

AMENDMENTS TO LB388

Introduced by Judiciary.

1 1. Strike the original sections and insert the following new
2 sections:

3 Section 1. Section 43-283.01, Revised Statutes Cumulative
4 Supplement, 2018, is amended to read:

5 43-283.01 (1) In determining whether reasonable efforts have been
6 made to preserve and reunify the family and in making such reasonable
7 efforts, the juvenile's health and safety are the paramount concern.

8 (2) Except as provided in subsections (4) and (5) of this section,
9 reasonable efforts shall be made to preserve and reunify families prior
10 to the placement of a juvenile in foster care to prevent or eliminate the
11 need for removing the juvenile from the juvenile's home and to make it
12 possible for a juvenile to safely return to the juvenile's home.

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

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

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

24 (b) The parent of the juvenile has (i) committed ~~first or second~~
25 ~~degree~~ murder of ~~to~~ another child of the parent, (ii) committed voluntary
26 manslaughter of ~~to~~ another child of the parent, (iii) aided or abetted,
27 attempted, conspired, or solicited to commit murder, or aided or abetted

1 voluntary manslaughter of the juvenile or another child of the parent,
2 (iv) committed a felony assault which results in serious bodily injury to
3 the juvenile or another minor child of the parent, (v) committed a sexual
4 assault of the juvenile or another minor child under section 28-319,
5 28-319.01, 28-320, or 28-320.01, (vi) committed labor trafficking of a
6 minor or sex trafficking of a minor under section 28-831 with such
7 juvenile or another minor child as the victim, or (vii) ~~(v)~~ been
8 convicted of ~~felony~~ sexual assault of the other parent of the juvenile
9 under section 28-319, 28-319.01, 28-320, or 28-320.01 or a comparable
10 crime in another state; or

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

13 (5) Except as otherwise provided in the Nebraska Indian Child
14 Welfare Act, if the family includes a child who was conceived by the
15 victim of a sexual assault and a biological parent is convicted of the
16 crime under section 28-319, 28-319.01, ~~or~~ 28-320, or 28-320.01 or a law
17 in another jurisdiction similar to any such ~~either section 28-319 or~~
18 ~~28-320,~~ the convicted biological parent of such child shall not be
19 considered a part of the child's family for purposes of requiring
20 reasonable efforts to preserve and reunify the family.

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

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

1 Sec. 2. Section 43-285, Revised Statutes Cumulative Supplement,
2 2018, is amended to read:

3 43-285 (1) When the court awards a juvenile to the care of the
4 Department of Health and Human Services, an association, or an individual
5 in accordance with the Nebraska Juvenile Code, the juvenile shall, unless
6 otherwise ordered, become a ward and be subject to the legal custody and
7 care of the department, association, or individual to whose care he or
8 she is committed. Any such association and the department shall have
9 authority, by and with the assent of the court, to determine the care,
10 placement, medical services, psychiatric services, training, and
11 expenditures on behalf of each juvenile committed to it. Any such
12 association and the department shall be responsible for applying for any
13 health insurance available to the juvenile, including, but not limited
14 to, medical assistance under the Medical Assistance Act. Such custody and
15 care shall not include the guardianship of any estate of the juvenile.

16 (2)(a) Following an adjudication hearing at which a juvenile is
17 adjudged to be under subdivision (3)(a) or (c) of section 43-247, the
18 court may order the department to prepare and file with the court a
19 proposed plan for the care, placement, services, and permanency which are
20 to be provided to such juvenile and his or her family. The health and
21 safety of the juvenile shall be the paramount concern in the proposed
22 plan.

23 (b) The department shall provide opportunities for the child, in an
24 age or developmentally appropriate manner, to be consulted in the
25 development of his or her plan as provided in the Nebraska Strengthening
26 Families Act.

