentile and not to exceed the seventy-fifth percentile of the current market rate survey, except that (1) nationally accredited child care providers may be reimbursed at higher rates and (2) for the two fiscal years beginning July 1, 2003, such rate may be less than the sixtieth percentile but shall not be less than the rate for the immediately preceding fiscal year.

**XVI. MISCELLANEOUS PROVISIONS REGARDING CHILDREN COMMITTED TO DHHS AND THE PLACEMENT OF CHILDREN**

**43-701. License; when required; issuance; revocation.** Except as otherwise provided in the Nebraska Indian Child Welfare Act, no person, other than a parent, shall (1) place, (2) assist in placing, (3) advertise a child for placement, or (4) give the care and custody of any child to any person or association for adoption or otherwise, except for temporary or casual care, unless such person shall be duly licensed by the Department of Health and Human Services under such rules and regulations as the department shall prescribe. The department may grant or revoke such a license and make all needful rules regarding the issuance or revocation thereof.

**43-702. Custodian of child; records required.** Persons or courts charged with the care of dependent and delinquent children who place out or give the care and custody of any child to any person or association shall keep and preserve such records as may be prescribed by the Department of Health and Human Services. The records shall be reported to the department on the first day of each month and shall include the (1) full name and actual or apparent age of such child, (2) names and residence of the child's parents, so far as known, and (3) name and residence of the person or association with whom such child is placed. If such person or court subsequently removes the child from the custody of the person or association with whom the child was placed, the fact of the removal and disposition of the child shall be entered upon such record.

**43-703. Repealed. Laws 1989, LB 22, s. 8.**

**43-704. Repealed. Laws 1980, LB 951, s. 1.**

**43-705. Visitation; Department of Health and Human Services; power.** The Department of Health and Human Services, or such person as it may authorize, may visit any child so placed, who has not been legally adopted, with a view of ascertaining whether such child is being properly cared for and living under moral surroundings.

**43-706. Abuse or neglect by custodian; filing of complaint.** Whenever the Department of Health and Human Services has reason to believe that any person having the care or custody of a child placed out, and not legally adopted, is an improper person for such care or custody, or subjects such child to cruel treatment, or neglect, or immoral surroundings, it shall cause a complaint to be filed in the proper juvenile court.

**43-707. Protection of children; Department of Health and Human Services; powers and duties.** The Department of Health and Human Services shall have the power and it shall be its duty:

(1) To promote the enforcement of laws for the protection and welfare of children born out of wedlock, mentally and physically handicapped children, and dependent, neglected, and delinquent children, except laws the administration of which is expressly vested in some other state department or division, and to take the initiative in all matters involving such children when adequate provision therefor has not already been made;

(2) To visit and inspect public and private institutions, agencies, societies, or persons caring for, receiving, placing out, or handling children; and

(3) To prescribe the form of reports required by law to be made to the departments by public officers,

agencies, and institutions.

(4) To exercise general supervision over the administration and enforcement of all laws governing the placing out and adoption of children; and

(5) To advise with judges and probation officers of courts of domestic relations and juvenile courts of the several counties, with a view to encouraging, standardizing, and coordinating the work of such courts and officers throughout the state; and

(6) To regulate the issuance of certificates or licenses to such institutions, agencies, societies, or persons and to revoke such licenses or certificates for good cause shown. If a license is refused or revoked, the refusal or revocation may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act.

**43-708. Parent; guardian; or custodian; powers.** No official, agent or representative of either the Department of Health and Human Services shall, by virtue of sections 43-701 to 43-709, have any right to enter any home over the objection of the occupants thereof or to take charge of any child over the objection of the parents, or either of them, or of the person standing in loco parentis or having the custody of such child. Nothing in sections 43-701 to 43-709 shall be construed as limiting the power of a parent or guardian to determine what treatment or correction shall be provided for a child or the agency or agencies to be employed for such purposes.

**43-709. Violation; penalty.** Any person or agency who or which shall violate any of the provisions of sections 43-701 to 43-709 shall be guilty of a Class III misdemeanor, and this penalty shall apply to officers and employees of agencies.

**43-901. Repealed. Laws 1996, LB 1155, s. 121.**

**43-901.01. Repealed. Laws 1985, LB 26, s. 1.**

**43-902. Repealed. Laws 1996, LB 1155, s. 121.**

**43-903. Court acting pursuant to Nebraska Juvenile Code; disposition of children.** Any court acting pursuant to the Nebraska Juvenile Code shall commit to the care of the Department of Health and Human Services or any regularly organized and incorporated society or institution, for the purpose of caring for and placing in good family homes, all children, except those already committed to the care of responsible persons or institutions, who have been decreed to be children as described in subdivision (3)(a) of section 43-247 and who for that reason must be removed from the care of their parents or legal guardians.

**43-904. Repealed. Laws 1996, LB 1155, s. 121.**

**43-905. Guardianship; care; placement; contracts; payment for maintenance.**

(1) The Department of Health and Human Services shall be the legal guardian of all children committed to it. The department shall afford temporary care and shall use special diligence to provide suitable homes for such children. The department is authorized to place such children in suitable families for adoption or, in the discretion of

the department, on a written contract.

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

(3) Whenever any child who has been committed to the department becomes self-supporting, the department shall declare that fact and the guardianship of the department shall cease. Thereafter the child shall be entitled to his or her own earnings. Guardianship of and services by the department shall never extend beyond the age of majority, except that services by the department to a child shall continue until the child reaches the age of twenty-one if the child is a student regularly attending a school, college, or university or regularly attending a course of vocational or technical training designed to prepare such child for gainful employment.

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

(5) Whenever permanent free homes for the children cannot be obtained, the department shall have the authority to provide and pay for the maintenance of the children in private families, boarding homes, or institutions for care of children.

**43-906. Adoption; consent.** Except as otherwise provided in the Nebraska Indian Child Welfare Act, the Department of Health and Human Services, or its duly authorized agent, may consent to the adoption of children committed to it upon the order of a juvenile court if the parental rights of the parents or of the mother of a child born out of wedlock have been terminated and if no father of a child born out of wedlock has timely asserted his paternity rights under section 43-104.02, or upon the relinquishment to such department by their parents or the mother and, if required under sections 43-104.08 to 43-104.25, the father of a child born out of wedlock. The parental rights of parents of a child born out of wedlock shall be determined pursuant to sections 43-104.05 and 43-104.08 to 43-104.25.

**43-907. Assets; custody; records; expenditures; investments.** Unless a guardian shall have been appointed by a court of competent jurisdiction, the Department of Health and Human Services shall take custody of and exercise general control over assets owned by children under the charge of the department. Children owning assets shall at all times pay for personal items. Assets over and above a maximum of one thousand dollars and current income shall be available for reimbursement to the state for the cost of care. Assets may be deposited in a checking account, invested in United States bonds, or deposited in a savings account insured by the United States Government. All income received from the investment or deposit of assets shall be credited to the individual child whose assets were invested or deposited. The department shall make and maintain detailed records showing all receipts, investments, and expenditures of assets owned by children under the charge of the department.

**43-908. Child reaching age of majority; disposition of assets.** An attempt shall be made by the Department of Health and Human Services to locate children who arrive at the age of majority for the purpose of delivering and transferring to any such child such funds or property as he or she may own. In the event that such child cannot be located within five years after the child arrives at the age of majority, any funds or assets owned by him or her shall be transferred to the state treasury of the State of Nebraska.

## **XVII. CHILD SUPPORT AND PATERNITY**

**43-1401. Terms, defined.** For the purposes of sections 43-1401 to 43-1418:

- (1) Child shall mean a child under the age of eighteen years born out of wedlock;
- (2) Child born out of wedlock shall mean a child whose parents were not married to each other at the time of its birth, except that a child shall not be considered as born out of wedlock if its parents were married at the time of its conception but divorced at the time of its birth. The definition of legitimacy or illegitimacy for other purposes shall not be affected by the provisions of such sections; and
- (3) Support shall include reasonable education.

**43-1402. Child support; liability of parents.** The father of a child whose paternity is established either by judicial proceedings or by acknowledgment as hereinafter provided shall be liable for its support to the same extent and in the same manner as the father of a child born in lawful wedlock is liable for its support. The mother of a child shall also be liable for its support. The liability of each parent may be determined, enforced, and discharged in accordance with the methods hereinafter provided.

**43-1403. Support by county; conditions.** In case of the neglect or inability of the parents, or either of them, to support a child, it shall be supported by the county chargeable therewith under the provisions of Chapter 68. Nothing in this section shall be construed to make a child ineligible to receive relief to which it might otherwise be entitled under any law enacted for the relief of children.

**43-1404. Child support; liability of parents; discharge.** The liability of the father or mother of a child for its support shall be discharged by compliance with the terms of a judicial decree for support or the terms of a judicially approved settlement or by the adoption of the child by some other person or persons.

**43-1405. Child support; liability of father; discharge by settlement; requirements.** A settlement provided for in section 43-1404 means a voluntary agreement between the father of the child and the mother or some person authorized to act in her behalf, or between the father and the next friend or guardian of the child, whereby the father promises to make adequate provision for the support of the child. In the event that such a settlement is made it shall be binding on all parties and shall bar all other remedies of the mother and child and the legal representatives of the child so long as it shall be performed by the father, if said settlement is approved by the court having jurisdiction to compel the support of the child. The court shall approve such settlement only if it shall find and determine that adequate provision is made for the support of the child and that the father shall have offered clear evidence of his willingness and ability to perform the agreement. The court, in its discretion, may require the father to furnish bond with proper sureties conditioned upon the performance of the settlement.

**43-1406. Determination of paternity by other state; full faith and credit; legitimacy of child.**

- (1) A determination of paternity made by any other state, whether established through voluntary acknowledgment, genetic testing, or administrative or judicial processes, shall be given full faith and credit by this state.
- (2) A child whose parents marry is legitimate.

**43-1407. Expenses of mother; liability of father; enforcement; payment by medical assistance program; recovery; procedure.**

- (1) The father of a child shall also be liable for the reasonable expenses of (a) the child that are associated with the birth of the child and (b) the mother of such child during the period of her pregnancy, confinement, and

recovery. Such liability shall be determined and enforced in the same manner as the liability of the father for the support of the child.

(2) In cases in which any medical expenses associated with the birth of the child and the mother of such child during the period of her pregnancy, confinement, and recovery are paid by the medical assistance program, the county attorney or authorized attorney, as defined in section 43-1704, may petition the court for a judgment for all or a portion of the reasonable medical expenses paid by the medical assistance program. Any medical expenses associated with the birth of such child and the mother of such child during the period of her pregnancy, confinement, and recovery that are approved and paid by the medical assistance program shall be presumed to be medically reasonable. If the father challenges any such expenses as not medically reasonable, he has the burden of proving that such expenses were not medically reasonable.

(3) A civil proceeding to recover medical expenses pursuant to this section may be instituted within four years after the child's birth. Summons shall issue and be served as in other civil proceedings, except that such summons may be directed to the sheriff of any county in the state and may be served in any county

**43-1408. Repealed. Laws 1991, LB 457, s. 47.**

**43-1408.01. Notarized acknowledgment of paternity; execution by alleged father; form; filing with Department of Health and Human Services; payment.**

(1) During the period immediately before or after the in-hospital birth of a child whose mother was not married at the time of either conception or birth of the child or at any time between conception and birth of the child, the person in charge of such hospital or his or her designated representative shall provide to the child's mother and alleged father, if the alleged father is readily identifiable and available, the documents and written instructions for such mother and father to complete a notarized acknowledgment of paternity. Such acknowledgment, if signed by both parties and notarized, shall be filed with the Department of Health and Human Services at the same time at which the certificate of live birth is filed.

Nothing in this section shall be deemed to require the person in charge of such hospital or his or her designee to seek out or otherwise locate an alleged father who is not readily identifiable or available.

(2) The acknowledgment shall be executed on a form prepared by the department. Such form shall be in essentially the same form provided by the department and used for obtaining signatures required by section 71-640.02. The acknowledgment shall include, but not be limited to, (a) a statement by the mother consenting to the acknowledgment of paternity and a statement that the alleged father is the biological father of the child, (b) a statement by the alleged father that he is the biological father of the child, (c) written information regarding parental rights and responsibilities, and (d) the social security numbers of the parents.

(3) The form provided for in subsection (2) of this section shall also contain instructions for completion and filing with the department if it is not completed and filed with a birth certificate as provided in subsection (1) of this section.

(4) The department shall accept completed acknowledgment forms and make available to county attorneys or authorized attorneys a record of acknowledgments it has received, as provided in subsection (1) of section 71-612. The department may prepare photographic, electronic, or other reproductions of acknowledgments. Such reproductions, when certified and approved by the department, shall be accepted as the original records, and the documents from which permanent reproductions have been made may be disposed of as provided by rules and regulations of the department.



(5) The department may by regulation establish a nominal payment and procedure for payment by the department for each acknowledgment filed with the department. The amount of such payments and the entities receiving such payments shall be within the limits allowed by Title IV-D of the federal Social Security Act, as amended.

**43-1409. Notarized acknowledgment of paternity; rebuttable presumption; admissibility; rescission.** The signing of a notarized acknowledgment, whether under section 43-1408.01 or otherwise, by the alleged father shall create a rebuttable presumption of paternity as against the alleged father. The signed, notarized acknowledgment is subject to the right of any signatory to rescind the acknowledgment within the earlier of (1) sixty days or (2) the date of an administrative or judicial proceeding relating to the child, including a proceeding to establish a support order in which the signatory is a party. After the rescission period a signed, notarized acknowledgment is considered a legal finding which may be challenged only on the basis of fraud, duress, or material mistake of fact with the burden of proof upon the challenger, and the legal responsibilities, including the child support obligation, of any signatory arising from the acknowledgment shall not be suspended during the challenge, except for good cause shown. Such a signed and notarized acknowledgment or a certified copy or certified reproduction thereof shall be admissible in evidence in any proceeding to establish support.

**43-1410. Child support; decree or approved settlement; effect after death of parent.** Any judicially approved settlement or order of support made by a court having jurisdiction in the premises shall be binding on the legal representatives of the father or mother in the event of his or her death, to the same extent as other contractual obligations and judicial judgments or decrees.

**43-1411. Paternity; action to establish; venue; limitation; summons.** A civil proceeding to establish the paternity of a child may be instituted, in the court of the district where the child is domiciled or found or, for cases under the Uniform Interstate Family Support Act, where the alleged father is domiciled, by (1) the mother or the alleged father of such child, either during pregnancy or within four years after the child's birth, unless (a) a valid consent or relinquishment has been made pursuant to sections 43-104.08 to 43-104.25 or section 43-105 for purposes of adoption or (b) a county court or separate juvenile court has jurisdiction over the custody of the child or jurisdiction over an adoption matter with respect to such child pursuant to sections 43-101 to 43-116 or (2) the guardian or next friend of such child or the state, either during pregnancy or within eighteen years after the child's birth. Summons shall issue and be served as in other civil proceedings, except that such summons may be directed to the sheriff of any county in the state and may be served in any county.

**43-1411.01. Paternity; jurisdiction.** An action for paternity or parental support under sections 43-1401 to 43-1418 may be initiated by filing a complaint with the clerk of the district court as provided in section 25-2740. Such proceeding may be heard by the county court or the district court as provided in section 25-2740. A paternity determination under sections 43-1411 to 43-1418 may also be decided in a county court or separate juvenile court if the county court or separate juvenile court already has jurisdiction over the child whose paternity is to be determined.

**43-1412. Paternity; action to establish; procedure; public hearings prohibited; evidence; default judgment; decree; payment of costs and fees.**

(1) The method of trial shall be the same as that in other civil proceedings, except that the trial shall be by the court without a jury unless a jury is requested (a) by the alleged father, in a proceeding instituted by the mother or the guardian or next friend, or (b) by the mother, in a proceeding instituted by the alleged father. It being contrary to public policy that such proceedings should be open to the general public, no one but the parties, their counsel, and

others having a legitimate interest in the controversy shall be admitted to the courtroom during the trial of the case. The alleged father and the mother shall be competent to testify. The uncorroborated testimony (i) of the mother, in a proceeding instituted by the mother or the guardian or next friend, or (ii) of the alleged father, in a proceeding instituted by the alleged father, shall not alone be sufficient to support a verdict or finding that the alleged father is actually the father. Refusal by the alleged father to comply with an order of the court for genetic testing shall be deemed corroboration of the allegation of paternity. A signed and notarized acknowledgment of paternity or a certified copy or certified reproduction thereof shall be admissible in evidence in any proceeding to establish paternity without the need for foundation testimony or other proof of authenticity or accuracy.

If it is determined in this proceeding that the alleged father is actually the father of the child, a judgment shall be entered declaring the alleged father to be the father of the child.

(2) A default judgment shall be entered upon a showing of service and failure of the defendant to answer or otherwise appear.

(3) If a judgment is entered under this section declaring the alleged father to be the father of the child, the court shall retain jurisdiction of the cause and enter such order of support, including the amount, if any, of any court costs and attorney's fees which the court in its discretion deems appropriate to be paid by the father, as may be proper under the procedure and in the manner specified in section 43-512.04. If it is not determined in the proceeding that the alleged father is actually the father of the child, the court shall, if it finds that the action was frivolous, award court costs and attorney's fees incurred by the alleged father, with such costs and fees to be paid by the plaintiff.

(4) All judgments under this section declaring the alleged father to be the father of the child shall include the father's social security number. The social security number of the declared father of the child shall be furnished to the clerk of the district court in a document accompanying the judgment.

**43-1413. Child born out of wedlock; term substituted for other terms.** In any local law, ordinance or resolution, or in any public or judicial proceeding, or in any process, notice, order, decree, judgment, record or other public document or paper, the terms bastard or illegitimate child shall not be used but the term child born out of wedlock shall be used in substitution therefor and with the same force and effect.

**43-1414. Genetic testing; procedure; confidentiality; violation; penalty.**

(1) In any proceeding to establish paternity, the court may, on its own motion, or shall, on a timely request of a party, after notice and hearing, require the child, the mother, and the alleged father to submit to genetic testing to be performed on blood or any other appropriate genetic testing material. Failure to comply with such requirement for genetic testing shall constitute contempt and may be dealt with in the same manner as other contempts. If genetic testing is required, the court shall direct that inherited characteristics be determined by appropriate testing procedures and shall appoint an expert in genetic testing and qualified as an examiner of genetic markers to analyze and interpret the results and to report to the court. The court shall determine the number of experts required.

(2) In any proceeding to establish paternity, the Department of Health and Human Services, county attorneys, and authorized attorneys have the authority to require the child, the mother, and the alleged father to submit to genetic testing to be performed on blood or any other appropriate genetic testing material. All genetic testing shall be performed by a laboratory accredited by the College of American Pathologists or any other national accrediting body or public agency which has requirements that are substantially equivalent to or more comprehensive than those of the college.

(3) Except as authorized under sections 43-1414 to 43-1418, a person shall not disclose information obtained from genetic paternity testing that is done pursuant to such sections.