27 (c) The department shall include in the plan for a child who is
28 fourteen years of age or older and subject to the legal care and custody
29 of the department a written independent living transition proposal which
30 meets the requirements of section 43-1311.03 and, for eligible children,
31 the Young Adult Bridge to Independence Act. The department juvenile court

1 shall provide a copy of the plan to all interested parties before the
2 hearing and within the time period specified by local court rule. The
3 court may approve the plan, modify the plan, order that an alternative
4 plan be developed, or implement another plan that is in the child's best
5 interests. In its order the court shall include a finding regarding the
6 appropriateness of the programs and services described in the proposal
7 designed to help the child prepare for the transition from foster care to
8 a successful adulthood. The court shall also ask the child, in an age or
9 developmentally appropriate manner, if he or she participated in the
10 development of his or her plan and make a finding regarding the child's
11 participation in the development of his or her plan as provided in the
12 Nebraska Strengthening Families Act. Rules of evidence shall not apply at
13 the dispositional hearing when the court considers the plan that has been
14 presented.

15 (d) The last court hearing before jurisdiction pursuant to
16 subdivision (3)(a) of section 43-247 is terminated for a child who is
17 sixteen years of age or older shall be called the independence hearing.
18 In addition to other matters and requirements to be addressed at this
19 hearing, the independence hearing shall address the child's future goals
20 and plans and access to services and support for the transition from
21 foster care to adulthood consistent with section 43-1311.03 and the Young
22 Adult Bridge to Independence Act. The child shall not be required to
23 attend the independence hearing, but efforts shall be made to encourage
24 and enable the child's attendance if the child wishes to attend,
25 including scheduling the hearing at a time that permits the child's
26 attendance. An independence coordinator as provided in section 43-4506
27 shall attend the hearing if reasonably practicable, but the department is
28 not required to have legal counsel present. At the independence hearing,
29 the court shall advise the child about the bridge to independence
30 program, including, if applicable, the right of young adults in the
31 bridge to independence program to request a court-appointed, client-

1 directed attorney under subsection (1) of section 43-4510 and the
2 benefits and role of such attorney and to request additional permanency
3 review hearings in the bridge to independence program under subsection
4 (5) of section 43-4508 and how to request such a hearing. The court shall
5 also advise the child, if applicable, of the rights he or she is giving
6 up if he or she chooses not to participate in the bridge to independence
7 program and the option to enter such program at any time between nineteen
8 and twenty-one years of age if the child meets the eligibility
9 requirements of section 43-4504. The department shall present information
10 to the court regarding other community resources that may benefit the
11 child, specifically information regarding state programs established
12 pursuant to 42 U.S.C. 677. The court shall also make a finding as to
13 whether the child has received the documents as required by subsection
14 (9) of section 43-1311.03.

15 (3)(a) Within thirty days after an order awarding a juvenile to the
16 care of the department, an association, or an individual and until the
17 juvenile reaches the age of majority, the department, association, or
18 individual shall file with the court a report stating the location of the
19 juvenile's placement and the needs of the juvenile in order to effectuate
20 the purposes of subdivision (1) of section 43-246. The department,
21 association, or individual shall file a report with the court once every
22 six months or at shorter intervals if ordered by the court or deemed
23 appropriate by the department, association, or individual. Every six
24 months, the report shall provide an updated statement regarding the
25 eligibility of the juvenile for health insurance, including, but not
26 limited to, medical assistance under the Medical Assistance Act. The
27 department shall also concurrently file a written sibling placement
28 report as described in subsection (3) of section 43-1311.02 at these
29 times.

30 (b) The department, association, or individual shall file a report
31 and notice of placement change with the court and shall send copies of

1 the notice to all interested parties, including all of the child's
2 siblings that are known to the department, at least seven days before the
3 placement of the juvenile is changed from what the court originally
4 considered to be a suitable family home or institution to some other
5 custodial situation in order to effectuate the purposes of subdivision
6 (1) of section 43-246. The department, association, or individual shall
7 afford a parent or an adult sibling the option of refusing to receive
8 such notifications. The court, on its own motion or upon the filing of an
9 objection to the change by an interested party, may order a hearing to
10 review such a change in placement and may order that the change be stayed
11 until the completion of the hearing. Nothing in this section shall
12 prevent the court on an ex parte basis from approving an immediate change
13 in placement upon good cause shown. The department may make an immediate
14 change in placement without court approval only if the juvenile is in a
15 harmful or dangerous situation or when the foster parents request that
16 the juvenile be removed from their home. Approval of the court shall be
17 sought within twenty-four hours after making the change in placement or
18 as soon thereafter as possible.