(4) If an alleged father who is tested as part of an action under such sections is found to be the child's father, the testing laboratory shall retain the genetic testing material of the alleged father, mother, and child for no longer than the period of years prescribed by the national standards under which the laboratory is accredited. If a man is found not to be the child's father, the testing laboratory shall destroy the man's genetic testing material in the presence of a witness after such material is used in the paternity action. The witness may be an individual who is a party to the destruction of the genetic testing material. After the man's genetic testing material is destroyed, the testing laboratory shall make and keep a written record of the destruction and have the individual who witnessed the destruction sign the record. The testing laboratory shall also expunge its records regarding the genetic paternity testing performed on the genetic testing material in accordance with the national standards under which the laboratory is accredited. The testing laboratory shall retain the genetic testing material of the mother and child for no longer than the period of years prescribed by the national standards under which the laboratory is accredited. After a testing laboratory destroys an individual's genetic testing material as provided in this subsection, it shall notify the adult individual, or the parent or legal guardian of a minor individual, by certified mail that the genetic testing material was destroyed.

(5) A testing laboratory is required to protect the confidentiality of genetic testing material, except as required for a paternity determination. The court and its officers shall not use or disclose genetic testing material for a purpose other than the paternity determination.

(6) A person shall not buy, sell, transfer, or offer genetic testing material obtained under sections 43-1414 to 43-1418.

(7) A testing laboratory shall annually have an independent audit verifying the contracting laboratory's compliance with this section. The audit shall not disclose the names of, or otherwise identify, the test subjects required to submit to testing during the previous year. The testing laboratory shall forward the audit to the department.

(8) Any person convicted of violating this section shall be guilty of a Class IV misdemeanor for the first offense and a Class III misdemeanor for the second or subsequent offense.

(9) For purposes of sections 43-1414 to 43-1418, an expert in genetic testing means a person who has formal doctoral training or postdoctoral training in human genetics.

**43-1415. Results of genetic tests; admissible evidence; rebuttable presumption.**

(1) The results of the tests, including the statistical probability of paternity, shall be admissible evidence and, except as provided in subsection (2) of this section, shall be weighed along with other evidence of paternity.

(2) When the results of tests, whether or not such test were ordered pursuant to section 43-1414, show a probability of paternity of ninety-nine percent or more, there exists a rebuttable presumption of paternity.

(3) Such evidence may be introduced by verified written report without the need for foundation testimony or other proof of authenticity or accuracy unless there is a timely written request for personal testimony of the expert at least thirty days prior to trial.

**43-1416. Genetic tests; chain of custody; competent evidence.** The chain of custody of blood or tissue specimens shall be competent evidence and admissible by stipulation or by a verified written report, without the

need for foundation testimony or other proof of authenticity, unless a timely written request for testimony is made at least thirty days prior to trial.

**43-1417. Additional genetic testing; when.** If the result of genetic testing or the expert's analysis of inherited characteristics is disputed, the court, upon reasonable request of a party, shall order that additional testing be done by the same laboratory or an independent laboratory at the expense of the party requesting additional testing.

**43-1418. Genetic testing; costs.** In cases where the court orders genetic testing at the request of a party, the requesting party shall initially pay such expense. In cases where the court orders genetic testing in the absence of a request of any party, the assessment of the cost of such testing shall be determined by the court. Whenever the disputing party prevails, the costs shall be borne by the other party.

## XVIII. GRANDPARENT VISITATION

**43-1801. Grandparent, defined.** As used in sections 43-1801 to 43-1803, unless the context otherwise requires, grandparent shall mean the biological or adoptive parent of a minor child's biological or adoptive parent. Such term shall not include a biological or adoptive parent of any minor child's biological or adoptive parent whose parental rights have been terminated.

**43-1802. Visitation; conditions; order; modification.**

(1) A grandparent may seek visitation with his or her minor grandchild if:

- (a) The child's parent or parents are deceased;
- (b) The marriage of the child's parents has been dissolved or petition for the dissolution of such marriage has been filed, is still pending, but no decree has been entered; or
- (c) The parents of the minor child have never been married but paternity has been legally established.

(2) In determining whether a grandparent shall be granted visitation, the court shall require evidence concerning the beneficial nature of the relationship of the grandparent to the child. The evidence may be presented by affidavit and shall demonstrate that a significant beneficial relationship exists, or has existed in the past, between the grandparent and the child and that it would be in the best interests of the child to allow such relationship to continue. Reasonable rights of visitation may be granted when the court determines by clear and convincing evidence that there is, or has been, a significant beneficial relationship between the grandparent and the child, that it is in the best interests of the child that such relationship continue, and that such visitation will not adversely interfere with the parent-child relationship.

(3) The court may modify an order granting or denying such visitation upon a showing that there has been a material change in circumstances which justifies such modification and that the modification would serve the best interests of the child.

**43-1803. Venue; petition; contents; service.**

(1) If the minor child's parent or parents are deceased or have never been married, a grandparent seeking visitation shall file a petition in the district court in the county in which the minor child resides. If the marriage of the parents of a minor child has been dissolved or a petition for the dissolution of such marriage has been filed, is still pending, but no decree has been entered, a grandparent seeking visitation shall file a petition for such visitation in the district court in the county in which the dissolution was had or the proceedings are taking place. The county court or the district court may hear the proceedings as provided in section 25-2740. The form of the petition and all other pleadings required by this section shall be prescribed by the Supreme Court. The petition shall include the following:

- (a) The name and address of the petitioner and his or her attorney;
- (b) The name and address of the parent, guardian, or other party having custody of the child or children;
- (c) The name and address of any parent not having custody of the child or children if applicable;
- (d) The name and year of birth of each child with whom visitation is sought;
- (e) The relationship of petitioner to such child or children;
- (f) An allegation that the parties have attempted to reconcile their differences, but the differences are irreconcilable and such parties have no recourse but to seek redress from the court; and
- (g) A statement of the relief sought.

(2) When a petition seeking visitation is filed, a copy of the petition shall be served upon the parent or

parents or other party having custody of the child and upon any parent not having custody of such child by personal service or in the manner provided in section 25-517.02.

## **XIX. GUARDIANSHIP OF MINORS**

**30-2605. Status of guardian of minor; general.** A person becomes a guardian of a minor by acceptance of a testamentary appointment or upon appointment by the court. The guardianship status continues until terminated, without regard to the location from time to time of the guardian and minor ward.

**30-2606. Testamentary appointment of guardian of minor; notice.** The parent of a minor may appoint by will a guardian of an unmarried minor. Subject to the right of the minor under section 30-2607, a testamentary appointment becomes effective upon filing the guardian's acceptance in the court in which the will is probated if, before acceptance, both parents are dead or the surviving parent is adjudged incapacitated. If both parents are dead, an effective appointment by the parent who died later has priority. This state recognizes a testamentary appointment effected by filing the guardian's acceptance under a will probated in another state which is the testator's domicile. Upon acceptance of appointment, written notice of acceptance must be given by the guardian to the minor and to the person having his care, or to his nearest adult relation.

**30-2607. Objection by minor of fourteen or older to testamentary appointment.** A minor of fourteen or more years may prevent an appointment of his testamentary guardian from becoming effective, or may cause a previously accepted appointment to terminate, by filing with the court in which the will is probated a written objection to the appointment before it is accepted or within thirty days after notice of its acceptance. An objection may be withdrawn. An objection does not preclude appointment by the court in a proper proceeding of the testamentary nominee, or any other suitable person.

**30-2608. Natural guardians; court appointment of guardian of minor; standby guardian; conditions for appointment; child born out of wedlock; additional considerations; filings.**

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

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

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

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

(e) The petition and all other court filings for a guardianship proceeding shall be filed with the clerk of the

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

**30-2609. Court appointment of guardian of minor; venue.** The venue for guardianship proceedings for a minor is in the place where the minor resides or is present or where property is located if he is a nonresident of this state.

**30-2610. Court appointment of guardian of minor; qualification; priority of minor's nominee.** The court may appoint as guardian any person whose appointment would be in the best interests of the minor. The court shall appoint a person nominated by the minor, if the minor is fourteen years of age or older, unless the court finds the appointment contrary to the best interests of the minor.

**30-2611. Court appointment of guardian of minor; procedure.**

(a) Notice of the time and place of hearing of a petition for the appointment of a guardian of a minor is to be given by the petitioner in the manner prescribed by section 30-2220 to:

- (1) the minor, if he is fourteen or more years of age;
- (2) the person who has had the principal care and custody of the minor during the sixty days preceding the date of the petition; and
- (3) any living parent of the minor.

(b) Upon hearing, if the court finds that a qualified person seeks appointment, venue is proper, the required notices have been given, the requirements of section 30-2608 have been met, and the welfare and best interests of the minor will be served by the requested appointment, it shall make the appointment. In other cases the court may dismiss the proceedings, or make any other disposition of the matter that will best serve the interest of the minor.

(c) If necessary, the court may appoint a temporary guardian, with the status of an ordinary guardian of a minor, but the authority of a temporary guardian shall not last longer than six months. In an emergency, the court may appoint a temporary guardian of a minor without notice, pending notice and hearing.

(d) If, at any time in the proceeding, the court determines that the interests of the minor are or may be inadequately represented, it may appoint an attorney to represent the minor, giving consideration to the preference of the minor if the minor is fourteen years of age or older.

**30-2612. Consent to service by acceptance of appointment; notice.** By accepting a testamentary or court appointment as guardian, a guardian submits personally to the jurisdiction of the court in any proceeding relating to the guardianship that may be instituted by any interested person. Notice of any proceeding shall be delivered to the guardian, or mailed to him by ordinary mail at his address as listed in the court records and to his address as then known to the petitioner. Letters of guardianship must indicate whether the guardian was appointed



by will or by court order.

**30-2613. Powers and duties of guardian of minor.**

(1) A guardian of a minor has the powers and responsibilities of a parent who has not been deprived of custody of his minor and unemancipated child, except that a guardian is not legally obligated to provide from his own funds for the ward and is not liable to third persons by reason of the parental relationship for acts of the ward. In particular, and without qualifying the foregoing, a guardian has the following powers and duties:

(a) He must take reasonable care of his ward's personal effects and commence protective proceedings if necessary to protect other property of the ward.

(b) He may receive money payable for the support of the ward to the ward's parent, guardian or custodian under the terms of any statutory benefit or insurance system, or any private contract, devise, trust, conservatorship or custodianship. He also may receive money or property of the ward paid or delivered by virtue of section 30-2603. Any sums so received shall be applied to the ward's current needs for support, care and education, except as provided in subdivisions (2) and (3) of this section. He must exercise due care to conserve any excess for the ward's future needs unless a conservator has been appointed for the estate of the ward, in which case such excess shall be paid over at least annually to the conservator. Sums so received by the guardian are not to be used for compensation for his services except as approved by order of court. A guardian may institute proceedings to compel the performance by any person of a duty to support the ward or to pay sums for the welfare of the ward.

(c) The guardian is empowered to facilitate the ward's education, social, or other activities and to authorize medical or other professional care, treatment, or advice. A guardian is not liable by reason of this consent for injury to the ward resulting from the negligence or acts of third persons unless it would have been illegal for a parent to have consented. A guardian may consent to the marriage or adoption of his ward.

(d) A guardian must report the condition of his ward and of the ward's estate which has been subject to his possession or control, as ordered by court on petition of any person interested in the minor's welfare or as required by court rule, and upon termination of the guardianship settle his accounts with the ward or his legal representatives and pay over and deliver all of the estate and effects remaining in his hands or due from him on settlement to the person or persons who shall be lawfully entitled thereto.

(2) The appointment of a guardian for a minor shall not relieve his parent or parents, liable for the support of such minor, from their obligation to provide for such minor. For the purposes of guardianship of minors, the application of guardianship income and principal after payment of debts and charges of managing the estate, in relationship to the respective obligations owed by fathers, mothers, and others, for the support, maintenance and education of the minor shall be:

(a) The income and property of the father and mother of the minor in such manner as they can reasonably afford, regard being had to the situation of the family and to all the circumstances of the case;

(b) The guardianship income, in whole or in part, as shall be judged reasonable considering the extent of the guardianship income and the parents' financial ability;

(c) The income and property of any other person having a legal obligation to support the minor, in such manner as the person can reasonably afford, regard being had to the situation of the person's family and to all the circumstances of the case; and

(d) The guardianship principal, either personal or real estate, in whole or in part, as shall be judged for the best interest of the minor, considering all the circumstances of the minor and those liable for his support.

(3) Notwithstanding the provisions of subsection (2) of this section, the court may from time to time authorize the guardian to use so much of the guardianship income or principal, whether personal or real estate, as it may deem proper, considering all the circumstances of the minor and those liable for his support, if it is shown that (a) an emergency exists which justifies an expenditure, or (b) a fund has been given to the minor for a special purpose and the court can, with reasonable certainty, ascertain such purpose.

(4) The court may require a guardian to furnish a bond in an amount and conditioned in accordance with the provisions of section 30-2640.

**30-2614. Termination of appointment of guardian; general.** A guardian's authority and responsibility terminates upon the death, resignation or removal of the guardian or upon the minor's death, adoption, marriage or attainment of majority, but termination does not affect his liability for prior acts, nor his obligation to account for funds and assets of his ward. Resignation of a guardian does not terminate the guardianship until it has been approved by the court. A testamentary appointment under an informally probated will terminates if the will is later denied probate in a formal proceeding.

**30-2615. Proceedings subsequent to appointment; venue.**

(a) The court where the ward resides has concurrent jurisdiction with the court which appointed the guardian, or in which acceptance of a testamentary appointment was filed, over resignation, removal, accounting and other proceedings relating to the guardianship.

(b) If the court located where the ward resides is not the court in which acceptance of appointment is filed, the court in which proceedings subsequent to appointment are commenced shall in all appropriate cases notify the other court, in this or another state, and after consultation with that court determine whether to retain jurisdiction or transfer the proceedings to the other court, whichever is in the best interest of the ward. A copy of any order accepting a resignation or removing a guardian shall be sent to the court in which acceptance of appointment is filed.

**30-2616. Resignation or removal proceedings.**

(a) Any person interested in the welfare of a ward, or the ward, if fourteen or more years of age, may petition for removal of a guardian on the ground that removal would be in the best interest of the ward. A guardian may petition for permission to resign. A petition for removal or for permission to resign may, but need not, include a request for appointment of a successor guardian.

(b) After notice and hearing on a petition for removal or for permission to resign, the court may terminate the guardianship and make any further order that may be appropriate.

(c) If, at any time in the proceeding, the court determines that the interests of the ward are, or may be, inadequately represented, it may appoint an attorney to represent the minor, giving consideration to the preference of the minor if the minor is fourteen or more years of age.

## XX. ADOPTION OF CHILDREN

### **43-101. Children eligible for adoption.**

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

(2) Any adult child may be adopted by any person or persons subject to sections 43-101 to 43-115, except that no person having a husband or wife may adopt an adult child unless the husband or wife joins in the petition therefor. If the husband or wife so joins the petition therefor, the adoption shall be by them jointly. The adoption of an adult child by another adult or adults who are not the stepparent of the adult child may be permitted if the adult child has had a parent-child relationship with the prospective parent or parents for a period of at least six months next preceding the adult child's age of majority and (a) the adult child has no living parents, (b) the adult child's parent or parents have been deprived of parental rights to such child by the order of any court of competent jurisdiction, (c) the parent or parents, if living, have relinquished the adult child for adoption by a written instrument, (d) the parent or parents had abandoned the child for at least six months next preceding the adult child's age of majority, or (e) the parent or parents are incapable of consenting. The substitute consent provisions of section 43-105 do not apply to adoptions under this subsection.

### **43-102. Petition requirements; decree; adoptive home study, when required; jurisdiction; filings.**

Except as otherwise provided in the Nebraska Indian Child Welfare Act, any person or persons desiring to adopt a minor child or an adult child shall file a petition for adoption signed and sworn to by the person or persons desiring to adopt. The consent or consents required by sections 43-104 and 43-105 or section 43-104.07, the documents required by section 43-104.07 or the documents required by sections 43-104.08 to 43-104.24 and section 43-104.25, and a completed preplacement adoptive home study if required by section 43-107 shall be filed prior to the hearing required in section 43-103.

The county court of the county in which the person or persons desiring to adopt a child reside has jurisdiction of adoption proceedings, except that if a separate juvenile court already has jurisdiction over the child to be adopted under the Nebraska Juvenile Code, such separate juvenile court has concurrent jurisdiction with the county court in such adoption proceeding. If a child to be adopted is a ward of any court or a ward of the state at the time of placement and at the time of filing an adoption petition, the person or persons desiring to adopt shall not be required to be residents of Nebraska. The petition and all other court filings for an adoption proceeding shall be filed with the clerk of the county court. The party shall state in the petition whether such party requests that the proceeding be heard by the county court or, in cases in which a separate juvenile court already has jurisdiction over the child to be adopted under the Nebraska Juvenile Code, such separate juvenile court. Such proceeding is considered a county court proceeding even if heard by a separate juvenile court judge and an order of the separate juvenile court in such adoption proceeding has the force and effect of a county court order. The testimony in an adoption proceeding heard before a separate juvenile court judge shall be preserved as in any other separate juvenile court proceeding. The clerks of the district courts shall transfer all adoption petitions and other adoption filings which were filed with such clerks prior to August 28, 1999, to the clerk of the county court where the separate juvenile court which heard the proceeding is situated. The clerk of such county court shall file and docket such petitions and other filings.

Except as set out in subdivisions (1)(b)(ii), (iii), (iv), and (v) of section 43-107, an adoption decree shall not be issued until at least six months after an adoptive home study has been completed by the Department of Health and Human Services or a licensed child placement agency.

**43-102.01. Military personnel; deemed residents; when.** For purposes of adoption, persons serving in the armed forces of the United States, who have been continuously stationed at any military base or installation in the State of Nebraska for the period of one year immediately preceding the filing of a petition for adoption shall be deemed residents in good faith of this state and the county where such military base or installation is located.

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

**43-104. Adoption; consent required; exceptions.**

(1) Except as otherwise provided in this section and in the Nebraska Indian Child Welfare Act, no adoption shall be decreed unless written consents thereto are filed in the county court of the county in which the person or persons desiring to adopt reside or in the county court in which the separate juvenile court having jurisdiction over the custody of the child is located and the written consents are executed by (a) the minor child, if over fourteen years of age, or the adult child, (b) any district court, county court, or separate juvenile court in the State of Nebraska having jurisdiction of the custody of a minor child by virtue of proceedings had in any district court, county court, or separate juvenile court in the State of Nebraska or by virtue of the Uniform Child Custody Jurisdiction and Enforcement Act, and (c) both parents of a child born in lawful wedlock if living, the surviving parent of a child born in lawful wedlock, the mother of a child born out of wedlock, or both the mother and father of a child born out of wedlock as determined pursuant to sections 43-104.08 to 43-104.25. On and after April 20, 2002, a written consent or relinquishment for adoption under this section shall not be valid unless signed at least forty-eight hours after the birth of the child.

(2) Consent shall not be required of any parent who (a) has relinquished the child for adoption by a written instrument, (b) has abandoned the child for at least six months next preceding the filing of the adoption petition, (c) has been deprived of his or her parental rights to such child by the order of any court of competent jurisdiction, or (d) is incapable of consenting.

(3) Consent shall not be required of a putative father who has failed to timely file (a) a Notice of Objection to Adoption and Intent to Obtain Custody pursuant to section 43-104.02 and, with respect to the absence of such filing, a certificate has been filed pursuant to section 43-104.04 or (b) a petition pursuant to section 43-104.05 for the adjudication of such notice and a determination of whether his consent to the adoption is required and the mother of the child has timely executed a valid relinquishment and consent to the adoption pursuant to such section.

(4) Consent shall not be required of an adjudicated or putative father who is not required to consent to the adoption pursuant to section 43-104.22.

**43-104.01. Child born out of wedlock; biological father registry; Department of Health and Human Services; duties.**

(1) The Department of Health and Human Services shall establish a biological father registry. The department shall maintain such registry and shall record the names and addresses of (a) any person adjudicated by a court of this state or by a court of another state or territory of the United States to be the biological father of a child

born out of wedlock if a certified copy of the court order is filed with the registry by such person or any other person, (b) any putative father who has filed with the registry, prior to the receipt of notice under sections 43-104.12 to 43-104.16, a Request for Notification of Intended Adoption with respect to such child, and (c) any putative father who has filed with the registry a Notice of Objection to Adoption and Intent to Obtain Custody with respect to such child.

(2) A Request for Notification of Intended Adoption or a Notice of Objection to Adoption and Intent to Obtain Custody filed with the registry shall include (a) the putative father's name, address, and social security number, (b) the name and last-known address of the mother, (c) the month and year of the birth or the expected birth of the child, (d) the case name, court name, and location of any Nebraska court having jurisdiction over the custody of the child, and (e) a statement by the putative father that he acknowledges liability for contribution to the support and education of the child after birth and for contribution to the pregnancy-related medical expenses of the mother of the child. The person filing the notice shall notify the registry of any change of address pursuant to procedures prescribed in rules and regulations of the department.

(3) A request or notice filed under this section or section 43-104.02 shall be admissible in any action for paternity and shall estop the putative father from denying paternity of such child thereafter.

(4) Any putative father who files a Request for Notification of Intended Adoption or a Notice of Objection to Adoption and Intent to Obtain Custody with the biological father registry may revoke such filing. Upon receipt of such revocation by the registry, the effect shall be as if no filing had ever been made.

(5) The department shall not divulge the names and addresses of persons listed with the biological father registry to any other person except as authorized by law or upon order of a court of competent jurisdiction for good cause shown.

(6) The department may develop information about the registry and may distribute such information, through its existing publications, to the news media and the public. The department may provide information about the registry to the Department of Correctional Services, which may distribute such information through its existing publications.

(7) A person who has been adjudicated by a Nebraska court of competent jurisdiction to be the biological father of a child born out of wedlock who is the subject of a proposed adoption shall not be construed to be a putative father for purposes of sections 43-104.01 to 43-104.05 and shall not be subject to the provisions of such sections as applied to such fathers. Whether such person's consent is required for the proposed adoption shall be determined by the Nebraska court having jurisdiction over the custody of the child pursuant to section 43-104.22, as part of proceedings required under section 43-104 to obtain the court's consent to such adoption.

**43-104.02. Child born out of wedlock; Notice of Objection to Adoption and Intent to Obtain Custody; filing requirements.** A Notice of Objection to Adoption and Intent to Obtain Custody shall be filed with the biological father registry under section 43-104.01 on forms provided by the Department of Health and Human Services (1) within five business days after the birth of the child or (2) if notice is provided after the birth of the child (a) within five business days after receipt of the notice provided under section 43-104.12 or (b) within five business days after the last date of any published notice provided under section 43-104.14, whichever notice is earlier. Such notice shall be considered to have been filed if it is received by the department or postmarked prior to the end of the fifth business day as provided in this section.

**43-104.03. Child born out of wedlock; filing with biological father registry; department; notice; to whom given.** Within three days after the filing of a Request for Notification of Intended Adoption or a Notice of

Objection to Adoption and Intent to Obtain Custody with the biological father registry pursuant to sections 43-104.01 and 43-104.02, the Department of Health and Human Services shall cause a certified copy of such request or notice to be mailed by certified mail to (1) the mother or prospective mother of such child at the last-known address shown on the request or notice or an agent specifically designated in writing by the mother or prospective mother to receive such request or notice and (2) any Nebraska court identified by the putative father under section 43-104.01 as having jurisdiction over the custody of the child.

**43-104.04. Child born out of wedlock; failure to file notice; effect.** If a Notice of Objection to Adoption and Intent to Obtain Custody is not timely filed with the biological father registry pursuant to section 43-104.02, the mother of a child born out of wedlock or an agent specifically designated in writing by the mother may request, and the Department of Health and Human Services shall supply, a certificate that no such notice has been filed with the biological father registry. The filing of such certificate pursuant to section 43-102 shall eliminate the need or necessity of a consent or relinquishment for adoption by the putative father of such child.

**43-104.05. Child born out of wedlock; notice; filed; petition for adjudication of paternity; trial; guardian ad litem; court; jurisdiction.**

(1) If a Notice of Objection to Adoption and Intent to Obtain Custody is timely filed with the biological father registry pursuant to section 43-104.02, either the putative father, the mother, or her agent specifically designated in writing shall, within thirty days after the filing of such notice, file a petition for adjudication of the notice and a determination of whether the putative father's consent to the proposed adoption is required. The petition shall be filed in the county court in the county where such child was born or, if a separate juvenile court already has jurisdiction over the custody of the child, in the county court of the county in which such separate juvenile court is located.

(2) If such a petition is not filed within thirty days after the filing of such notice and the mother of the child has executed a valid relinquishment and consent to the adoption within sixty days of the filing of such notice, the putative father's consent to adoption of the child shall not be required, he is not entitled to any further notice of the adoption proceedings, and any alleged parental rights and responsibilities of the putative father shall not be recognized thereafter in any court.

(3) After the timely filing of such petition, the court shall set a trial date upon proper notice to the parties not less than twenty nor more than thirty days after the date of such filing. If the mother contests the putative father's claim of paternity, the court shall order DNA testing to establish whether the putative father is the biological father. The court shall assess the costs of such testing between the parties in an equitable manner. Whether the putative father's consent to the adoption is required shall be determined pursuant to section 43-104.22. The court shall appoint a guardian ad litem to represent the best interests of the child.

(4) (a) The county court of the county where the child was born or the separate juvenile court having jurisdiction over the custody of the child shall have jurisdiction over proceedings under this section from the date of notice provided under section 43-104.12 or the last date of published notice under section 43-104.14, whichever notice is earlier, until thirty days after the conclusion of adoption proceedings concerning the child, including appeals, unless such jurisdiction is transferred under subdivision (b) of this subsection.

(b) Except as otherwise provided in this subdivision, the court shall, upon the motion of any party, transfer the case to the district court for further proceedings on the matters of custody, visitation, and child support with respect to such child if (i) such court determines under section 43-104.22 that the consent of the putative father is required for adoption of the minor child and the putative father refuses such consent or (ii) the mother of the child, within thirty days after the conclusion of proceedings under this section, including appeals, has not executed a valid relinquishment and consent to the adoption. The court, upon its own motion, may retain the case for good cause

shown.

**43-104.06. Repealed. Laws 1995, LB 712, § 31.**

**43-104.07. Child born in a foreign country; requirements.** The petition for adoption of a child born in a foreign country shall be accompanied by:

(1) A document or documents from a court, official department, or government agency of the country of origin stating that the parent has consented to the adoption, stating that the parental rights of the parents of the child have been terminated, or stating that the child to be adopted has been abandoned or relinquished by the natural parents and that the child is to immigrate to the United States for the purpose of adoption; and

(2) Written consent to the adoption of the child from a child placement agency licensed by the Department of Health and Human Services or the agency's duly authorized representative which placed the child with the adopting person or persons. The consent shall be signed and acknowledged before an officer authorized to acknowledge deeds in the state where the consent is signed and shall not require a witness.

Any document in a foreign language shall be translated into English by the Department of State or by a translator who shall certify the accuracy of the translation.

A guardian shall not be required to be appointed to give consent to the adoption of any child born in a foreign country when the consent requirements of this section have been met.

**43-104.08. Child born out of wedlock; identify and inform biological father.** Whenever a child is claimed to be born out of wedlock and the biological mother contacts an adoption agency or attorney to relinquish her rights to the child, or the biological mother joins in a petition for adoption to be filed by her husband, the agency or attorney contacted shall attempt to establish the identity of the biological father and further attempt to inform the biological father of his right to execute a relinquishment and consent to adoption, or a denial of paternity and waiver of rights, in the form mandated by section 43-106, pursuant to sections 43-104.08 to 43-104.25.

**43-104.09. Child born out of wedlock; biological mother; affidavit; form.** In all cases of adoption of a minor child born out of wedlock, the biological mother shall complete and sign an affidavit in writing and under oath. The affidavit shall be executed by the biological mother before or at the time of execution of the consent or relinquishment and shall be attached as an exhibit to any petition to finalize the adoption. If the biological mother is under the age of nineteen, the affidavit may be executed by the agency or attorney representing the biological mother based upon information provided by the biological mother. The affidavit shall be in substantially the following form:

AFFIDAVIT OF IDENTIFICATION

I, \_\_\_\_\_, the mother of a child, state under oath or affirm as follows:

(1) My child was born, or is expected to be born, on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, at \_\_\_\_\_, in the State of \_\_\_\_\_.

(2) I reside at \_\_\_\_\_, in the City or Village of \_\_\_\_\_, County of \_\_\_\_\_, State of \_\_\_\_\_.

(3) I am of the age of \_\_\_\_\_ years, and my date of birth is \_\_\_\_\_.

(4) I acknowledge that I have been asked to identify the father of my child.

(5) (CHOOSE ONE)

(5A) I know and am identifying the biological father (or possible biological fathers) as follows:  
The name of the biological father is \_\_\_\_\_.  
His last-known home address is \_\_\_\_\_.  
His last-known work address is \_\_\_\_\_.  
He is \_\_\_\_\_ years of age, or he is deceased, having died on or about the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, at \_\_\_\_\_, in the State of \_\_\_\_\_.  
He has been adjudicated to be the biological father by the \_\_\_\_\_ Court of \_\_\_\_\_ county, State of \_\_\_\_\_, case name \_\_\_\_\_, docket number \_\_\_\_\_.

(For other possible biological fathers, please use additional sheets of paper as needed.)

(5B) I am unwilling or unable to identify the biological father (or possible biological fathers). I do not wish or I am unable to name the biological father of the child for the following reasons:  
\_\_\_\_ Conception of my child occurred as a result of sexual assault or incest  
\_\_\_\_ Providing notice to the biological father of my child would threaten my safety or the safety of my child  
\_\_\_\_ Other reason:  
\_\_\_\_\_

(6) If the biological mother is unable to name the biological father, the physical description of the biological father (or possible biological fathers) and any other information which may assist in identifying him, including the city or county and state where conception occurred:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(use additional sheets of paper as needed).

(7) Under penalty of perjury, the undersigned certifies that the statements set forth in this affidavit are true and correct.

(8) I have read this affidavit and have had the opportunity to review and question it. It was explained to me by \_\_\_\_\_ . I am signing it as my free and voluntary act and understand the contents and the effect of signing it.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

(Acknowledgment)

\_\_\_\_\_  
(Signature)



**43-104.10. Child born out of wedlock; agency or attorney; duty to inform biological mother.** The agency or attorney representing the biological mother shall inform the mother of the legal and medical need to determine, whenever possible, the paternity of the child prior to an adoption and that her failure or refusal to accurately identify the biological father or possible biological fathers could threaten the legal validity of any adoptive placement of the child.

**43-104.11. Child born out of wedlock; father's relinquishment and consent; when effective.** If the biological mother's affidavit, required by section 43-104.09, identifies only one possible biological father of the child and states that there are no other possible biological fathers of the child, and if the named father executes a valid relinquishment and consent to adoption of the child in the form mandated by section 43-106 or executes a denial of paternity and waiver of rights in the form mandated by section 43-106, the court may enter a decree of adoption pursuant to section 43-109 without regard to sections 43-104.12 to 43-104.16. A named biological father's relinquishment and consent or a named biological father's waiver of rights is irrevocable upon signing and is not voidable for any period after signing. Such relinquishment and consent or such waiver of rights may only be challenged on the basis of fraud or duress for up to six months after signing.

**43-104.12. Child born out of wedlock; agency or attorney; duty to inform biological father.** In order to attempt to inform the biological father or possible biological fathers of the right to execute a relinquishment and consent to adoption or a denial of paternity and waiver of rights, the agency or attorney representing the biological mother shall notify, by registered or certified mail, restricted delivery, return receipt requested:

(1) Any person adjudicated by a court in this state or by a court in another state or territory of the United States to be the biological father of the child;

(2) Any person who has filed a Request for Notification of Intended Adoption or a Notice of Objection to Adoption and Intent to Obtain Custody pursuant to sections 43-104.01 and 43-104.02;

(3) Any person who is recorded on the child's birth certificate as the child's father;

(4) Any person who might be the biological father of the child who was openly living with the child's biological mother within the twelve months prior to the birth of the child;

(5) Any person who has been identified as the biological father or possible biological father of the child by the child's biological mother pursuant to section 43-104.09;

(6) Any person who was married to the child's biological mother within six months prior to the birth of the child and prior to the execution of the relinquishment; and

(7) Any other person who the agency or attorney representing the biological mother may have reason to believe may be the biological father of the child.

**43-104.13. Child born out of wedlock; notice to biological father; contents.** The notice sent by the agency or attorney pursuant to section 43-104.12 shall be served sufficiently in advance of the birth of the child, whenever possible, to allow compliance with subdivision (1) of section 43-104.02 and shall state:

(1) The biological mother's name, the fact that she is pregnant or has given birth to the child, and the expected or actual date of delivery;

(2) That the child has been relinquished by the biological mother, that she intends to execute a relinquishment, or that the biological mother has joined or plans to join in a petition for adoption to be filed by her

husband;

(3) That the person being notified has been identified as a possible biological father of the child;

(4) That the possible biological father may have certain rights with respect to such child if he is in fact the biological father;

(5) That the possible biological father has the right to (a) deny paternity, (b) waive any parental rights he may have, (c) relinquish and consent to adoption of the child, (d) file a Notice of Objection to Adoption and Intent to Obtain Custody pursuant to section 43-104.02, or (e) object to the adoption in a proceeding before any Nebraska court which has, prior to his receipt of this notice, adjudicated him to be the biological father of the child;

(6) That to deny paternity, to waive his parental rights, or to relinquish and consent to the adoption, the biological father must contact the undersigned agency or attorney representing the biological mother, and that if he wishes to object to the adoption and seek custody of the child he should seek legal counsel from his own attorney immediately; and

(7) That if he is the biological father and if the child is not relinquished for adoption, he has a duty to contribute to the support and education of the child and to the pregnancy-related expenses of the mother and a right to seek a court order for custody, parenting time, visitation, or other access with the child.

The agency or attorney representing the biological mother may enclose with the notice a document which is an admission or denial of paternity and a waiver of rights by the biological father, which the biological father may choose to complete, in the form mandated by section 43-106, and return to the agency or attorney.

**43-104.14. Child born out of wedlock; agency or attorney; duty to notify biological father by publication; when.**

(1) If the agency or attorney representing the biological mother is unable through reasonable efforts to locate and serve notice on the biological father or possible biological fathers as contemplated in sections 43-104.12 and 43-104.13, the agency or attorney shall notify the biological father or possible biological fathers by publication.

(2) The publication shall be made once a week for three consecutive weeks in a legal newspaper of general circulation in the Nebraska county or county of another state which is most likely to provide actual notice to the biological father. The publication shall include:

(a) The first name or initials of the father or possible father or the entry "John Doe, real name unknown", if applicable;

(b) A description of the father or possible father if his first name or initials are unknown;

(c) The approximate date of conception of the child and the city and state in which conception occurred, if known;

(d) The date of birth or expected birth of the child;

(e) That he has been identified as the biological father or possible biological father of a child whom the biological mother currently intends to place for adoption and the approximate date that placement will occur;

(f) That he has the right to (i) deny paternity, (ii) waive any parental rights he may have, (iii) relinquish and consent to adoption of the child, (iv) file a Notice of Objection to Adoption and Intent to Obtain Custody pursuant to section 43-104.02, or (v) object to the adoption in a proceeding before any Nebraska court which has adjudicated him to be the biological father of the child prior to his receipt of notice; and

(g) That (i) in order to deny paternity, waive his parental rights, relinquish and consent to the adoption, or receive additional information to determine whether he is the father of the child in question, he must contact the undersigned agency or attorney representing the biological mother and (ii) if he wishes to object to the adoption and

seek custody of the child, he must seek legal counsel from his own attorney immediately.

**43-104.15. Child born out of wedlock; notification to biological father; exceptions.** The notification procedure set forth in sections 43-104.12 to 43-104.14 shall, whenever possible, be completed prior to a child being placed in an adoptive home. If the information provided in the biological mother's affidavit prepared pursuant to section 43-104.09 presents clear evidence that providing notice to a biological father or possible biological father as contemplated in sections 43-104.12 to 43-104.14 would be likely to threaten the safety of the biological mother or the child or that conception was the result of sexual assault or incest, notice is not required to be given. If the biological father or possible biological fathers are not given actual or constructive notice prior to the time of placement, the agency or attorney shall give the adoptive parents a statement of legal risk indicating the legal status of the biological father's parental rights as of the time of placement, and the adoptive parents shall sign a statement of legal risk acknowledging their acceptance of the placement, notwithstanding the legal risk.

**43-104.16. Child born out of wedlock; notice requirements; affidavit by agency or attorney.** In all cases involving the adoption of a minor child born out of wedlock, the agency or attorney representing the biological mother shall execute an affidavit stating that due diligence was used to identify and give actual or constructive notice to the biological father or possible biological fathers of the child and stating the methods used to attempt to identify and give actual or constructive notice to those persons or the reason why no attempts were made to identify and notify those persons. The affidavit shall be attached to any petition filed in an adoption proceeding.

**43-104.17. Child born out of wedlock; petition; evidence of compliance required; notice to biological father; when.** In all cases of adoption of a minor child born out of wedlock, the petition to finalize the adoption shall specifically allege compliance with sections 43-104.08 to 43-104.16, and shall attach as exhibits all documents which are evidence of such compliance. No notice of the filing of the petition to finalize or the hearing on the petition shall be given to a biological father or putative biological father who (1) executed a valid relinquishment and consent or a valid denial of paternity and waiver of rights pursuant to section 43-104.11, (2) was provided notice under sections 43-104.12 to 43-104.14 and failed to timely file a Notice of Objection to Adoption and Intent to Obtain Custody pursuant to section 43-104.02 or petition pursuant to section 43-104.05, or (3) is not required to consent to the adoption pursuant to proceedings conducted under section 43-104.22.