19 (c) The department shall provide the juvenile's guardian ad litem
20 with a copy of any report filed with the court by the department pursuant
21 to this subsection.

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

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

30 (6) Whenever a juvenile is in a foster care placement as defined in
31 section 43-1301, the Foster Care Review Office or the designated local

1 foster care review board may participate in proceedings concerning the
2 juvenile as provided in section 43-1313 and notice shall be given as
3 provided in section 43-1314.

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

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

16 Sec. 3. Section 43-292, Reissue Revised Statutes of Nebraska, is
17 amended to read:

18 43-292 The court may terminate all parental rights between a parent
19 and a juvenile ~~the parents or the mother of a juvenile born out of~~
20 ~~wedlock and such juvenile~~ when the court finds by clear and convincing
21 evidence or, if an Indian child is involved, the standard of proof
22 applicable under the Nebraska Indian Child Welfare Act, that termination
23 is in the best interests of the juvenile and such parent is unfit by
24 reason of conduct or a condition which renders the parent unable to care
25 properly for the juvenile due to such action to be in the best interests
26 ~~of the juvenile and it appears by the evidence that one or more of the~~
27 following enumerated grounds ~~conditions exist:~~

28 (1) The parents have abandoned the juvenile for six months or more
29 immediately prior to the filing of the petition;

30 (2) The parents have substantially and continuously or repeatedly
31 neglected and refused to give the juvenile or a sibling of the juvenile

1 necessary parental care and protection;

2 (3) The court, or a court of competent jurisdiction in another
3 state, has entered an order involuntarily terminating parental rights
4 with respect to another child of the parent;

5 (4) (3) The parents, being financially able, have willfully
6 neglected to provide the juvenile with the necessary subsistence,
7 education, or other care necessary for his or her health, morals, or
8 welfare or have neglected to pay for such subsistence, education, or
9 other care when legal custody of the juvenile is lodged with others and
10 such payment ordered by the court;

11 (5) The inappropriate use by the parent of alcohol, narcotics, or
12 other drugs for such a duration or of such a nature as to render the
13 parent unable to care for the ongoing physical, mental, or emotional
14 needs of the juvenile or to be a serious detriment to the health, safety,
15 and well-being of the juvenile;

16 ~~(4) The parents are unfit by reason of debauchery, habitual use of~~
17 ~~intoxicating liquor or narcotic drugs, or repeated lewd and lascivious~~
18 ~~behavior, which conduct is found by the court to be seriously detrimental~~
19 ~~to the health, morals, or well-being of the juvenile;~~

20 (6) (5) The parents are unable to discharge parental
21 responsibilities because of mental illness or mental deficiency and there
22 are reasonable grounds to believe that such condition will continue for a
23 prolonged indeterminate period;

24 (7) (6) Following a determination that the juvenile is one as
25 described in subdivision (3)(a) of section 43-247, reasonable efforts to
26 preserve and reunify the family if required under section 43-283.01,
27 under the direction of the court, have failed to correct the conditions
28 leading to the determination;

29 (8) (7) The juvenile has been in an out-of-home placement for
30 fifteen or more months of the most recent twenty-two months;

31 (9) (8) The parent has inflicted upon the juvenile, by other than

1 accidental means, serious bodily injury;

2 ~~(10)~~ (9) The parent of the juvenile has subjected the juvenile or
3 another minor child to aggravated circumstances, including, but not
4 limited to, abandonment, torture, chronic abuse, or sexual abuse;

5 ~~(11)~~ (10) The parent has (a) committed murder of another child of
6 the parent, (b) committed voluntary manslaughter of another child of the
7 parent, (c) aided or abetted, attempted, conspired, or solicited to
8 commit murder, or aided or abetted voluntary manslaughter of the juvenile
9 or another child of the parent, ~~or~~ (d) committed a felony assault that
10 resulted in serious bodily injury to the juvenile or another minor child
11 of the parent, (e) committed a sexual assault of the juvenile or another
12 minor child under section 28-319, 28-319.01, 28-320, or 28-320.01, or (f)
13 committed labor trafficking of a minor or sex trafficking of a minor
14 under section 28-831 with such juvenile or another minor child as the
15 victim; or

16 ~~(12)~~ The ~~(11)~~ One parent has been convicted of ~~felony~~ sexual assault
17 of the other parent of the juvenile under section 28-319, 28-319.01,
18 28-320, or 28-320.01 or a comparable crime in another state.