**43-104.18. Child born out of wedlock; failure to establish compliance with notice requirements; court powers; guardian ad litem authorized.** If a petition to finalize an adoption is filed and fails to establish substantial compliance with sections 43-104.08 to 43-104.16, the court shall receive evidence by affidavit of the facts and circumstances of the biological mother's relationship with the biological father or possible biological fathers at the time of conception of the child and at the time of the biological mother's relinquishment of the child, including any evidence that providing notice to a biological father would be likely to threaten the safety of the biological mother or the child or that the conception was the result of sexual assault or incest. If, under the facts and circumstances presented, the court finds that the agency or attorney representing the biological mother did not exercise due diligence in complying with sections 43-104.08 to 43-104.16, or if the court finds that there is no credible evidence that providing notice to a biological father would be likely to threaten the safety of the biological mother or the child or that the conception was the result of sexual assault or incest, the court shall order the attorney or agency to exercise due diligence in complying with sections 43-104.08 to 43-104.16. If the attorney or agency fails to exercise due diligence in complying with such sections or at any time upon the petition or application of any interested party the court may appoint a guardian ad litem to represent the interests of the biological father. The guardian ad litem shall be chosen from a qualified pool of local attorneys. The guardian ad litem shall receive reasonable compensation for the representation, the amount to be determined at the discretion of the court.

**43-104.19. Child born out of wedlock; guardian ad litem for biological father; duties.** The guardian ad litem for the biological father shall:

- (1) Identify the biological father whenever possible;
- (2) Notify the biological father or possible biological fathers of the proposed relinquishment of the child and inform the biological father or possible biological fathers of their parental rights and duties with regard to the child;
- (3) Notify the court if all reasonable attempts to both identify and notify the biological father or possible biological fathers are unsuccessful; and
- (4) Determine, by deposition, by affidavit, by interview, or through testimony at a hearing, the following: Whether the mother was married at the time of conception of the child or at any time thereafter, whether the mother was cohabitating with a man at the time of conception or birth of the child, whether the mother has received support payments or promises of support with respect to the child or in connection with her pregnancy, whether conception was the result of sexual assault or incest, and whether any man has formally or informally acknowledged or declared his possible paternity of the child.

**43-104.20. Child born out of wedlock; guardian ad litem for biological father; investigation; hearing.** The guardian ad litem for the biological father shall complete the investigation of the interests of the biological father within twenty days after appointment unless the court finds reasonable cause to extend the time period. The court shall hold a hearing as soon as practicable to determine whether the child was born out of wedlock, to determine the identity of the biological father, if possible, and to determine the rights of the biological father. The court may exercise its contempt powers with respect to any individual who admits having knowledge of information regarding the paternity of the child but who refuses to disclose that information to the guardian ad litem or to the court.

**43-104.21. Child born out of wedlock; guardian ad litem for biological father; hearing; notice; when.**

(1) Notice of the hearing under section 43-104.20 shall be given to every person identified by the guardian ad litem as the biological father or a possible biological father. Notice shall be given in the manner appropriate under the rules of civil procedure for the service of process in this state and in any additional manner that the court directs. Proof of notice shall be filed with the court before the hearing.

(2) Notice is not required to be given to a person who may be the father of a child conceived as a result of a sexual assault or incest or if notification is likely to result in a threat to the safety of the biological mother or the child.

**43-104.22. Child born out of wedlock; hearing; paternity of child; father's consent required; when; determination of custody.** At any hearing to determine the parental rights of an adjudicated biological father or putative biological father of a minor child born out of wedlock and whether such father's consent is required for the adoption of such child, the court shall receive evidence with regard to the actual paternity of the child and whether such father is a fit, proper, and suitable custodial parent for the child. The court shall determine that such father's consent is not required for a valid adoption of the child upon a finding of one or more of the following:

- (1) The father abandoned or neglected the child after having knowledge of the child's birth;
- (2) The father is not a fit, proper, and suitable custodial parent for the child;
- (3) The father had knowledge of the child's birth and failed to provide reasonable financial support for the mother or child;
- (4) The father abandoned the mother without reasonable cause and with knowledge of the pregnancy;
- (5) The father had knowledge of the pregnancy and failed to provide reasonable support for the mother

during the pregnancy;

- (6) The child was conceived as a result of a nonconsensual sex act or an incestual act;
- (7) Notice was provided pursuant to sections 43-104.12 to 43-104.14 and the putative father failed to timely file a Notice of Objection to Adoption and Intent to Obtain Custody pursuant to section 43-104.02;
- (8) The putative father failed to timely file a petition to adjudicate a Notice of Objection to Adoption and Intent to Obtain Custody pursuant to section 43-104.05;
- (9) Notice was provided to an adjudicated biological father through service of process under applicable state law and he failed to object to the adoption or failed to appear at the hearing conducted under section 43-104.25;
- (10) The father executed a valid relinquishment or consent to adoption; or
- (11) The man is not, in fact, the biological father of the child.

The court shall determine the custody of the child according to the best interest of the child, weighing the superior rights of a biological parent who has been found to be a fit, proper, and suitable parent against any detriment the child would suffer if removed from the custody of persons with whom the child has developed a substantial relationship.

**43-104.23. Child born out of wedlock; order finalizing adoption without biological father's notification; when; appeal.** If, after viewing the evidence submitted to support a petition to finalize an adoption or any evidence submitted by a guardian ad litem if one is appointed, the court determines that no biological father can be identified, or that no identified father can be notified without likely threat to the safety of the biological mother or the child, or upon a finding of due diligence and substantial compliance with sections 43-104.08 to 43-104.16 and a finding that no biological father has timely filed under section 43-104.02, the court shall enter an order finalizing the adoption of the child. Subject to the disposition of an appeal, upon the expiration of thirty days after an order is issued under this section, the order shall not be reversed, vacated, or modified in any manner or upon any ground including fraud, misrepresentation, or failure to provide notice under sections 43-104.12 to 43-104.14.

**43-104.24. Child born out of wedlock; proceedings; court priority.** All proceedings pursuant to sections 43-104.08 to 43-104.23 have the highest priority and shall be advanced on the court docket to provide for their earliest practical disposition. An adjournment or continuance of a proceeding pursuant to sections 43-104.08 to 43-104.23 shall not be granted without a showing of good cause.

**43-104.25 Child born out of wedlock; biological father; applicability of sections.** With respect to any person who has been adjudicated by a Nebraska court of competent jurisdiction to be the biological father of a child born out of wedlock who is the subject of a proposed adoption:

(1) Such person shall not be construed to be a putative father for purposes of sections 43-104.01 to 43-104.05 and shall not be subject to the provisions of such sections as applied to such fathers; and

(2) (a) If the adjudicated biological father has been provided notice in substantial compliance with section 43-104.12 or section 43-104.14, whichever notice is earlier, and he has not executed a valid relinquishment or consent to the adoption, the mother or lawful custodian of the child or his or her agent shall file a motion in the court with jurisdiction of the custody of the child for a hearing to determine whether such father's consent to the adoption is required and whether the court shall give its consent to the adoption;

(b) Notice of the motion and hearing shall be served on the adjudicated biological father in the manner provided for service of process under applicable state law; and

(c) Within thirty days after service of notice under subdivision (b) of this subdivision, the court shall conduct an evidentiary hearing to determine whether the adjudicated biological father's consent to the adoption is required and whether the court shall give its consent to the adoption. Whether such father's consent is required for the proposed adoption shall be determined pursuant to section 43-104.22.

**43-105. Substitute consents.**

(1) If consent is not required of both parents of a child born in lawful wedlock if living, the surviving parent of a child born in lawful wedlock, or the mother or mother and father of a child born out of wedlock, because of the provisions of subdivision (1)(c) of section 43-104, substitute consents shall be filed as follows:

(a) Consent to the adoption of a minor child who has been committed to the Department of Health and Human Services may be given by the department or its duly authorized agent in accordance with section 43-906;

(b) When a parent has relinquished a minor child for adoption to any child placement agency licensed or approved by the department or its duly authorized agent, consent to the adoption of such child may be given by such agency; and

(c) In all other cases when consent cannot be given as provided in subdivision (1)(c) of section 43-104, consent shall be given by the guardian or guardian ad litem of such minor child appointed by a court, which consent shall be authorized by the court having jurisdiction of such guardian or guardian ad litem.

(2) Substitute consent provisions of this section do not apply to a biological father whose consent is not required under section 43-104.22.

**43-106. Consents; signature; witnesses; acknowledgment; certified copy of orders.** Consents required to be given under sections 43-104 and 43-105, except under subdivision (1)(b) of section 43-104, must be acknowledged before an officer authorized to acknowledge deeds in this state and signed in the presence of at least one witness, in addition to the officer. Consents under subdivision (1)(b) of section 43-104 shall be shown by a duly certified copy of order of the court required to grant such consent.

**43-106.01. Relinquishment; relief from parental duties; no impairment or right to inherit.** When a child shall have been relinquished by written instrument, as provided by sections 43-104 and 43-106, to the Department of Health and Human Services or to a licensed child placement agency and the agency has, in writing, accepted full responsibility for the child, the person so relinquishing shall be relieved of all parental duties toward and all responsibilities for such child and have no rights over such child. Nothing contained in this section shall impair the right of such child to inherit.

**43-106.02. Relinquishment of child; presentation of nonconsent form required.** Prior to the relinquishment of a child for adoption, a representative of the Department of Health and Human Services or of any child placement agency licensed by the department or an attorney and a witness shall present a copy or copies of the nonconsent form as provided in section 43-146.06 to the relinquishing parent or parents and explain the effects of signing such form.

**43-107. Investigation by Department of Health and Human Services; adoptive home studies required; when; medical history; required; exceptions; report required.**

(1) (a) For adoption placements occurring or in effect prior to January 1, 1994, upon the filing of a petition for adoption, the county judge shall, except in the adoption of children by stepparents when the requirement of an investigation is discretionary, request the Department of Health and Human Services or any child placement agency licensed by the department to examine the allegations set forth in the petition and to ascertain any other facts relating to such minor child and the person or persons petitioning to adopt such child as may be relevant to the propriety of such adoption, except that the county judge shall not be required to request such an examination if the judge determines that information compiled in a previous examination or study is sufficiently current and

comprehensive. Upon the request being made, the department or other licensed agency shall conduct an investigation and report its findings to the county judge in writing at least one week prior to the date set for hearing.

(b) (i) For adoption placements occurring on or after January 1, 1994, a preplacement adoptive home study shall be filed with the court prior to the hearing required in section 43-103, which study is completed by the Department of Health and Human Services or a licensed child placement agency within one year before the date on which the adoptee is placed with the petitioner or petitioners and indicates that the placement of a child for the purpose of adoption would be safe and appropriate.

(ii) An adoptive home study shall not be required when the petitioner is a stepparent of the adoptee unless required by the court, except that for petitions filed on or after January 1, 1994, the judge shall order the petitioner or his or her attorney to request the Nebraska State Patrol to file a national criminal history record information check and to request the department to conduct and file a check of the central register created in section 28-718 for any history of the petitioner of behavior injurious to or which may endanger the health or morals of a child. An adoption decree shall not be issued until such records are on file with the court. The petitioner shall pay the cost of the national criminal history record information check and the check of the central register.

(iii) The placement of a child for foster care made by or facilitated by the department or a licensed child placement agency in the home of a person who later petitions the court to adopt the child shall be exempt from the requirements of a preplacement adoptive home study. The petitioner or petitioners who meet such criteria shall have a postplacement adoptive home study completed by the department or a licensed child placement agency and filed with the court at least one week prior to the hearing for adoption.

(iv) A voluntary placement for purposes other than adoption made by a parent or guardian of a child without assistance from an attorney, physician, or other individual or agency which later results in a petition for the adoption of the child shall be exempt from the requirements of a preplacement adoptive home study. The petitioner or petitioners who meet such criteria shall have a postplacement adoptive home study completed by the department or a licensed child placement agency and filed with the court at least one week prior to the hearing for adoption.

(v) The adoption of an adult child as provided in subsection (2) of section 43-101 shall be exempt from the requirements of an adoptive home study unless the court specifically orders otherwise. The court may order an adoptive home study, a background investigation, or both if the court determines that such would be in the best interests of the adoptive party or the person to be adopted.

(vi) Any adoptive home study required by this section shall be conducted by the department or a licensed child placement agency at the expense of the petitioner or petitioners unless such expenses are waived by the department or licensed child placement agency. The department or licensed agency shall determine the fee or rate for the adoptive home study.

(vii) The preplacement or postplacement adoptive home study shall be performed as prescribed in rules and regulations of the department and shall include at a minimum an examination into the facts relating to the petitioner or petitioners as may be relevant to the propriety of such adoption. Such rules and regulations shall require an adoptive home study to include a national criminal history record information check and a check of the central register created in section 28-718 for any history of the petitioner or petitioners of behavior injurious to or which may endanger the health or morals of a child.

(2) Upon the filing of a petition for adoption, the judge shall require that a complete medical history be provided on the child, except that in the adoption of a child by a stepparent the provision of a medical history shall be discretionary. A medical history shall be provided, if available, on the biological mother and father and their biological families, including, but not limited to, siblings, parents, grandparents, aunts, and uncles, unless the child is foreign born or was abandoned. The medical history or histories shall be reported on a form provided by the

department and filed along with the report of adoption as provided by section 71-626. If the medical history or histories do not accompany the report of adoption, the department shall inform the court and the State Court Administrator. The medical history or histories shall be made part of the court record. After the entry of a decree of adoption, the court shall retain a copy and forward the original medical history or histories to the department. This subsection shall only apply when the relinquishment or consent for an adoption is given on or after September 1, 1988.

**43-108. Personal appearance of parties; exceptions.** The minor child to be adopted, unless such child is over fourteen years of age, and the person or persons desiring to adopt the child must appear in person before the judge at the time of hearing, except that when the petitioners are husband and wife and one of them is present in court, the court, in its discretion, may accept the affidavit of an absent spouse who is in the armed forces of the United States and it appears to the court the absent spouse will not be able to be present in court for more than a year because of his or her military assignment, which affidavit sets forth that the absent spouse favors the adoption.

**43-109. Decree; conditions; content.**

(1) If, upon the hearing, the court finds that such adoption is for the best interests of such minor child or such adult child, a decree of adoption shall be entered. No decree of adoption shall be entered unless (a) it appears that the child has resided with the person or persons petitioning for such adoption for at least six months next preceding the entering of the decree of adoption, except that such residency requirement shall not apply in an adoption of an adult child, (b) the medical histories required by subsection (2) of section 43-107 have been made a part of the court record, and (c) the court record includes an affidavit or affidavits signed by the relinquishing biological parent, or parents if both are available, in which it is affirmed that, pursuant to section 43-106.02, prior to the relinquishment of the child for adoption, the relinquishing parent was, or parents if both are available were, (i) presented a copy or copies of the nonconsent form provided for in section 43-146.06 and (ii) given an explanation of the effects of filing or not filing the nonconsent form. Subdivisions (b) and (c) of this subsection shall only apply when the relinquishment or consent for an adoption is given on or after September 1, 1988.

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

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

**43-110. Decree; effect as between parties.** After a decree of adoption is entered, the usual relation of parent and child and all the rights, duties and other legal consequences of the natural relation of child and parent shall thereafter exist between such adopted child and the person or persons adopting such child and his, her or their kindred.

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

**43-111.01. Denial of petition; court; powers.** Except as otherwise provided in the Nebraska Indian Child Welfare Act, if, upon a hearing, the court shall deny a petition for adoption, the court may take custody of the child involved and determine whether or not it is in the best interests of the child to remain in the custody of the proposed adopting parents. The court may also, on its own motion, appoint a legal guardian over the person and property of such minor and make disposition in the best interests of the child without further notice, relinquishments, or consents as may otherwise be required by sections 43-102 to 43-112.



**43-112. Decree; appeal.** An appeal shall be allowed from any final order, judgment, or decree, rendered under the authority of sections 43-101 to 43-115, from the county court to the Court of Appeals in the same manner as an appeal from district court to the Court of Appeals.

An appeal may be taken by any party and may also be taken by any person against whom the final judgment or final order may be made or who may be affected thereby. The judgment of the Court of Appeals shall not vacate the judgment of the county court. The judgment of the Court of Appeals shall be certified without cost to the county court for further proceedings consistent with the determination of the Court of Appeals.

**43-113. Adoption records; access; retention.** Except as otherwise provided in the Nebraska Indian Child Welfare Act, court adoption records may not be inspected by the public and shall be permanently retained on microfilm or in their original form in accordance with the Records Management Act. No person shall have access to such records except that:

(1) Access shall be provided on the order of the judge of the court in which the decree of adoption was entered on good cause shown or as provided in sections 43-138 to 43-140 or 43-146.11 to 43-146.13; or

(2) The clerk of the court shall provide three certified copies of the decree of adoption to the parents who have adopted a child born in a foreign country and not then a citizen of the United States within three days after the decree of adoption is entered. A court order is not necessary to obtain these copies. Certified copies shall only be provided upon payment of applicable fees.

**43-114. Repealed. Laws 1949, c. 95, s. 2.**

**43-115. Prior adoptions.** No adoption heretofore lawfully made shall be affected by the enactment of sections 43-101 to 43-115, but such adoptions shall continue in effect and operation according to the terms thereof.

**43-116. Validity of decrees.** When any court in the State of Nebraska shall (1) have entered of record a decree of adoption prior to August 27, 1949, it shall be conclusively presumed that such adoption and all instruments and proceedings in connection therewith are valid in all respects notwithstanding some defect or defects may appear on the face of the record, or the absence of any record of such court, unless an action shall be brought within two years from August 27, 1949, attacking its validity, or (2) hereafter enter of record such a decree of adoption, it shall in like manner be conclusively presumed that the adoption and all instruments and proceedings in connection therewith are valid in all respects notwithstanding some defect or defects may appear on the face of the record, or the absence of any record of such court, unless an action is brought within two years from the entry of such decree of adoption attacking its validity.

**43-117. Adoptive parents; assistance.**

(1) The Department of Health and Human Services may make payments as needed in behalf of a ward of the department with special needs after the legal completion of his or her adoption. Such payments to adoptive parents may include maintenance costs, medical and surgical expenses, and other costs incidental to the care of the child. Payments for maintenance and medical care shall terminate on or before the child's twentieth birthday.

(2) The Department of Health and Human Services shall pay the treatment costs for the care of an adopted minor child which are the result of an illness or condition if within three years after the decree of adoption is entered

the child is diagnosed as having a physical or mental illness or condition which predates the adoption and the child was adopted through the department, the department did not inform the adopting parents of such condition prior to the adoption, and the condition is of such nature as to require medical, psychological, or psychiatric treatment and is more extensive than ordinary childhood illness.

(3) The Department of Health and Human Services shall conduct a medical assessment of the mental and physical needs of any child to be adopted through the department.

**43-117.01. Ward of a child placement agency; adoptive parents; assistance.** The Department of Health and Human Services may make payments as needed on behalf of a ward of a child placement agency with special needs after the legal completion of the child's adoption as authorized by the federal adoption assistance program, 42 U.S.C. 673. Such payments to adoptive parents may include maintenance costs, medical and surgical expenses, and other costs incidental to the care of the child. Payments for maintenance and medical care shall terminate on or before the child's nineteenth birthday.

**43-117.02. Child with special needs; adoptive parents; reimbursement for adoption expenses.** The Department of Health and Human Services may make a payment of up to two thousand dollars on behalf of a child with special needs after the legal completion of the child's adoption. The payment to the adoptive parents shall be a reimbursement for nonrecurring adoption expenses, including reasonable and necessary adoption fees, court costs, attorney's fees, and other expenses which are directly related to the legal adoption of the child, which are not incurred in violation of law, and which have not been reimbursed from any other source or funds.