19 Sec. 4. Section 43-292.01, Reissue Revised Statutes of Nebraska, is
20 amended to read:

21 43-292.01 When termination of the parent-juvenile relationship is
22 sought under subdivision ~~(6)~~ (5) of section 43-292, the court shall
23 appoint a guardian ad litem for the alleged incompetent parent. The court
24 may, in any other case, appoint a guardian ad litem, as deemed necessary
25 or desirable, for any party. The guardian ad litem shall be paid a
26 reasonable fee set by the court and paid from the general fund of the
27 county.

28 Sec. 5. Section 43-292.02, Revised Statutes Cumulative Supplement,
29 2018, is amended to read:

30 43-292.02 (1) Except as provided in subsections (2) and (3) of this
31 section, a A petition shall be filed on behalf of the state to terminate

1 the parental rights of the juvenile's parents or, if such a petition has
2 been filed by another party, the state shall join as a party to the
3 petition, and the state shall concurrently identify, recruit, process,
4 and approve a qualified family for an adoption of the juvenile, if:

5 (a) A juvenile has been in foster care under the responsibility of
6 the state for fifteen or more months of the most recent twenty-two
7 months. The number of months of out-of-home placement shall be calculated
8 in accordance with section 43-1301.01; or

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

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

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

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

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

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

10 (4) If the court makes a determination that the exception in
11 subsection (3) of this section applies, such determination shall be
12 reviewed at all subsequent review hearings and permanency planning
13 hearings, including hearings under section 43-1313.

14 (5) (4) Except as otherwise provided in the Nebraska Indian Child
15 Welfare Act, if a child is conceived by the victim of a sexual assault, a
16 petition for termination of parental rights of the perpetrator shall be
17 granted if such termination is in the best interests of the child and (a)
18 the perpetrator has been convicted of or pled guilty or nolo contendere
19 to sexual assault of the child's birth parent under section 28-319,
20 28-319.01, or 28-320, or 28-320.01 or a law in another jurisdiction
21 similar to any such ~~either section 28-319 or 28-320~~ or (b) the
22 perpetrator has fathered the child or given birth to the child as a
23 result of such sexual assault.

24 Sec. 6. Section 43-292.03, Reissue Revised Statutes of Nebraska, is
25 amended to read:

26 43-292.03 (1) Within thirty days after the fifteen-month period
27 under subsection (1) of section 43-292.02, the court shall hold a hearing
28 on the record and shall make a determination on the record as to whether
29 there is an exception under subsection (3) of section 43-292.02 in this
30 particular case. If the court determines there is no exception, the state
31 shall proceed as provided in subsection (1) of section 43-292.02. If the

1 court determines that such exception does apply, such determination shall
2 be reviewed at all subsequent review hearings and permanency planning
3 hearings, including hearings under section 43-1313.

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

10 Sec. 7. Section 43-533, Reissue Revised Statutes of Nebraska, is
11 amended to read:

12 43-533 The following principles shall guide the actions of state
13 government and departments, agencies, institutions, committees, courts,
14 and commissions which become involved with families and children in need
15 of assistance or services:

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

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

29 (3) To maximize resources the state shall develop methods to
30 coordinate services and resources for families and children. Every child-
31 serving department, agency, institution, committee, court, or commission

1 shall recognize that the jurisdiction of such department, agency,
2 institution, committee, court, or commission in serving multiple-need
3 children is not mutually exclusive;

4 (4) When children are removed from their home, permanency planning
5 shall be the guiding philosophy. It shall be the policy of the state (a)
6 to make reasonable efforts to reunite the child with his or her family in
7 a timeframe appropriate to the age and developmental needs of the child
8 so long as the best interests of the child, the health and safety of the
9 child being of paramount concern, and the needs of the child have been
10 given primary consideration in making a determination whether or not
11 reunification is possible, (b) when a child cannot remain with parents,
12 to give preference to relatives as a placement resource, except as
13 provided in subdivision (5) of this section, and (c) to minimize the
14 number of placement changes for children in out-of-home care so long as
15 the needs, health, safety, and best interests of the child in care are
16 considered; and

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

23 (a) That such preference shall not apply if there is no significant
24 relationship between the relative and the child, the child has been cared
25 for by a non-relative foster parent or parents for a continuous period of
26 twelve months or more, and bonding has occurred, as evidenced by the
27 positive emotional and physical interaction between the foster parent or
28 parents and child. In such case, consideration shall be given to
29 permanent placement with such foster parent or parents unless declined by
30 the foster parent or parents; and

31 (b) As otherwise provided in the Nebraska Indian Child Welfare Act.

1 Sec. 8. Section 43-1311.01, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 43-1311.01 (1) When notified pursuant to section 43-1311 or upon
4 voluntary placement of a child, the Department of Health and Human
5 Services shall, as provided in this section, identify, locate, and
6 provide written notification of the removal of the child from his or her
7 home, within thirty days after removal, to any noncustodial parent and to
8 all grandparents, all parents who have legal custody of a sibling of the
9 child, and all adult siblings, adult aunts, adult uncles, adult cousins,
10 and adult relatives suggested by the child or the child's parents, except
11 when that relative's history of family or domestic violence makes
12 notification inappropriate. For purposes of this section, sibling means
13 an individual who is considered by Nebraska law to be a sibling or who
14 would have been considered a sibling under Nebraska law but for a
15 termination of parental rights or other disruption in parental rights
16 such as the death of a parent. If the child is an Indian child as defined
17 in section 43-1503, the child's extended family members as defined in
18 such section shall be notified. Such notification shall include all of
19 the following information:

20 (a) The child has been or is being removed from the custody of the
21 parent or parents of the child;

22 (b) An explanation of the options the relative has under federal,
23 state, and local law to participate in the care and placement of the
24 child, including as provided in section 43-533 and including any options
25 that may be lost by failing to respond to the notice;

26 (c) A description of the requirements for the relative to serve as a
27 foster care provider or other type of care provider for the child and the
28 additional services, training, and other support available for children
29 receiving such care; and

30 (d) Information concerning the option to apply for guardianship
31 assistance payments.

1 (2) The department shall investigate the names and locations of the
2 relatives, including, but not limited to, asking the child in an age-
3 appropriate manner about relatives important to the child and obtaining
4 information regarding the location of the relatives.

5 (3) The department shall provide to the court, within thirty
6 calendar days after removal of the child, the names and relationship to
7 the child of all relatives contacted, the method of contact, and the
8 responses received from the relatives.

9 (4) This section shall not be construed to guarantee that a relative
10 identified pursuant to this section will receive custody of the child, as
11 all such determinations are based upon the individual child's best
12 interests.

13 Sec. 9. Section 43-1312, Reissue Revised Statutes of Nebraska, is
14 amended to read:

15 43-1312 (1) Following the investigation conducted pursuant to
16 section 43-1311 and immediately following the initial placement of the
17 child, the person or court in charge of the child shall cause to be
18 established a safe and appropriate plan for the child. The plan shall
19 contain at least the following:

20 (a) The purpose for which the child has been placed in foster care;

21 (b) The estimated length of time necessary to achieve the purposes
22 of the foster care placement;

23 (c) A description of the services which are to be provided in order
24 to accomplish the purposes of the foster care placement;

25 (d) The person or persons who are directly responsible for the
26 implementation of such plan;

27 (e) A complete record of the previous placements of the foster
28 child;

29 (f) The name of the school the child shall attend as provided in
30 section 43-1311; and

31 (g) The efforts made to involve and engage the child in the

1 development of such plan as provided in the Nebraska Strengthening
2 Families Act.