**43-118. Assistance; conditions.** All actions of the Department of Health and Human Services under the programs authorized by sections 43-117 to 43-117.02 shall be subject to the following criteria:

(1) The child so adopted shall have been a child for whom adoption would not have been possible without the financial aid provided for by sections 43-117 to 43-117.02; and

(2) The department shall adopt and promulgate rules and regulations for the administration of sections 43-117 to 43-118.

**43-118.01 Ward of state; adoption assistance payment.**

(1) For adoptions decreed on or after January 1, 2000, and on or before October 1, 2002, every individual or couple that adopts a ward of the State of Nebraska shall be entitled to a payment of one thousand dollars for the year of adoption and for up to four succeeding years. Payments shall be made after approval of an application submitted by the adoptive parent or parents to the Department of Health and Human Services. The application shall be on a form prescribed by the department. An application shall be submitted during January of the year following the year for which the payment is sought. An applicant shall be eligible for payment for the year of adoption and for the earliest of four subsequent years or until the adopted child reaches the age of majority, is emancipated, or is no longer living in the home of the adoptive parent or parents. To be eligible for payment in the years subsequent to the adoption, the requirements of this section must be met for the entire year.

(2) The department shall review all applications for eligibility for payment. The department shall approve or deny payment within thirty days after receipt of the application. If approved, the department shall certify the necessary information to the Director of Administrative Services for the issuance of a warrant. Warrants shall be issued within thirty days after certification. Any person aggrieved by a decision of the department may appeal. The appeal shall be in accordance with the Administrative Procedure Act.

(3) The department shall adopt and promulgate rules and regulations to carry out this section.

**43-119. Definitions, where found.** For purposes of sections 43-119 to 43-146.16, unless the context otherwise requires, the definitions found in sections 43-121 to 43-123.01 shall be used.

**43-120. Repealed. Laws 1997, LB 307, s. 236.**

**43-121. Agency, defined.** Agency shall mean a child placement agency licensed by the Department of Health and Human Services.

**43-122. Department, defined.** Department shall mean the Department of Health and Human Services.

**43-123. Relative, defined.** Relative shall mean the biological parents or biological siblings of an adopted person.

**43-123.01. Medical history, defined.** Medical history shall mean medical history as defined by the department in its rules and regulations.

**43-124. Department; provide relative consent form.** The department shall provide a form which may be signed by a relative indicating the fact that such relative consents to his or her name being released to such relative's adopted person as provided by sections 43-113, 43-119 to 43-146.16, 71-626, 71-626.01, and 71-627.02. Such consent shall be effective as of the time of filing the form with the department.

**43-125. Relative; consent form.** The form provided by section 43-124 shall contain the following information:

- (1) The name of the person completing the form and, if different, the name of such person at the time of birth of the adopted person;
- (2) The relationship of the person to the adopted person;
- (3) The date of birth of the adopted person;
- (4) The sex of the adopted person;
- (5) The place of birth of the adopted person;
- (6) Authorization that the name, last-known address, and last-known telephone number of the relative and the original birth certificate of the adopted person may be released to the adopted person as provided by sections 43-113, 43-119 to 43-146.16, 71-626, 71-626.01, and 71-627.02; and
- (7) A notice in the following form:

#### **IMPORTANT NOTICE**

You do not have to sign this form. If you do sign it, you are entitled to a copy of it. Your signature on this form allows the Department of Health and Human Services to give your name and other information to the adopted person designated, upon his or her written request after reaching twenty-five years of age. You may file additional copies of this consent if your name or address changes. You may revoke this consent at any time by filing a revocation of consent with the Department of Health and Human Services.

**43-126. Relative; revocation of consent; form.** At any time after signing the consent form, a relative may revoke such consent form. A form for revocation of consent shall be provided by the department. The revocation shall be effective as of the time of filing the form with the department. The revocation form shall contain the following notice:

**IMPORTANT NOTICE**

You do not have to sign this form. If you do sign it, you are entitled to a copy of it. Your signature on this form means that the Department of Health and Human Services will not disclose your name or address to any person without a court order. If you sign this form and later decide you do want your name and address given to a relative properly requesting the information, you may file another consent for that purpose.

**43-127. Relative; consent and revocation forms; notarized; filing.** The forms provided by sections 43-124 and 43-126 shall be notarized and filed with the department which shall keep such forms with all other records of an individual adopted person.

**43-128. Medical history; access; contents.** A child placement agency shall maintain, and shall provide to the adopting parents upon placement of the person with such parents and to the adopted person upon his or her request, the available medical history of the person placed for adoption and of the biological parents. The medical history shall not include the names of the biological parents of the adopted person or the place of birth of the adopted person.

**43-129. Original birth certificate; access by medical professionals; when.** If at any time an individual licensed to practice medicine and surgery pursuant to the Medicine and Surgery Practice Act or licensed to engage in the practice of psychology pursuant to the Psychology Practice Act, through his or her professional relationship with an adopted person, determines that information contained on the original birth certificate of the adopted person may be necessary for the treatment of the health of the adopted person, whether physical or mental in nature, he or she may petition a court of competent jurisdiction for the release of the information contained on the original birth certificate, and the court may release the information on good cause shown.

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

**43-131. Release of information; procedure.**

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

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

(3) If no consent forms have been filed, or if the consent form has been revoked, and if no nonconsent form

has been filed pursuant to section 43-143, the following information shall be released to the adopted person:

- (a) The name and address of the court which issued the adoption decree;
- (b) The name and address of the child placement agency, if any, involved in the adoption; and
- (c) The fact that an agency may assist the adopted person in searching for relatives as provided in sections 43-132 to 43-141.

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

**43-132. Biological parent; notice of nonconsent; filing.** A biological parent or parents may at any time, if they desire, file a notice of nonconsent with the department stating that at no time after his or her death and prior to the death of his or her spouse, if such spouse is not a biological parent, may any information on the adopted person's original birth certificate be released to such adopted person. The provisions of this section shall not apply to persons subject to the Nebraska Indian Child Welfare Act.

**43-133. Biological parent; nonconsent form.** The nonconsent form provided for in section 43-132 shall contain the following information:

- (1) The name of the person completing the form and, if different, the name of such person at the time of birth of the adopted person;
- (2) The relationship of the person to the adopted person;
- (3) The date of birth of the adopted person;
- (4) The sex of the adopted person;
- (5) The place of birth of the adopted person;
- (6) A statement that no information concerning the information contained in the original birth certificate of the adopted person shall be released following the death of the parent or parents signing the form and such information shall not be released to the adopted person prior to the death of the spouse of such parent or parents, if such spouse is not a biological parent; and
- (7) A notice in the following form:

#### IMPORTANT NOTICE

You do not have to sign this form. If you do sign it, you are entitled to a copy of it. Your signature on this form means that the Department of Health and Human Services will not disclose any information contained on the birth certificate of the adopted person to any person following your death and prior to the death of your spouse, if such spouse is not a biological parent, without a court order. If you later decide that you do not object to the release of such information you may file a form stating that purpose.

**43-134. Biological parent; revocation of nonconsent; form.** At any time after signing the notice of nonconsent provided for in section 43-132, the parent or parents may revoke such notice. A form of revocation shall be provided by the department and shall take effect at the time of filing of the form with the department. The revocation form shall contain the following notice:

#### IMPORTANT NOTICE

You do not have to sign this form. If you do sign it, you are entitled to a copy of it. Your signature on this form means that the Department of Health and Human Services may disclose any information contained on the birth certificate of the adopted person following your death. If you sign this form and later decide you do not want this information released following your death and prior to the death of your spouse, if such spouse is not a biological parent, you may file another form for that purpose.

**43-135. Biological parent; deceased; release of information.** If the department has information indicating that both biological parents of the adopted person are deceased, or if only one biological parent is known and information indicates that such parent is deceased, and no nonconsent form, as provided in section 43-132 or 43-143, has been filed, all information on the adopted person's original birth certificate regarding such deceased parent or parents shall be released to the adopted person notwithstanding the fact that no consent form was signed and filed by such deceased parent or parents prior to death.

**43-136. Release of original birth certificate; when.** If a consent form has been signed and filed by both biological parents or by the biological mother of a child born out of wedlock, and no nonconsent form, as provided in section 43-143, has been filed, a copy of the adopted person's original birth certificate shall be provided to the adopted person.

**43-137. Adopted person; contact child placement agency or department; when.** If an adopted person twenty-five years of age or older, after following the procedures set forth in sections 43-130 and 43-131 is not able to obtain information about such person's relatives, such person may then contact the child placement agency which handled the adoption if the name of the agency has been given to the adopted person by the department. If it is not feasible for the adopted person to contact the agency, such person may contact the department.

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

**43-139. Court or department records provided; record required.** When any information is provided to the department or agency pursuant to section 43-138, the person providing the information shall record in the records of the adopted person the nature of the information disclosed, to whom the information was disclosed, and the date of the disclosure.

**43-140. Department or agency; contact relative; limitations; reunion or release of information; when.**

(1) Upon determining the identity and location of the relative being sought, the department or agency shall attempt to contact the relative to determine such relative's willingness to be contacted by the adopted person.

(2) In contacting the relative, the department or agency shall not discuss or reveal in any other manner to any person other than that particular relative who is being sought the nature of the contact, the name, nature, or business of the adoption agency, or any other information which might indicate or imply that such relative is the biological parent of an adopted person.

(3) In contacting the relative, the department or agency shall not reveal the identity or any other information about the adopted person.

(4) No reunion of a relative and an adopted person shall be arranged, nor shall any information about the relative be released to the adopted person until such relative has signed the consent form provided by section 43-124 and the form has been filed with the department.

**43-141. Department or agency; fees; rules and regulations.** The department or agency may charge a reasonable fee in an amount established by the department or agency in rules and regulations to recover expenses in carrying out sections 43-137 to 43-140. The department or agency shall use the fees to defray costs incurred to carry out such sections. The department or agency may waive the fee if the requesting party shows that the fee would work an undue financial hardship on the party. The department may adopt and promulgate rules and regulations to carry out such sections.

**43-142. Department or agency; file report with clerk.** The department or an agency which receives information as provided in section 43-138 shall file a written report with the clerk of the court within nine months of receipt of the information. The report shall indicate whether the relative has been located and whether a contact between the relative and the adopted person has been arranged or has occurred. If the relative has not been located, the report shall set forth the efforts made to identify and locate the relative.

**43-143. Adoptive parent; notice of nonconsent; filing.** For adoptions in which the relinquishment or consent for adoption was given prior to July 20, 2002: An adoptive parent or parents may at any time, if they desire, file a notice of nonconsent with the department stating that at no time prior to his or her death or the death of both parents if each signed the form may any information on the adopted person's original birth certificate be released to such adopted person. The provisions of this section shall not apply to persons subject to the Nebraska Indian Child Welfare Act.

**43-144. Adoptive parent; nonconsent form.** The nonconsent form provided for in section 43-143 shall contain the following information:

- (1) The name of the person completing the form and, if different, the name of such person at the time of birth of the adopted person;
- (2) The relationship of the person to the adopted person;
- (3) The date of birth of the adopted person;
- (4) The sex of the adopted person;
- (5) The place of birth of the adopted person;
- (6) A statement that no information concerning the information contained in the original birth certificate of the adopted person shall be released prior to the death of the adoptive parent or parents signing the form; and
- (7) A notice in the following form:

#### **IMPORTANT NOTICE**

You do not have to sign this form. If you do sign it, you are entitled to a copy of it. Your signature on this form means that the Department of Health and Human Services will not disclose any information contained on the birth certificate of the adopted person to any person prior to your death and the death of your spouse, if he or she signed the form, without a court order. If you later decide that you do not object to the release of such information you may file a form stating that purpose.

**43-145. Adoptive parent; revocation of nonconsent; form.** At any time after signing the notice of nonconsent provided for in section 43-143, the adoptive parent or parents may revoke such notice. A form of

revocation shall be provided by the department and shall take effect at the time of filing of the form with the department. The revocation form shall contain the following notice:

**IMPORTANT NOTICE**

You do not have to sign this form. If you do sign it, you are entitled to a copy of it. Your signature on this form means that the Department of Health and Human Services may disclose any information contained on the birth certificate of the adopted person pursuant to sections 43-113, 43-119 to 43-146.16, 71-626, 71-626.01, and 71-627.02. If you sign this form and later decide you do not want this information released prior to your death you may file another form for that purpose.

**43-146. Forms; notarized; filing.** The forms provided by sections 43-132, 43-134, 43-143, and 43-145 shall be notarized and filed with the department which shall keep such forms with all other records of an individual adopted person.

**43-146.01. Sections; applicability.** (1) Sections 43-106.02, 43-121, 43-123.01, and 43-146.02 to 43-146.16 shall provide the procedures for gaining access to information concerning an adopted person when a relinquishment or consent for an adoption is given on or after September 1, 1988. (2) Sections 43-119 to 43-142 shall remain in effect for a relinquishment or consent for an adoption which is given prior to September 1, 1988. (3) Except as otherwise provided in subsection (2) of section 43-107, subdivisions (1)(b) and (1)(c) of section 43-109, and subsection (4) of this section: Sections 43-101 to 43-118, 43-143 to 43-146, 43-146.17, 71-626, 71-626.01, and 71-627.02 shall apply to all adoptions.

**43-146.02. Medical history; requirements.** A child placement agency, the department, or a private agency handling the adoption, as the case may be, shall maintain and shall provide to the adopting parents upon placement of the person with such parents and to the adopted person, upon his or her request, the available medical history of the person placed for adoption and of the biological parents. The medical history shall not include the names of the biological parents of the adopted person or any other identifying information.

**43-146.03. Information on original birth certificate; release; when.** If at any time an individual licensed to practice medicine and surgery pursuant to the Medicine and Surgery Practice Act or licensed to engage in the practice of psychology pursuant to the Psychology Practice Act, through his or her professional relationship with an adopted person, determines that information contained on the original birth certificate of the adopted person may be necessary for the treatment of the health of the adopted person, whether physical or mental in nature, he or she may petition a court of competent jurisdiction for the release of the information contained on the original birth certificate, and the court may release the information on good cause shown.

**43-146.04. Adopted person; request for information; form.** An adopted person twenty-one years of age or older born in this state who desires access to the names of relatives or access to his or her original certificate of birth shall file a written request for such information with the department. The department shall provide a form for making such request.

**43-146.05. Release of information; procedure.**

(1) Upon receipt of a request for information made under section 43-146.04, the department shall check the records of the adopted person to determine whether an unrevoked nonconsent form is on file from a biological parent pursuant to section 43-146.06.



(2) If no nonconsent form has been filed pursuant to section 43-146.06, the following information shall be released to the adopted person:

- (a) The name and address of the court which issued the adoption decree;
- (b) The name and address of the child placement agency, if any, involved in the adoption;
- (c) The fact that an agency or the department may assist the adopted person in searching for relatives as provided in sections 43-146.10 to 43-146.14;
- (d) A copy of the person's original birth certificate; and
- (e) A copy of the person's medical history and any medical records on file.

(3) If an unrevoked nonconsent form has been filed pursuant to section 43-146.06, no information may be released to the adopted person except a copy of the person's medical history as provided in section 43-107 if requested. The medical history shall not include the names of the biological parents or relatives of the adopted person or any other identifying information.

**43-146.06. Biological parent; notice of nonconsent; filing; failure to sign; effect.** A biological parent may at any time file a notice of nonconsent with the department stating that at no time prior to his or her death may any information on the adopted person's original birth certificate or any other identifying information, except medical histories as provided in section 43-107, be released to such adopted person. Failure by a biological parent to sign the notice of nonconsent shall be deemed a notice of consent by such parent to release the adopted person's original birth certificate to such adopted person.

**43-146.07. Biological parent; nonconsent form.** The nonconsent form provided for in section 43-146.06 shall be designed by the department and shall contain the following information:

- (1) The name of the person completing the form and, if different, the name of such person at the time of birth of the adopted person;
- (2) The relationship of the person to the adopted person;
- (3) The date of birth of the adopted person;
- (4) The sex of the adopted person;
- (5) The place of birth of the adopted person;
- (6) A statement that no information contained in the original birth certificate or any other identifying information, except medical histories as provided in section 43-107, shall be released prior to the death of the parent signing the form;
- (7) A statement that the person signing understands the effect and consequences of filing or not filing a nonconsent form; and
- (8) A notice in the following form:

#### **IMPORTANT NOTICE**

You do not have to sign this form. If you do sign it, you are entitled to a copy of it. Your signature on this form means that the Department of Health and Human Services will not disclose any information contained in the original birth certificate of the adopted person or any other identifying information to any person prior to your death without a court order. If you later decide that you do not object to the release of such information, you may file a form stating that purpose.

**43-146.08. Biological parent; revocation of nonconsent; form.** At any time after signing the notice of nonconsent provided for in section 43-146.06, the biological parent may revoke such notice. A form of revocation shall be provided by the department and shall take effect at the time of filing of the form with the department. The revocation form shall contain the following notice:

### IMPORTANT NOTICE

You do not have to sign this form. If you do sign it, you are entitled to a copy of it. Your signature on this form means that the Department of Health and Human Services may at any time disclose to the adopted person any information contained on the original birth certificate of the adopted person.

**43-146.09. Biological parent; deceased; release of information.** If the department has verified information indicating that both biological parents of the adopted person are deceased or if only one biological parent is known and verified information indicates that such parent is deceased, all information on the adopted person's original birth certificate regarding such deceased parent or parents shall be released to the adopted person upon request. The department shall establish a policy for verifying information about the death of the biological parent or parents.

**43-146.10. Adopted person; contact child placement agency or department; when.** If an adopted person twenty-one years of age or older, after following the procedures set forth in sections 43-146.04 and 43-146.05, is unable to obtain information about the adopted person's relatives and there is no unrevoked nonconsent form as provided in section 43-146.06 on file with the department, such person may then contact the child placement agency which handled the adoption or the department.

**43-146.11. Department or agency; acquire information in court or department records; disclosure requirements.** After being contacted by an adopted person as provided in section 43-146.10, the department or agency, as the case may be, shall verify that no unrevoked nonconsent form is on file with the department. If an unrevoked nonconsent form is not on file, the department or agency, as the case may be, shall apply to the clerk of the court which issued the adoption decree or the department for any information in the court or department records regarding the adopted person or his or her relatives, including names, locations, and any birth, marriage, divorce, or death certificates. Any information which is available shall be given by the court or department only to the department or agency. The department or agency shall keep such information confidential.

**43-146.12. Court or department records provided; record required.** When any information is provided to the department or agency pursuant to section 43-146.11, the person providing the information shall record in the records of the adopted person the nature of the information disclosed, to whom the information was disclosed, and the date of the disclosure.

**43-146.13. Department or agency; contact relative; release of information; condition.**

(1) Upon determining the identity and location of the relative being sought, the department or agency shall attempt to contact the relative to determine such relative's willingness to be contacted by the adopted person.

(2) Information about the relative shall not be released to the adopted person by the department or agency unless such relative agrees to be contacted by the adopted person.