3 (2) If the return of the child to his or her parents is not likely
4 based upon facts developed as a result of the investigation, the
5 Department of Health and Human Services shall recommend termination of
6 parental rights and referral for adoption, guardianship, placement with a
7 relative, or, as a last resort, and only in the case of a child who has
8 attained sixteen years of age, another planned permanent living
9 arrangement. If the child is removed from his or her home, the department
10 shall make reasonable efforts to accomplish joint-sibling placement or
11 sibling visitation or ongoing interaction between the siblings as
12 provided in section 43-1311.02.

13 (3) Each child in foster care under the supervision of the state
14 shall have a permanency hearing by a court, no later than twelve months
15 after the date the child enters foster care and annually thereafter
16 during the continuation of foster care except as provided in subdivision
17 (10) of section 43-1312.01. The court's order shall include the
18 determinations required by section 43-4711 and a finding regarding the
19 appropriateness of the permanency plan determined for the child and shall
20 include whether, and if applicable when, the child will be:

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

31 (4) As provided in the Nebraska Strengthening Families Act, in the

1 case of any child age sixteen years of age or older for whom another
2 planned permanent living arrangement is the recommended or court-approved
3 permanency plan:

4 (a) The permanency plan shall include the identification of
5 significant, supportive connections with identified adults willing to be
6 consistently involved in the child's life as the child transitions to
7 adulthood;

8 (b) The department shall document the intensive, ongoing, and, as of
9 the date of the hearing, unsuccessful efforts made by the department to
10 return the child home or secure a placement for the child with a fit and
11 willing relative, a legal guardian, or an adoptive parent; and

12 (c) The court shall:

13 (i) Ask the child about the desired permanency outcome for the
14 child;

15 (ii) Make a determination explaining why, as of the date of the
16 hearing, another planned permanent living arrangement is the best
17 permanency plan for the child and the compelling reasons why it continued
18 to not be in the best interests of the child to return home, be placed
19 for adoption, be placed with a legal guardian, or be placed with a fit
20 and willing relative; and

21 (iii) Make a determination that the department has met the
22 requirements in subdivisions (a) and (b) of this subsection before
23 approving a permanency plan of another planned permanent living
24 arrangement for a child sixteen years of age or older.

25 Sec. 10. Section 43-1312.01, Reissue Revised Statutes of Nebraska,
26 is amended to read:

27 43-1312.01 (1) If the permanency plan for a child established
28 pursuant to section 43-1312 does not recommend return of the child to his
29 or her parent or that the child be placed for adoption, the juvenile
30 court may, upon the filing of a motion by an interested party as provided
31 in subsection (2) of this section or on its own motion as provided in

1 subsection (3) of this section, place the child in a guardianship in a
2 relative home as defined in section 71-1901, in a kinship home as defined
3 in section 71-1901, or with an individual as provided in section 43-285
4 if:

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

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

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

10 (d) Each prospective ~~The~~ guardian:

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

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

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

19 (iv) Agrees to give notice of any changes in his or her residential
20 address or the residence of the child by immediately filing a written
21 document in the juvenile court file of the child and providing copies of
22 such document to all interested parties; ~~-~~

23 (v) Acknowledges that the duties and obligations of the guardianship
24 have been fully explained to and understood by him or her; and

25 (vi) Agrees to complete all required guardianship training prior to
26 the court's entry of an order establishing the guardianship; and

27 (e) The court finds, by clear and convincing evidence, that
28 placement in such guardianship is in the child's best interests.

29 (2)(a) The county attorney, a guardian ad litem, or any interested
30 party may request the juvenile court to place a child in a guardianship
31 as described in subsection (1) of this section by filing a motion to

1 establish guardianship. The motion shall be filed in the juvenile court
2 in which the child was adjudicated to be under subdivision (3)(a) of
3 section 43-247. The motion shall be served on all other interested
4 parties.

5 (b) The motion shall allege that each of the requirements in
6 subsection (1) of this section are met. The motion shall also contain:

7 (i) The name of the child;

8 (ii) The name and address of each person nominated to serve as a
9 guardian of the child;

10 (iii) A statement of whether the permanency objective of
11 guardianship has been ordered by the juvenile court, and if so, the date
12 of such order;

13 (iv) The length of time the child has resided with or been placed
14 with the prospective guardian or guardians; and

15 (v) If applicable, a statement describing each parent who is
16 consenting to the guardianship.

17 (3) If the juvenile court seeks to place a child in a guardianship
18 as described in subsection (1) of this section on its own motion, the
19 juvenile court shall provide notice to all interested parties.

20 (4) A written consent to the guardianship shall be executed by each
21 child fourteen years of age or older and by any parent who is consenting
22 to the guardianship and shall be filed prior to the hearing under
23 subsection (6) of this section.

24 (5) Any objection to the guardianship shall be in writing and shall
25 be filed with the court and served upon all interested parties within
26 twenty days after receipt of the motion for guardianship or notice by the
27 court under subsection (3) of this section.

28 (6) The juvenile court shall hold an evidentiary hearing to
29 determine if a guardianship should be established within sixty days after
30 the filing of a motion to establish guardianship or notice by the court
31 under subsection (3) of this section, unless good cause is shown for

1 extending the time. In addition to all other interested parties in the
2 juvenile court proceeding, each prospective guardian and the child shall
3 attend the hearing, except that the child need not attend the hearing if
4 good cause is shown prior to the hearing.

5 (7) If the court finds that the requirements of subsection (1) of
6 this section are met, the court may enter an order granting guardianship
7 and appointing the guardian. Upon the entry of such order, the guardian
8 shall file a written acceptance of appointment.

9 (8) ~~(2)~~ In an the order granting guardianship, the juvenile court
10 shall:

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

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

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

18 (d) ~~Require that the child shall remain in the physical care and~~
19 custody of the guardian unless the order granting guardianship is
20 modified by the juvenile court;

21 (e) ~~Require the guardian to file with the court and to serve upon~~
22 all interested parties a written report on the condition of the child at
23 least once each year on a form to be provided by the juvenile court, and
24 specifying the deadline for the filing of the initial report; and

25 (f) ~~Continue the appointment of the child's guardian ad litem~~
26 throughout the duration of the guardianship. The guardian ad litem shall
27 remain subject to all obligations as required by statute and applicable
28 court rules, except as specifically waived by the juvenile court in its
29 order granting the guardianship.

30 ~~(d) Shall require that the guardian not return the child to the~~
31 physical care and custody of the person from whom the child was removed

1 ~~without prior approval of the court.~~

2 (9) (3) The juvenile court shall retain jurisdiction over the child
3 for modification or termination of the guardianship order and to monitor
4 the guardianship as needed. Modification of the order may include any
5 matter affecting the guardianship, including, but not limited to: -

6 (a) Family time between the child and his or her parents;

7 (b) Family time between the child and his or her siblings; and

8 (c) Resignation, removal, or replacement of the guardian or
9 guardians.

10 (10) The court shall discontinue regular permanency reviews and case
11 reviews under sections 43-1312 and 43-1313 and shall relieve the
12 Department of Health and Human Services of the responsibility of
13 supervising the placement of the child. The juvenile court shall conduct
14 a guardianship review hearing no later than twelve months after the date
15 of entry of the guardianship order and annually thereafter for the
16 duration of the guardianship. The juvenile court may conduct such a
17 hearing more frequently in its discretion or upon request by an
18 interested party. The juvenile court shall provide notice of any
19 guardianship review hearing to each guardian and all interested parties.

20 (11) Notwithstanding the retention of juvenile court jurisdiction,
21 the guardianship placement shall be considered permanent for the child.

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

24 (12) (5) Guardianships established under this section shall
25 terminate;

26 (a) On ~~on~~ the child's nineteenth birthday unless the child is
27 eligible for continued guardianship assistance payments under section
28 43-4511 and an agreement is signed by the Department of Health and Human
29 Services, the guardian, and the young adult, as defined in section
30 43-4503, to continue the guardianship assistance. The guardian shall
31 ensure that any guardianship assistance funds provided by the department

1 and received by the guardian for the purpose of an extended guardianship
2 shall be used for the benefit of the young adult. The department shall
3 adopt and promulgate rules and regulations defining services and supports
4 encompassed by such benefit; or -

5 (b) Upon order of the juvenile court.