**43-146.14. Department or agency; fees; department; rules and regulations.** The department or agency may charge a reasonable fee in an amount established by the department or agency in rules and regulations to recover expenses in carrying out sections 43-146.10 to 43-146.13. The department or agency shall use the fees to defray costs incurred to carry out such sections. The department or agency may waive the fee if the requesting party shows that the fee would work an undue financial hardship on the party. The department may adopt and promulgate

rules and regulations to carry out sections 43-123.01 and 43-146.01 to 43-146.16.

**43-146.15. Department or agency; written report; contents.** The department or an agency which receives information as provided in section 43-146.11 shall file a written report with the clerk of the court or department within nine months of receipt of the information. The report shall indicate whether the relative has been located and whether a contact between the relative and the adopted person has been arranged or has occurred. If the relative has not been located, the report shall set forth the efforts made to identify and locate the relative.

**43-146.16. Forms; notarized; filing.** The forms provided by sections 43-146.06 and 43-146.08 shall be notarized and filed with the department which shall keep such forms with all other records of the adopted person.

**43-146.17. Heir of adopted person; access to information; when; fee.**

(1) Notwithstanding sections 43-119 to 43-146.16 and except as otherwise provided in this section, an heir twenty-one years of age or older of an adopted person shall have access to all information on file at the Department of Health and Human Services related to such adopted person, including information contained in the original birth certificate of the adopted person, if: (a)(i) The adopted person is deceased, (ii) both biological parents of the adopted person are deceased or, if only one biological parent is known, such parent is deceased, and (iii) each spouse of the biological parent or parents of the adopted person, if any, is deceased, if such spouse is not a biological parent; or (b) at least one hundred years has passed since the birth of the adopted person.

(2) The following information relating to an adopted person shall not be released to the heir of such person under this section: (a) Tests conducted for the human immunodeficiency virus or acquired immunodeficiency syndrome; (b) the revocation of a license to practice medicine in the State of Nebraska; (c) child protective services reports or records; (d) adult protective services reports or records; (e) information from the central register of child protection cases and the Adult Protective Services Central Registry; or (f) law enforcement investigative reports.

(3) The department shall provide a form that an heir of an adopted person may use to request information under this section. The department may charge a reasonable fee in an amount established by rules and regulations of the department to recover expenses incurred by the department in carrying out this section. Such fee may be waived if the requesting party shows that the fee would work an undue financial hardship on the party. When any information is provided to an heir of an adopted person under this section, the disclosure of such information shall be recorded in the records of the adopted person, including the nature of the information disclosed, to whom the information was disclosed, and the date of the disclosure.

(4) For purposes of this section, an heir of an adopted person means a direct biological descendent of such adopted person.

(5) The department may adopt and promulgate rules and regulations to carry out this section.

**43-147. Legislative findings.** The Legislature finds that:

(1) Finding adoptive families for children for whom state assistance is provided pursuant to sections 43-117 and 43-118 and assuring the protection of the interests of the children affected during the entire assistance period require special measures when the adoptive parents move to other states or are residents of another state; and

(2) Providing medical and other necessary services for children, with state assistance, is more difficult when the services are provided in other states.

**43-148. Purposes of sections.** The purposes of sections 43-147 to 43-154 are to:

- (1) Authorize the department to enter into interstate agreements with agencies of other states for the protection of children on whose behalf adoption assistance is being provided by the department; and
- (2) Provide procedures for interstate children's adoption assistance payments, including medical payments.

**43-149. Terms, defined.** As used in sections 43-147 to 43-154, unless the context otherwise requires:

- (1) Adoption assistance state shall mean the state that is signatory to an adoption assistance agreement in a particular case;
- (2) Department shall mean the Department of Health and Human Services; and
- (3) State shall mean a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, or a territory or possession of or administered by the United States.

**43-150. Interstate compact; department; powers; effect.** The department may develop, participate in the development of, negotiate, and enter into one or more interstate compacts on behalf of this state with other states to implement one or more of the purposes set forth in sections 43-147 to 43-154. When entered into and for so long as it shall remain in force, such a compact shall have the force and effect of law.

**43-151. Interstate compact; requirements.** A compact entered into pursuant to sections 43-147 to 43-154 shall include:

- (1) A provision making it available for joinder by all states;
- (2) A provision for withdrawal from the compact upon written notice to the parties, but with a period of one year between the date of the notice and the effective date of the withdrawal;
- (3) A requirement that the protection afforded by or pursuant to the compact continue in force for the duration of the adoption assistance and be applicable to all children and their adoptive parents who on the effective date of the withdrawal are receiving adoption assistance from a party state other than the one in which they are residents and have their principal place of abode;
- (4) A requirement that each instance of adoption assistance to which the compact applies be covered by an adoption assistance agreement in writing between the adoptive parents and the state child welfare agency of the state which undertakes to provide the adoption assistance and that any such agreement be expressly for the benefit of the adopted child and enforceable by the adoptive parents and the state agency providing the adoption assistance; and
- (5) Such other provisions as may be appropriate to implement the proper administration of the compact.

**43-152. Interstate; compact; discretionary provisions.** A compact entered into pursuant to sections 43-147 to 43-154 may contain provisions in addition to those required pursuant to section 43-151, including:

- (1) Provisions establishing procedures and entitlements to medical, developmental, child care, or other social services for the child in accordance with applicable laws even though the child and the adoptive parents are in a state other than the one responsible for or providing the services or the funds to defray part or all of the costs thereof; and
- (2) Such other provisions as may be appropriate or incidental to the proper administration of the compact.

**43-153. Child with special needs; medical assistance identification; how obtained; payment; violations; penalty.**

(1) A child with special needs residing in this state who is the subject of an adoption assistance agreement with another state shall be entitled to receive a medical assistance identification from this state upon the filing with the department of a certified copy of the adoption assistance agreement obtained from the adoption assistance state. In accordance with rules and regulations of the department, the adoptive parents shall be required at least annually to show that the agreement is still in force or has been renewed.

(2) The department shall consider the holder of a medical assistance identification pursuant to this section the same as any other holder of a medical assistance identification under the laws of this state and shall process and make payment on claims on account of such holder in the same manner and pursuant to the same conditions and procedures as for other recipients of medical assistance.

(3) Any person who by means of a willfully false statement or representation or by impersonation or other device obtains or attempts to obtain or who aids or abets any other person in obtaining assistance under sections 43-147 to 43-154 shall, upon conviction thereof, be punished pursuant to section 68-1017.

(4) This section shall apply only to medical assistance for children under adoption assistance agreements from states that have entered into a compact with this state under which the other state provides medical assistance to children with special needs under adoption assistance agreements made by this state. All other children entitled to medical assistance pursuant to adoption assistance agreements entered into by this state shall be eligible to receive it in accordance with the laws and procedures applicable thereto.

**43-154. State plan; administer federal aid.** Consistent with federal law, the department, in connection with the administration of sections 43-147 to 43-154 and any compact entered into pursuant to such sections, shall include in any state plan made pursuant to the Adoption Assistance and Child Welfare Act of 1980, Public Law 96-272, Titles IV(e) and XIX of the Social Security Act, and any other applicable federal laws, the provision of adoption assistance and medical assistance for which the federal government pays some or all of the cost. The department shall apply for and administer all relevant federal aid in accordance with law.

## XXI. ADOPTION-RELATED PROVISIONS

### A. Exchange of Information Contracts:

**43-155. Legislative intent.** The Legislature finds that there are children in temporary foster care situations who would benefit from the stability of adoption. It is the intent of the Legislature that such situations be accommodated through the use of adoptions involving exchange-of-information contracts between the department and the adoptive or biological parent or parents.

**43-156. Terms, defined.** For purposes of sections 43-155 to 43-160, unless the context otherwise requires:

- (1) Adoption involving exchange of information shall mean an adoption of a child in which one or both of the child's biological parents contract with the department for information about the child obtained through his or her adoptive family;
- (2) Exchange-of-information contract shall mean a two-year, renewable obligation, voluntarily agreed to and signed by both the adoptive and biological parent or parents as well as the department; and
- (3) Department shall mean the Department of Health and Human Services.

**43-157. Determination by department.** The department may, when planning the placement of a child for adoption, determine whether the best interests of such child might be served by placing the child in an adoption involving exchange of information.

**43-158. Information included; effect on visitation.** When the department determines that an adoption involving exchange of information would serve a child's best interests, it may enter into agreements with the child's proposed adoptive parent or parents for the exchange of information. The nature of the information promised to be provided shall be specified in an exchange-of-information contract and may include, but shall not be limited to, letters by the adoptive parent or parents at specified intervals providing information regarding the child's development or photographs of the child at specified intervals. Any agreement shall provide that the biological parent or parents keep the department informed of any change in address or telephone number and may include provision for communication by the biological parent or parents indirectly through the department or directly to the adoptive parent or parents. Nothing in sections 43-155 to 43-160 shall be interpreted to preclude or allow court-ordered parenting time, visitation, or other access with the child and the biological parent or parents.

**43-159. Alteration.** When, after placement of a child for adoption, it is determined by the department, in consultation with the adoptive parent or parents, that certain or all exchanges of information are no longer in the best interests of the child, the department may enter into an agreement with the biological parent or parents to alter the original contract made between the department and the biological parent or parents.

**43-160. Effect; enforcement.** The existence of any agreement or agreements of the kind specified in section 43-158 shall not operate to impair the validity of any relinquishment or any decree of adoption entered by a court of the State of Nebraska. The violation of the terms of any agreement or agreements of the kind specified in section 43-158 shall not operate to impair the validity of any relinquishment or any decree of adoption entered by a court of competent jurisdiction. The parties to an exchange-of-information contract shall have the authority to bring suit in a court of competent jurisdiction for the enforcement of any agreement entered into pursuant to section 43-

158.

**B. Communication or Contact Agreements:**

**43-162. Communication or contact agreement; authorized; approval.** The prospective adoptive parent or parents and the birth parent or parents of a prospective adoptee may enter into an agreement regarding communication or contact after the adoption between or among the prospective adoptee and his or her birth parent or parents if the prospective adoptee is in the custody of the Department of Health and Human Services. Any such agreement shall not be enforceable unless approved by the court pursuant to section 43-163.

**43-163. Guardian ad litem; appointment; order approving agreement; considerations.**

(1) Before approving an agreement under section 43-162, the court shall appoint a guardian ad litem if the prospective adoptee is not already represented by a guardian ad litem, and the guardian ad litem of the prospective adoptee shall represent the best interests of the child concerning such agreement. The court may enter an order approving the agreement upon motion of one of the prospective adoptee's birth parents or one of the prospective adoptive parents if the terms of the agreement are approved in writing by the prospective adoptive parent or parents and the birth parent or parents and if the court finds, after consideration of the recommendations of the guardian ad litem and the Department of Health and Human Services and other factors, that such communication with the birth parent or parents and the maintenance of birth family history would be in the best interests of the prospective adoptee.

(2) In determining if the agreement is in the best interests of the prospective adoptee, the court shall consider the following factors as favoring communication with the birth parent or parents: Whether the prospective adoptee and birth parent or parents lived together for a substantial period of time; the prospective adoptee exhibits attachment or bonding to such birth parent or parents; and the adoption is a foster-parent adoption with the birth parent or parents having relinquished the prospective adoptee due to an inability to provide him or her with adequate parenting.

**43-164. Failure to comply with court order; effect.** Failure to comply with the terms of an order entered pursuant to section 43-163 shall not be grounds for setting aside an adoption decree, for revocation of a written consent to adoption after the consent has been approved by the court, or for revocation of a relinquishment of parental rights after the relinquishment has been accepted in writing by the Department of Health and Human Services as provided in section 43-106.01.

**43-165. Enforcement of order; modification; when.** An order entered pursuant to section 43-163 may be enforced by a civil action, and the prevailing party may be awarded, as part of the costs of the action, reasonable attorney's fees. The court shall not modify an order issued under such section unless it finds that the modification is necessary to serve the best interests of the adoptee and (1) that the modification is agreed to by the adoptive parent or parents and the birth parent or parents or (2) exceptional circumstances have arisen since the order was entered that justify modification of the order.

## XXII. SELECTED CRIMINAL STATUTES AND MISCELLANEOUS PROVISIONS

### A. Criminal Sexual Assault:

**28-317. Sexual assault; legislative intent.** It is the intent of the Legislature to enact laws dealing with sexual assault and related criminal sexual offenses which will protect the dignity of the victim at all stages of judicial process, which will insure that the alleged offender in a criminal sexual offense case have preserved the constitutionally guaranteed due process of law procedures, and which will establish a system of investigation, prosecution, punishment, and rehabilitation for the welfare and benefit of the citizens of this state as such system is employed in the area of criminal sexual offenses.

**28-318. Terms, defined.** As used in sections 28-317 to 28-321, unless the context otherwise requires:

- (1) Actor means a person accused of sexual assault;
- (2) Intimate parts means the genital area, groin, inner thighs, buttocks, or breasts;
- (3) Past sexual behavior means sexual behavior other than the sexual behavior upon which the sexual assault is alleged;
- (4) Serious personal injury means great bodily injury or disfigurement, extreme mental anguish or mental trauma, pregnancy, disease, or loss or impairment of a sexual or reproductive organ;
- (5) Sexual contact means the intentional touching of the victim's sexual or intimate parts or the intentional touching of the victim's clothing covering the immediate area of the victim's sexual or intimate parts. Sexual contact shall also mean the touching by the victim of the actor's sexual or intimate parts or the clothing covering the immediate area of the actor's sexual or intimate parts when such touching is intentionally caused by the actor. Sexual contact shall include only such conduct which can be reasonably construed as being for the purpose of sexual arousal or gratification of either party. Sexual contact shall also include the touching of a child with the actor's sexual or intimate parts on any part of the child's body for purposes of sexual assault of a child under sections 28-319.01 and 28-320.01;
- (6) Sexual penetration means sexual intercourse in its ordinary meaning, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, of any part of the actor's or victim's body or any object manipulated by the actor into the genital or anal openings of the victim's body which can be reasonably construed as being for nonmedical or nonhealth purposes. Sexual penetration shall not require emission of semen;
- (7) Victim means the person alleging to have been sexually assaulted;
- (8) Without consent means:
  - (a)(i) The victim was compelled to submit due to the use of force or threat of force or coercion, or (ii) the victim expressed a lack of consent through words, or (iii) the victim expressed a lack of consent through conduct, or (iv) the consent, if any was actually given, was the result of the actor's deception as to the identity of the actor or the nature or purpose of the act on the part of the actor;
  - (b) The victim need only resist, either verbally or physically, so as to make the victim's refusal to consent genuine and real and so as to reasonably make known to the actor the victim's refusal to consent; and
  - (c) A victim need not resist verbally or physically where it would be useless or futile to do so; and



(9) Force or threat of force means (a) the use of physical force which overcomes the victim's resistance or (b) the threat of physical force, express or implied, against the victim or a third person that places the victim in fear of death or in fear of serious personal injury to the victim or a third person where the victim reasonably believes that the actor has the present or future ability to execute the threat.

**28-319. Sexual assault; first degree; penalty.**

(1) Any person who subjects another person to sexual penetration (a) without the consent of the victim, (b) who knew or should have known that the victim was mentally or physically incapable of resisting or appraising the nature of his or her conduct, or (c) when the actor is nineteen years of age or older and the victim is at least twelve but less than sixteen years of age is guilty of sexual assault in the first degree.

(2) Sexual assault in the first degree is a Class II felony. The sentencing judge shall consider whether the actor caused serious personal injury to the victim in reaching a decision on the sentence.

(3) Any person who is found guilty of sexual assault in the first degree for a second time when the first conviction was pursuant to this section or any other state or federal law with essentially the same elements as this section shall be sentenced to a mandatory minimum term of twenty-five years in prison.

**28-319.01 Sexual assault of a child; first degree; penalty.**

(1) A person commits sexual assault of a child in the first degree if he or she subjects another person under twelve years of age to sexual penetration and the actor is at least nineteen years of age or older.

(2) Sexual assault of a child in the first degree is a Class IB felony with a mandatory minimum sentence of fifteen years in prison for the first offense.

(3) Any person who is found guilty of sexual assault of a child in the first degree under this section and who has previously been convicted (a) under this section, (b) under section 28-319 of first degree or attempted first degree sexual assault, (c) under section 28-320.01 before July 14, 2006, of sexual assault of a child or attempted sexual assault of a child, (d) under section 28-320.01 on or after July 14, 2006, of sexual assault of a child in the second or third degree or attempted sexual assault of a child in the second or third degree, or (e) in any other state or federal court under laws with essentially the same elements as this section, section 28-319, or section 28-320.01 as it existed before, on, or after July 14, 2006, shall be guilty of a Class IB felony with a mandatory minimum sentence of twenty-five years in prison.

**28-320. Sexual assault; second or third degree; penalty.**

(1) Any person who subjects another person to sexual contact (a) without consent of the victim, or (b) who knew or should have known that the victim was physically or mentally incapable of resisting or appraising the nature of his or her conduct is guilty of sexual assault in either the second or third degree.

(2) Sexual assault shall be in the second degree and is a Class III felony if the actor shall have caused serious personal injury to the victim.

(3) Sexual assault shall be in the third degree and is a Class I misdemeanor if the actor shall not have caused serious personal injury to the victim.

**28-320.01. Sexual assault of a child; second or third degree; penalties.**

(1) A person commits sexual assault of a child in the second or third degree if he or she subjects another

person fourteen years of age or younger to sexual contact and the actor is at least nineteen years of age or older.

(2) Sexual assault of a child is in the second degree if the actor causes serious personal injury to the victim. Sexual assault of a child in the second degree is a Class II felony for the first offense.

(3) Sexual assault of a child is in the third degree if the actor does not cause serious personal injury to the victim. Sexual assault of a child in the third degree is a Class IIIA felony for the first offense.

(4) Any person who is found guilty of second degree sexual assault of a child under this section and who has previously been convicted (a) under this section, (b) under section 28-319 of first degree or attempted first degree sexual assault, (c) under section 28-319.01 for first degree or attempted first degree sexual assault of a child, or (d) in any other state or federal court under laws with essentially the same elements as this section, section 28-319 or section 28-319.01 shall be guilty of a Class IC felony and shall be sentenced to a mandatory minimum term of twenty-five years in prison.

(5) Any person who is found guilty of third degree sexual assault of a child under this section and who has previously been convicted (a) under this section, (b) under section 28-319 of first degree or attempted first degree sexual assault, (c) under section 28-319.01 for first degree or attempted first degree sexual assault of a child, or (d) in any other state or federal court under laws with essentially the same elements as this section, section 28-319, or 28-319.01 shall be guilty of a Class IC felony.

**28-320.02 Sexual assault; use of computer; prohibited acts; penalties.**

(1) No person shall knowingly solicit, coax, entice, or lure (a) a child sixteen years of age or younger or (b) a peace officer who is believed by such person to be a child sixteen years of age or younger, by means of a computer as that term is defined in section 28-1343, to engage in an act which would be in violation of section 28-319, 28-319.01, or 28-320.01 or subsection (1) or (2) of section 28-320. A person shall not be convicted of both a violation of this subsection and a violation of section 28-319, 28-319.01, or 28-320.01 or subsection (1) or (2) of section 28-320 if the violations arise out of the same set of facts or pattern of conduct and the individual solicited, coaxed, enticed, or lured under this subsection is also the victim of the sexual assault under section 28-319, 28-319.01, or 28-320.01 or subsection (1) or (2) of section 28-320.

(2) A person who violates this section is guilty of a Class IIIA felony. If a person who violates this section has previously been convicted of a violation of this section or section 28-308, 28-309, 28-310, 28-311, 28-313, 28-314, 28-315, 28-319, 28-319.01, or 28-320.01 or subsection (1) or (2) of section 28-320, the person is guilty of a Class III felony.

**B. Methamphetamine:**

**28-457 Methamphetamine; prohibited acts; violation; penalties.**

- (1) For purposes of this section:
- (a) Bodily injury has the same meaning as in section 28-109;
  - (b) Chemical substance means a substance intended to be used as an immediate precursor or reagent in the manufacture of methamphetamine or any other chemical intended to be used in the manufacture of methamphetamine. Intent for purposes of this subdivision may be demonstrated by the substance's use, quantity, manner of storage, or proximity to other precursors or manufacturing equipment;
  - (c) Child means a person under the age of nineteen years;
  - (d) Methamphetamine means methamphetamine, its salts, optical isomers, and salts of its isomers;
  - (e) Paraphernalia means all equipment, products, and materials of any kind which are used, intended for use, or designed for use in manufacturing, injecting, ingesting, inhaling, or otherwise introducing methamphetamine into the human body;
  - (f) Prescription has the same meaning as in section 28-401;
  - (g) Serious bodily injury has the same meaning as in section 28-109; and
  - (h) Vulnerable adult has the same meaning as in section 28-371.
- (2) Any person who knowingly or intentionally causes or permits a child or vulnerable adult to inhale or have contact with methamphetamine, a chemical substance, or paraphernalia is guilty of a Class I misdemeanor. For any second or subsequent conviction under this subsection, any person so offending is guilty of a Class IV felony.
- (3) Any person who knowingly or intentionally causes or permits a child or vulnerable adult to ingest methamphetamine, a chemical substance, or paraphernalia is guilty of a Class I misdemeanor. For any second or subsequent conviction under this subsection, any person so offending shall be guilty of a Class IIIA felony.
- (4) Any child or vulnerable adult who resides with a person violating subsection (2) or (3) of this section shall be taken into protective custody as provided in the Adult Protective Services Act or the Nebraska Juvenile Code.
- (5) Any person who violates subsection (2) or (3) of this section and a child or vulnerable adult actually suffers serious bodily injury by ingestion of, inhalation of, or contact with methamphetamine, a chemical substance, or paraphernalia is guilty of a Class IIIA felony unless the ingestion, inhalation, or contact results in the death of the child or vulnerable adult, in which case the person is guilty of a Class IB felony.
- (6) It is an affirmative defense to a violation of this section that the chemical substance was provided by lawful prescription for the child or vulnerable adult and that it was administered to the child or vulnerable adult in accordance with the prescription instructions provided with the chemical substance.

**C. Criminal Offenses Involving the Family Relation:**

**28-703. Incest; penalty.**

(1) Any person who shall knowingly intermarry or engage in sexual penetration with any person who falls within the degrees of consanguinity set forth in section 28-702 or any person who engages in sexual penetration with his or her minor stepchild commits incest.

(2) Incest is a Class III felony.

(3) (a) For purposes of this section, the definitions found in section 28-318 shall be used.

(b) The testimony of a victim shall be entitled to the same weight as the testimony of victims of other crimes under this code.

**28-705. Abandonment of spouse, child, or dependent stepchild; prohibited acts; penalty.**

(1) Any person who abandons and neglects or refuses to maintain or provide for his or her spouse or his or her child or dependent stepchild, whether such child is born in or out of wedlock, commits abandonment of spouse, child, or dependent stepchild.

(2) For the purposes of this section, child shall mean an individual under the age of sixteen years.

(3) When any person abandons and neglects to provide for his or her spouse or his or her child or dependent stepchild for three consecutive months or more, it shall be prima facie evidence of intent to violate the provisions of subsection (1) of this section.

(4) A designation of assets for or use of income by an individual in accordance with section 68-922 shall be considered just cause for failure to use such assets or income to provide medical support of such individual's spouse.

(5) Abandonment of spouse, child, or dependent stepchild is a Class I misdemeanor.

**28-706. Criminal nonsupport; penalty; exceptions.**

(1) Any person who intentionally fails, refuses, or neglects to provide proper support which he or she knows or reasonably should know he or she is legally obliged to provide to a spouse, minor child, minor stepchild, or other dependent commits criminal nonsupport.

(2) A parent or guardian who refuses to pay hospital costs, medical costs, or any other costs arising out of or in connection with an abortion procedure performed on a minor child or minor stepchild does not commit criminal nonsupport if:

(a) Such parent or guardian was not consulted prior to the abortion procedure; or

(b) After consultation, such parent or guardian refused to grant consent for such procedure, and the abortion procedure was not necessary to preserve the minor child or stepchild from an imminent peril that substantially endangered her life or health.

(3) Support includes, but is not limited to, food, clothing, medical care, and shelter.

(4) A designation of assets for or use of income by an individual in accordance with section 68-922 shall be considered just cause for failure to use such assets or income to provide medical support of such individual's spouse.

(5) This section does not exclude any applicable civil remedy.

(6) Except as provided in subsection (7) of this section, criminal nonsupport is a Class II misdemeanor.

(7) Criminal nonsupport is a Class IV felony if it is in violation of any order of any court.

**28-707. Child abuse; privileges not available; penalties.**

- (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 pornographic photography, films, or depictions; or
  - (e) Placed in a situation to be sexually abused as defined in section 28-319 , 28-319.01, or 28-320.01.
- (2) The statutory privilege between patient and physician, between client and professional counselor, and between husband and wife shall not be available for excluding or refusing testimony in any prosecution for a violation of this section.
- (3) Child abuse is a Class I misdemeanor if the offense is committed negligently.
- (4) Child abuse is a Class IIIA felony if the offense is committed knowingly and intentionally and does not result in serious bodily injury as defined in section 28-109.
- (5) Child abuse is a Class III felony if the offense is committed knowingly and intentionally and results in serious bodily injury as defined in such section.
- (6) Child abuse is a Class IB felony if the offense is committed knowingly and intentionally and results in the death of such child.

**28-708 Repealed. 1988, LB 463, s. 50.**

**28-709. Contributing to the delinquency of a child; penalty; definitions.**

- (1) Any person who, by any act, encourages, causes, or contributes to the delinquency or need for special supervision of a child under eighteen years of age, so that such child becomes, or will tend to become, a delinquent child, or a child in need of special supervision, commits contributing to the delinquency of a child.
- (2) The following definitions shall be applicable to this section:
- (a) Delinquent child shall mean any child under the age of eighteen years who has violated any law of the state or any city or village ordinance; and
  - (b) 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 departs himself so as to injure or endanger seriously the morals or health of himself or others.
- (3) Contributing to the delinquency of a child is a Class I misdemeanor.

**D. Classification of Criminal Penalties:**

**28-104. Offense; crime; synonymous.** The terms offense and crime are synonymous as used in this code and mean a violation of, or conduct defined by, any statute for which a fine, imprisonment, or death may be imposed.

**28-105. Felonies; classification of penalties; sentences; where served; eligibility for probation.**

(1) For purposes of the Nebraska Criminal Code and any statute passed by the Legislature after the date of passage of the code, felonies are divided into nine classes which are distinguished from one another by the following penalties which are authorized upon conviction:

Class I felony .....	Death
Class IA felony .....	Life imprisonment without parole
Class IB felony .....	Maximum-life imprisonment Minimum-twenty years imprisonment
Class IC felony .....	Maximum-fifty years imprisonment Mandatory minimum-five years imprisonment
Class ID felony .....	Maximum-fifty years imprisonment Mandatory minimum-three years imprisonment
Class II felony .....	Maximum-fifty years imprisonment Minimum-one year imprisonment
Class III felony .....	Maximum-twenty years imprisonment, or twenty-five thousand dollars fine, or both Minimum-one year imprisonment
Class IIIA felony.....	Maximum-five years imprisonment, or ten thousand dollars fine, or both Minimum-none
Class IV felony .....	Maximum-five years imprisonment, or ten thousand dollars fine, or both Minimum-none

(2) All sentences of imprisonment for Class IA, IB, IC, ID, II, and III felonies and sentences of one year or more for Class IIIA and IV felonies shall be served in institutions under the jurisdiction of the Department of Correctional Services. Sentences of less than one year shall be served in the county jail except as provided in this subsection. If the department certifies that it has programs and facilities available for persons sentenced to terms of less than one year, the court may order that any sentence of six months or more be served in any institution under the jurisdiction of the department. Any such certification shall be given by the department to the State Court Administrator, who shall forward copies thereof to each judge having jurisdiction to sentence in felony cases.

(3) Nothing in this section shall limit the authority granted in sections 29-2221 and 29-2222 to increase sentences for habitual criminals.

(4) A person convicted of a felony for which a mandatory minimum sentence is prescribed shall not be eligible for probation.

**28-105.01. [Intentionally omitted.]**

**28-106. Misdemeanors; classification of penalties; sentences; where served.**

(1) For purposes of the Nebraska Criminal Code and any statute passed by the Legislature after the date of passage of the code, misdemeanors are divided into seven classes which are distinguished from one another by the following penalties which are authorized upon conviction:

Class I misdemeanor.....	Maximum -- not more than one year imprisonment, or one thousand dollars fine, or both
Minimum -- none	
Class II misdemeanor.....	Maximum -- six months imprisonment, or one thousand dollars fine, or both

Minimum -- none	
Class III misdemeanor.....	Maximum -- three months imprisonment, or five hundred dollars fine, or both
Minimum -- none	
Class IIIA misdemeanor.....	Maximum -- seven days imprisonment, five hundred dollars fine, or both
Minimum -- none	
Class IV misdemeanor.....	Maximum -- no imprisonment, five hundred dollars fine
Minimum -- one hundred dollars fine	
Class V misdemeanor.....	Maximum -- no imprisonment, one hundred dollars fine
Minimum -- none	
Class W misdemeanor.....	Driving under the influence or implied consent
First conviction	
Maximum -- sixty days imprisonment and five hundred dollars fine	
Mandatory minimum -- seven days imprisonment and four hundred dollars fine	
Second conviction	
Maximum -- six months imprisonment and five hundred dollars fine	
Mandatory minimum -- thirty days imprisonment and five hundred dollars fine	
Third conviction	
Maximum -- one year imprisonment and six hundred dollars fine	
Mandatory minimum -- ninety days imprisonment and six hundred dollars fine	

(2) Sentences of imprisonment in misdemeanor cases shall be served in the county jail, except that in the following circumstances the court may, in its discretion, order that such sentences be served in institutions under the jurisdiction of the Department of Correctional Services:

- (a) If the sentence is for a term of one year upon conviction of a Class I misdemeanor;
- (b) If the sentence is to be served concurrently or consecutively with a term for conviction of a felony; or
- (c) If the Department of Correctional Services has certified as provided in section 28-105 as to the availability of facilities and programs for short-term prisoners and the sentence is for a term of six months or more.

**E. Statute of Limitations for Criminal Offenses:**

**29-110 Prosecutions; complaint, indictment, or information; filing; time limitations; exceptions.**

(1) Except as otherwise provided by law, no person shall be prosecuted for any felony unless the indictment is found by a grand jury within three years next after the offense has been done or committed or unless a complaint for the same is filed before the magistrate within three years next after the offense has been done or committed and a warrant for the arrest of the defendant has been issued.

(2) Except as otherwise provided by law, no person shall be prosecuted, tried, or punished for any misdemeanor or other indictable offense below the grade of felony or for any fine or forfeiture under any penal statute unless the suit, information, or indictment for such offense is instituted or found within one year and six months from the time of committing the offense or incurring the fine or forfeiture or within one year for any offense the punishment of which is restricted by a fine not exceeding one hundred dollars and to imprisonment not exceeding three months.

(3) Except as otherwise provided by law, no person shall be prosecuted for kidnapping under section 28-313, false imprisonment under section 28-314 or 28-315, child abuse under section 28-707, pandering under section 28-802, debauching a minor under section 28-805, or an offense under section 28-813, 28-813.01, or 28-1463.03 when the victim is under sixteen years of age at the time of the offense (a) unless the indictment for such offense is found by a grand jury within seven years next after the offense has been committed or within seven years next after the victim's sixteenth birthday, whichever is later, or (b) unless a complaint for such offense is filed before the magistrate within seven years next after the offense has been committed or within seven years next after the victim's sixteenth birthday, whichever is later, and a warrant for the arrest of the defendant has been issued.

(4) No person shall be prosecuted for a violation of the Securities Act of Nebraska under section 8-1117 unless the indictment for such offense is found by a grand jury within five years next after the offense has been done or committed or unless a complaint for such offense is filed before the magistrate within five years next after the offense has been done or committed and a warrant for the arrest of the defendant has been issued.

(5) There shall not be any time limitations for prosecution or punishment for treason, murder, arson, forgery, sexual assault in the first or second degree under section 28-319 or 28-320, sexual assault of a child in the second or third degree under section 28-320.01, or sexual assault of a child in the first degree under section 28-319.01; nor shall there be any time limitations for prosecution or punishment for sexual assault in the third degree under section 28-320 when the victim is under sixteen years of age at the time of the offense.

(6) The time limitations prescribed in this section shall include all inchoate offenses pursuant to the Nebraska Criminal Code and compounding a felony pursuant to section 28-301.

(7) The time limitations prescribed in this section shall not extend to any person fleeing from justice.

(8) When any suit, information, or indictment for any crime or misdemeanor is limited by any statute to be brought or exhibited within any other time than is limited by this section, then the suit, information, or indictment shall be brought or exhibited within the time limited by such statute.

(9) If any suit, information, or indictment is quashed or the proceedings set aside or reversed on writ of error, the time during the pendency of such suit, information, or indictment so quashed, set aside, or reversed shall not be reckoned within this statute so as to bar any new suit, information, or indictment for the same offense.

(10) The changes made to this section by Laws 2004, LB 943, shall apply to offenses committed prior to April 16, 2004, for which the statute of limitations has not expired as of such date and to offenses committed on or after such date.

(11) The changes made to this section by Laws 2005, LB 713, shall apply to offenses committed prior to September 4, 2005, for which the statute of limitations has not expired as of such date and to offenses committed on or after such date.



**F. Justifiable Use of Force:**

**28-1413. Use of force by person with special responsibility for care, discipline, or safety of others.** The use of force upon or toward the person of another is justifiable if:

- (1) The actor is the parent or guardian or other person similarly responsible for the general care and supervision of a minor or a person acting at the request of such parent, guardian, or other responsible person and:
- (a) Such force is used for the purpose of safeguarding or promoting the welfare of the minor, including the prevention or punishment of his or her misconduct; and
  - (b) Such force used is not designed to cause or known to create a substantial risk of causing death,

serious bodily harm, disfigurement, extreme pain or mental distress, or gross degradation;

(2) The actor is the guardian or other person similarly responsible for the general care and supervision of an incompetent person and:

(a) Such force is used for the purpose of safeguarding or promoting the welfare of the incompetent person, including the prevention of his or her misconduct, or, when such incompetent person is in a hospital or other institution for his or her care and custody, for the maintenance of reasonable discipline in such institution; and

(b) Such force used is not designed to cause or known to create a substantial risk of causing death, serious bodily harm, disfigurement, extreme or unnecessary pain, mental distress, or humiliation;

(3) The actor is a doctor or other therapist or a person assisting him or her at his or her discretion and:

(a) Such force is used for the purpose of administering a recognized form of treatment which the actor believes to be adapted to promoting the physical or mental health of the patient; and

(b) Such treatment is administered with the consent of the patient or, if the patient is a minor or an incompetent person, with the consent of his or her parent or guardian or other person legally competent to consent in his or her behalf or the treatment is administered in an emergency when the actor believes that no one competent to consent can be consulted and that a reasonable person, wishing to safeguard the welfare of the patient, would consent;

(4) The actor is a warden or other authorized official of a correctional institution and:

(a) He or she believes that the force used is necessary for the purpose of enforcing the lawful rules or procedures of the institution, unless his or her belief in the lawfulness of the rule or procedure sought to be enforced is erroneous and his or her error is the result of ignorance or mistake as to the provisions or sections 28-1406 to 28-1416, any other provision of the criminal law, or the law governing the administration of the institution;

(b) The nature or degree of force used is not forbidden by section 28-1408 or 28-1409; and

(c) If deadly force is used, its use is otherwise justifiable under sections 28-1406 to 28-1416;

(5) The actor is a person responsible for the safety of a vessel or an aircraft or a person acting at his or her direction and:

(a) He or she believes that the force used is necessary to prevent interference with the operation of the vessel or aircraft or obstruction of the execution of a lawful order unless such belief in the lawfulness of the order is erroneous and such error is the result of ignorance or mistake as to the law defining such authority; and

(b) If deadly force is used, its use is otherwise justifiable under sections 28-1406 to 28-1416; and

(6) The actor is a person who is authorized or required by law to maintain order or decorum in a vehicle, train, or other carrier or in a place where others are assembled, and:

(a) He or she believes that the force used is necessary for such purpose; and

(b) Such force used is not designed to cause or know to create a substantial risk of causing death, bodily harm, or extreme mental distress.

#### **G. Definition of Detention Facilities:**

**83-4,125. Detention facilities, defined.** For purposes of sections 83-4,124 to 83-4,134:

(1) Criminal detention facility shall mean any institution operated by a political subdivision or a combination of political subdivisions for the careful keeping or rehabilitative needs of adult or juvenile criminal offenders or those persons being detained while awaiting disposition of charges against them. Criminal detention facility shall not include any institution operated by the Department of Correctional Services. Criminal detention facilities shall be classified as follows:

(a) Type I Facilities shall mean criminal detention facilities used for the detention of persons for not more than twenty-four hours, excluding non-judicial days;

(b) Type II Facilities shall mean criminal detention facilities used for the detention of persons for not more than ninety-six hours, excluding non-judicial days; and

(c) Type III Facilities shall mean criminal detention facilities used for the detention of persons beyond ninety-six hours; and

(2) Juvenile detention facility shall mean an institution operated by a political subdivision or political subdivisions for the secure custody and treatment of persons younger than eighteen years of age, including persons under the jurisdiction of a juvenile court, who are serving a sentence pursuant to a conviction in a county or district court or who are detained while waiting disposition of charges against them. Juvenile detention facility shall not include any institution operated by the department.

#### **H. Request for Transfer of Criminal Case to Juvenile Court:**

**29-1816. Arraignment of accused; when considered waived; child less than eighteen years of age; move court to waive jurisdiction to juvenile court; findings for decision; transfer to juvenile court; effect.**

The accused shall be arraigned by reading to him or her the indictment or information, unless the reading is waived by the accused when the nature of the charge is made known to him or her. The accused shall then be asked whether he or she is guilty or not guilty of the offense charged. If the accused appears in person and by counsel and goes to trial before a jury regularly impaneled and sworn, he or she shall be deemed to have waived arraignment and a plea of not guilty shall be deemed to have been made.

At the time of the arraignment the court shall advise the defendant, if he or she was less than eighteen years of age at the time of the commitment of the alleged crime, that he or she may move the district court at any time not later than fifteen days before trial to waive jurisdiction in such case to the juvenile court for further proceedings under the Nebraska Juvenile Code. The court shall schedule a hearing on such motion within fifteen days. The customary rules of evidence shall not be followed at such hearing. The county attorney shall present the evidence and reasons why such case should be retained, the defendant shall present the evidence and reasons why the case should be transferred, and both sides shall consider the criteria set forth in section 43-276. After considering all the evidence and reasons presented by both parties, pursuant to section 43-276, the case shall be transferred unless a sound basis exists for retaining the case.

In deciding such motion the court shall consider, among other matters, the matters set forth in section 43-276 for consideration by the county attorney when determining the type of case to file.

The court shall set forth findings for the reason for its decision, which shall not be a final order for the purpose of enabling an appeal. If the court determines that the child should be transferred to the juvenile court, the complete file in the district court shall be transferred to the juvenile court and the indictment or information may be used in place of a petition therein. The court making a transfer shall order the minor to be taken forthwith to the juvenile court and designate where the minor shall be kept pending determination by the juvenile court. The juvenile court shall then proceed as provided in the Nebraska Juvenile Code.

### XXIII. FOREIGN NATIONAL MINORS

#### **43-3801. Purpose of sections.**

(1) The purpose of sections 43-3801 to 43-3812 is to protect foreign national minors or minors holding dual citizenship within the State of Nebraska.

(2) The Legislature recognizes that:

- (a) Foreign national minors and minors holding dual citizenship are essential to the maintenance of their culture, traditions, and values;
- (b) The governments of foreign countries have a duty to care for the interests of their nationals and citizens abroad, particularly foreign national minors and minors holding dual citizenship;
- (c) The governments of foreign countries have the right to information and access in all cases involving minors who are children of foreign nationals and minors holding dual citizenship; and
- (d) The state should be able to identify foreign national minors and minors holding dual citizenship and their families in order to provide services for them.

#### **43-3802. Terms, defined.** For purposes of sections 43-3801 to 43-3812:

- (1) Agency means the agency in a foreign country charged with ensuring the welfare of minors who are nationals of that country or who hold dual citizenship in that country and the United States;
- (2) Custodian means the nonparental caretaker of a foreign national minor or minor holding dual citizenship who has been entrusted by the parent of the minor with the day-to-day care of the minor;
- (3) Department means the Department of Health and Human Services;
- (4) Foreign national minor means an unmarried person who is under the age of eighteen years and was born in a country other than the United States; and
- (5) Minor holding dual citizenship means an unmarried person who is under the age of eighteen years and who holds citizenship simultaneously in the United States and one other country.

**43-3803. Early identification; department; duties.** The department, in conjunction with the appropriate consulate, shall provide a method of early identification of foreign national minors and minors holding dual citizenship and their families in order to provide services which assure all the protections afforded by all applicable treaties and laws.

#### **43-3804. Ward of department; department; determination required; information provided to minor and parent or custodian; notify consulate; release of information.**

(1) When a court makes a minor a ward of the department, the department shall determine whether the minor is a foreign national minor or a minor holding dual citizenship. If such minor is a foreign national minor or a minor holding dual citizenship, the department shall provide such minor and his or her parent or custodian with the following information:

- (a) Written information in English and the minor's native language, explaining the juvenile court process and the rights of the minor and his or her parents or custodian; and
- (b) The address and telephone number of the nearest consulate serving the minor.

(2) The department shall notify the appropriate consulate in writing within ten working days after (a) the initial date the department takes custody of a foreign national minor or a minor holding dual citizenship or the date the department learns that a minor in its custody is a foreign national minor or a minor holding dual citizenship,

whichever occurs first, (b) the parent of a foreign national minor or a minor holding dual citizenship has requested that the consulate be notified, or (c) the department determines that a noncustodial parent of a foreign national minor or a minor holding dual citizenship in its custody resides in the country represented by the consulate.

(3) The department shall provide the consulate with the name and date of birth of the foreign national minor or the minor holding dual citizenship, the name of his or her parent or custodian, and the name and telephone number of the departmental caseworker directly responsible for the case.

(4) If the consulate needs additional specific information regarding the case of the foreign national minor or the minor holding dual citizenship, the consulate may contact the department and the department may release any information not required to be kept confidential under the Nebraska Juvenile Code or other state or federal statutes.

**43-3805. Interview by consular representative.** A consular representative may interview a foreign national minor or minor holding dual citizenship who is a citizen of the country represented by the consulate. The consular representative shall contact the department to arrange for an interview of a foreign national minor or a minor holding dual citizenship.

**43-3806. Ward of department; special immigrant juvenile status; documentation.** If a court makes a foreign national minor or a minor holding dual citizenship a ward of the department and the minor has become eligible for special immigrant juvenile status as defined in 8 U.S.C. 1101(a)(27)(J), the consulate will assist the department in obtaining the necessary documentation for completion of the application for special immigrant juvenile status.

**43-3807. Minor in custody of department; birth certificate; application.** The department may obtain a birth certificate from the appropriate country for a foreign national minor or a minor holding dual citizenship in the custody of the department. The department may request the assistance of the consulate in obtaining the necessary documentation to complete the application for a birth certificate under this section.

**48-3808. Home studies; other steps to ensure minor's welfare; department; duties.**

(1) Upon notification to a consulate pursuant to section 43-3804, the department shall request that the consulate obtain through the agency the appropriate home studies of potential families in such country who may be involved in the case and forward the information to the departmental caseworker directly responsible for the case.

(2) When a foreign national minor is placed in his or her country or a minor holding dual citizenship is placed in the country other than the United States in which he or she holds citizenship, the department shall take all steps necessary to obtain the cooperation of the consulate and the agency to ensure the minor's welfare and provide whatever services are needed. The department shall request copies of the monitoring reports prepared by the agency concerning the welfare of the minor.

**43-3809. Court appearance; cooperation of consulate.** The department will request the cooperation of the appropriate consulate in order to notify a person who resides in a foreign country and is required to appear in a court in this state regarding the case of a foreign national minor or a minor holding dual citizenship.

**43-3810. Coordination of activities; chief executive officer of the department; duties.**  
The chief executive officer of the department or his or her designee shall meet as necessary with consular officials to

discuss, clarify, and coordinate activities, ideas and concerns of a high-profile nature, timely media attention, and joint prevention efforts regarding the protection and well-being of foreign national minors and minors holding dual citizenship and families.

**43-3811. Rules and regulations.** The department may adopt and promulgate rules and regulations to carry out sections 43-3801 to 43-3810.

**43-3812. Sections; how construed.** Nothing in sections 43-3801 to 43-3811 shall be construed as a waiver of immunities to which a consulate and its consular agents are entitled under international law, the Foreign Sovereign Immunities Act of 1976, 28 U.S.C. 1602 et seq., and international treaties in force between the United States and foreign countries.

## XXIV. COMPULSORY EDUCATION

### **79-201. Compulsory education; attendance required; exceptions.**

(1) For purposes of this section:

(a) Prior to July 1, 2005, a child is of mandatory attendance age if the child (i) has reached seven years of age, (ii) did not reach sixteen years of age prior to July 16, 2004, and (iii) has not reached eighteen years of age; and

(b) On and after July 1, 2005, a child is of mandatory attendance age if the child (i) will reach six years of age prior to January 1 of the then-current school year, (ii) did not reach sixteen years of age prior to July 16, 2004, and (iii) has not reached eighteen years of age.

(2) Except as provided in subsection (3) of this section, every person residing in a school district within the State of Nebraska who has legal or actual charge or control of any child who is of mandatory attendance age or is enrolled in a public school shall cause such child to enroll in, if such child is not enrolled, and attend regularly a public, private, denominational, or parochial day school which meets the requirements for legal operation prescribed in Chapter 79, or a school which elects pursuant to section 79-1601 not to meet accreditation or approval requirements, each day that such school is open and in session, except when excused by school authorities or when illness or severe weather conditions make attendance impossible or impracticable.

(3) Subsection (2) of this section does not apply in the case of any child who:

(a) Has obtained a high school diploma by meeting the graduation requirements established in section 79-729;

(b) Has completed the program of instruction offered by a school which elects pursuant to section 79-1601 not to meet accreditation or approval requirements;

(c) Has reached the age of eighteen years;

(d) Has reached the age of sixteen years and such child's parent or guardian has signed a notarized release discontinuing the enrollment of the child on a form provided by the school;

(e)(i) Will reach six years of age prior to January 1 of the then-current school year, but will not reach seven years of age prior to January 1 of such school year, (ii) such child's parent or guardian has signed an affidavit stating that the child is participating in an education program that the parent or guardian believes will prepare the child to enter grade one for the following school year, and (iii) such affidavit has been filed by the parent or guardian with the school district in which the child resides;

(f)(i) Will reach six years of age prior to January 1 of the then-current school year but has not reached seven years of age, (ii) such child's parent or guardian has signed an affidavit stating that the parent or guardian intends for the child to participate in a school which has elected or will elect pursuant to section 79-1601 not to meet accreditation or approval requirements and the parent or guardian intends to provide the Commissioner of Education with a statement pursuant to subsection (3) of section 79-1601 on or before the child's seventh birthday, and (iii) such affidavit has been filed by the parent or guardian with the school district in which the child resides; or

(g) Will not reach six years of age prior to January 1 of the then-current school year and such child was enrolled in a public school and has discontinued the enrollment according to the policy of the school board adopted pursuant to subsection (4) of this section.

(4) The board shall adopt policies allowing discontinuation of the enrollment of students who will not reach six years of age prior to January 1 of the then-current school year and specifying the procedures therefor.

### **79-202. Repealed. Laws 2004, LB 868, s. 5.**



**79-203. Compulsory attendance; necessarily employed children; permit.** In case the services or earnings of a child are necessary for his or her own support or the support of those actually dependent upon him or her and the child is fourteen years of age or more and not more than sixteen years of age and has completed the work of the eighth grade, the person having legal or actual charge of such child may apply to the superintendent of the primary high school district in which the child resides or a person designated in writing by the superintendent. The superintendent or designee may, in his or her discretion, issue a permit allowing such child to be employed.

**79-204. Compulsory attendance; necessarily employed children; continuation schools; attendance required.** All children who are fourteen years of age or more and not more than sixteen years of age, who reside in a school district in which a part-time continuation school is maintained by authority of the public school district and who are granted permits to be employed under section 79-203, shall attend a public, private, denominational, or parochial part-time continuation school eight hours of each week during the entire school year

**79-205. Compulsory attendance; record of attendance; annual attendance reports; made where.** Each teacher in the public, private, denominational, and parochial schools of this state shall keep a record showing (1) the name, age, and address of each child enrolled, (2) the number and county of the school district in which the school is located, (3) the number of days each pupil was present and the number of days absent, and (4) the cause of absence. On the third day on which the public, private, denominational, and parochial schools are in session at the beginning of each school year, each teacher shall send to the superintendent or administrator of the school a list of the pupils enrolled in his or her school with the age, grade, and address of each.

**79-206. Compulsory attendance; nonattendance lists; transmission to enforcement officers.** Each superintendent or administrator of a school district, upon the receipt of the list specified in section 79-205, shall (1) compare the names of the children enrolled with the last census report on file in his or her office from such district, (2) prepare a list of all children resident in such district under his or her jurisdiction who are not attending school as provided in section 79-201, and (3) transmit the list to the officer or officers in such district whose duty it is to enforce the provisions of such section.

**79-207. Compulsory attendance; entry or withdrawal of student; teachers' attendance reports.** Whenever any child enters or withdraws from any school after the third day in which school is in session, the teacher shall transmit at once the name of such child to the superintendent as specified in section 79-206 and the superintendent shall use such information in whatever way he or she deems necessary for the purpose of enforcing section 79-201. At the end of each week each teacher shall report all absences and the cause of absence to the proper superintendent. At the close of each period each teacher shall transmit to the superintendent a report showing (1) the name, age, and address of each child enrolled, (2) the number of half days each child was absent, (3) the number enrolled and the number attending on the last day of the period, and (4) the average daily attendance for the period. The provisions of this section requiring reports from each teacher shall not apply to individual teachers in schools employing more than one teacher but shall in such case apply to the head teacher, principal, or superintendent who shall obtain the required information from the teachers under his or her supervision or control. All reports and lists required in this section shall be upon blanks prescribed by the State Department of Education.

**79-208. Compulsory attendance; attendance officers; powers and duties; compensation.** School boards shall appoint one or more attendance officers who shall be vested with police powers and shall enforce the provisions of section 79-201 in the school districts for which they act. Attendance officers shall be compensated for their services in such sums as are determined by the school board, to be paid out of the general school fund of the district.

**79-209. Compulsory attendance; nonattendance; school district; duties; remedial services; enforcement.** In all school districts in this state, any superintendent, principal, teacher, or member of the school board who knows of any violation of section 79-201 on the part of any child of school age, his or her parent, the person in actual or legal control of such child, or any other person shall within three days report such violation to the attendance officer of the school, who shall investigate the case. When of his or her personal knowledge, by report or complaint from any resident of the district, or by report or complaint as provided in this section, the attendance officer believes that any child is unlawfully absent from school, the attendance officer shall immediately investigate.

All school districts shall have a written policy on excessive absenteeism. The policy shall state the number of absences or the hourly equivalent upon the occurrence of which the school shall render all services in its power to compel such child to attend some public, private, denominational, or parochial school, which the person having control of the child shall designate, in an attempt to remediate the child's truant behavior. The number of absences in the policy shall not exceed five days per quarter or the hourly equivalent. School districts may use excused and unexcused absences for purposes of the policy. Such services shall include, but need not be limited to:

- (1) One or more meetings between a school attendance officer, school social worker or other person designated by the school administration if such school does not have a school social worker, the child's parent or guardian, and the child, if necessary, to report and to attempt to solve the truancy problem, unless the officer or worker has documented the refusal of the parent or guardian to participate in such meetings;
- (2) Educational counseling to determine whether curriculum changes, including, but not limited to, enrolling the child in an alternative education program that meets the specific educational and behavioral needs of the child, would help solve the truancy problem;
- (3) Educational evaluation, which may include a psychological evaluation, to assist in determining the specific condition, if any, contributing to the truancy problem, supplemented by specific efforts by the school to help remedy any condition diagnosed; and
- (4) Investigation of the truancy problem by the school social worker, or if such school does not have a school social worker, by another person designated by the administration, to identify conditions which may be contributing to the truancy problem. If services for the child and his or her family are determined to be needed, the school social worker or other person performing the investigation shall meet with the parent or guardian and the child to discuss any referral to appropriate community agencies for economic services, family or individual counseling, or other services required to remedy the conditions that are contributing to the truancy problem.

If the child continues to be or becomes habitually truant, the attendance officer shall serve a written notice to the person violating section 79-201, warning him or her to comply with its provisions. If within one week after the time such notice is given such person is still violating the section, the attendance officer shall file a report with the county attorney of the county in which such person resides. All school districts shall have a written policy describing notification of habitual truancy to the county attorney. The number of absences in the policy shall not exceed twenty days cumulative per year or the hourly equivalent. School districts may use excused and unexcused absences for purposes of the policy. The county attorney may file a complaint against such person before the judge of the county court of the county in which such person resides charging such person with violation of section 79-201. If after such notice has been sent to any person violating such section such person again violates the same section, no written notice shall be required but a complaint may be filed at once.

**79-210. Violations; penalty.** Any person violating the provisions of sections 79-201 to 79-209 shall be guilty of a Class III misdemeanor.

**XXV. CHILDREN'S BEHAVIORAL HEALTH TASK FORCE**

**43-4001. Children's Behavioral Health Task Force; created; members; expenses; chairperson.**

(1) The Children's Behavioral Health Task Force is created. The task force shall consist of the following members:

(a) The chairperson of the Health and Human Services Committee of the Legislature or his or her designee;

(b) The chairperson of the Appropriations Committee of the Legislature or his or her designee;

(c) The chairperson of the Behavioral Health Oversight Commission of the Legislature;

(d) Two providers of community-based behavioral health services to children, appointed by the chairperson of the Health and Human Services Committee of the Legislature;

(e) One regional administrator appointed under section 71-808, appointed by the chairperson of the Health and Human Services Committee of the Legislature;

(f) Two representatives of organizations advocating on behalf of consumers of children's behavioral health services and their families, appointed by the chairperson of the Health and Human Services Committee of the Legislature;

(g) One juvenile court judge, appointed by the Chief Justice of the Supreme Court;

(h) Two representatives of the Department of Health and Human Services, appointed by the Governor; and

(i) The Administrator of the Office of Juvenile Services.

(2) All members shall be appointed within thirty days after May 25, 2007.

(3) Members of the task force shall serve without compensation but shall be reimbursed from the Nebraska Health Care Cash Fund for their actual and necessary expenses as provided in sections 81-1174 to 81-1177.

(4) The chairperson of the Behavioral Health Oversight Commission of the Legislature shall serve as chairperson of the task force. Administrative and staff support for the task force shall be provided by the Health and Human Services Committee of the Legislature and the Appropriations Committee of the Legislature.

**43-4002. Children's Behavioral Health Task Force; prepare children's behavioral health plan; contents; department; duties; implementation.**

(1) The Children's Behavioral Health Task Force, under the direction of and in consultation with the Health and Human Services Committee of the Legislature and the Department of Health and Human Services, shall prepare a children's behavioral health plan and shall submit such plan to the Governor and the committee on or before December 4, 2007. The scope of the plan shall include juveniles accessing public behavioral health resources.

(2) The plan shall include, but not be limited to:

(a) Plans for the development of a statewide integrated system of care to provide appropriate educational, behavioral health, substance abuse, and support services to children and their families. The integrated system of care should serve both adjudicated and nonadjudicated juveniles with behavioral health or substance abuse issues;

(b) Plans for the development of community-based inpatient and subacute substance abuse and behavioral health services and the allocation of funding for such services to the community pursuant to subdivision (4) of section 43-406;

(c) Strategies for effectively serving juveniles assessed in need of substance abuse or behavioral health services upon release from the Youth Rehabilitation and Treatment Center-Kearney or Youth Rehabilitation and Treatment Center-Geneva;

(d) Plans for the development of needed capacity for the provision of community-based substance abuse and behavioral health services for children;

(e) Strategies and mechanisms for the integration of federal, state, local, and other funding sources for the provision of community-based substance abuse and behavioral health services for children;

(f) Measurable benchmarks and timelines for the development of a more comprehensive and integrated system of substance abuse and behavioral health services for children;

(g) Identification of necessary and appropriate statutory changes for consideration by the Legislature; and

(h) Development of a plan for a data and information system for all children receiving substance abuse and behavioral health services shared among all parties involved in the provision of services for children.

(3) The department shall provide a written implementation and appropriations plan for the children's behavioral health plan to the Governor and the committee by January 4, 2008. The chairperson of the Health and Human Services Committee of the Legislature shall prepare legislation or amendments to legislation to implement this subsection for introduction in the 2008 legislative session.

**43-4003. Children's Behavioral Health Task Force; duties.** The Children's Behavioral Health Task Force will oversee implementation of the children's behavioral health plan until June 30, 2010, at which time the task force shall submit to the Governor and the Legislature a recommendation regarding the necessity of continuing the task force.