6 (13) (6) Upon the child's nineteenth birthday regardless of the
7 existence of an agreement to extend the guardianship until the child's
8 twenty-first birthday, the guardian shall no longer have the legal
9 authority to make decisions on behalf of the child and shall have no more
10 authority over the person or property of the child than a biological or
11 adoptive parent would have over his or her child, absent consent from the
12 child.

13 (14) (7) A guardianship established under this section does not
14 terminate the parent-child relationship, including:

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

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

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

20 (15) The fact that a parent has consented to the establishment of
21 the guardianship shall not constitute evidence of parental unfitness and
22 shall not forfeit the right of such parent to seek termination of the
23 guardianship and custody of the child.

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

26 Sec. 11. (1) A parent, a guardian, a guardian ad litem, the county
27 attorney, or any interested party may file a motion to terminate a
28 guardianship established under section 43-1312.01 and restore or grant
29 custody of the child to his or her parent. Except as provided in
30 subsection (2) of this section, the party seeking termination shall have
31 the burden of proving by clear and convincing evidence that the parent is

1 fit and able to assume the custody of the child. In determining parental
2 fitness, the court may consider evidence of the following:

3 (a) Whether the juvenile court or any court has previously found or
4 determined that the parent requesting termination has subjected the child
5 or his or her siblings to abuse, neglect, abandonment, or to lack of
6 proper parental care regardless of fault on the part of the parent, and
7 if so:

8 (i) When such finding or determination was made;

9 (ii) What, if any, steps the parent has taken or completed to remedy
10 the problems that gave rise to such finding or determination; and

11 (iii) Whether the problems that gave rise to such finding or
12 determination still exist and, if so, to what extent they are likely to
13 impede the parent's ability to care for the child;

14 (b)(i) Whether the parent is presently involved as a defendant in
15 any criminal prosecution, engaging in substance abuse of any kind, or
16 diagnosed with a mental health condition of any kind and (ii) the extent
17 to which any of these impair or are likely to impair the parent's ability
18 to care for the child;

19 (c) The parent's present living situation and financial capacity to
20 care for the child;

21 (d) Financial, social, medical, or emotional support provided by the
22 parent to the child since the establishment of the guardianship;

23 (e) The expressed preference, if any, of the child if he or she is
24 fourteen years of age or older; and

25 (f) Any other factor that might affect the parent's ability to
26 assume custody of and care for the child.

27 (2) The juvenile court may terminate a guardianship under this
28 section without requiring proof that a parent is fit and able to assume
29 custody of the child if:

30 (a) Such parent has executed a written consent to establishment of
31 the guardianship under subsection (4) of section 43-1312.01;

1 (b) The parental rights of such parent have not been involuntarily
2 terminated; and

3 (c) The parent has not been found unfit under subdivision (3)(a) of
4 section 43-247.

5 (3) Upon the filing of a motion under this section, if, in relation
6 to any guardianship ordered prior to the effective date of this act, the
7 juvenile court has not ordered the continuation of the appointment of the
8 child's guardian ad litem in the initial guardianship order, the court
9 shall appoint a guardian ad litem for each child for whom the termination
10 of the guardianship is sought.

11 (4) The juvenile court may grant the motion and enter an order
12 terminating the guardianship and granting or restoring custody of the
13 child to the parent if the court finds, by clear and convincing evidence,
14 that doing so is in the best interests of the child. If the juvenile
15 court denies the motion, it shall include in its order the specific
16 reasons for denial.

17 (5) The Department of Health and Human Services may adopt and
18 promulgate rules and regulations for the administration of this section.

19 Sec. 12. (1) Except when a child has been placed in the custody of
20 a parent under subsection (4) of section 11 of this act, in the event of
21 the disruption or the termination of the guardianship for a child under
22 the age of nineteen years, or the removal or resignation of the child's
23 guardian, the juvenile court shall immediately place the child in the
24 temporary custody of the Department of Health and Human Services.

25 (2) Within eight days after such placement, the juvenile court shall
26 conduct a protective custody hearing. If the court finds that the child's
27 health, safety, and welfare are at risk of harm, the juvenile court shall
28 continue custody of the child with the department pending further
29 hearing. The court shall provide notice of the hearing to the parents and
30 all interested parties.

31 (3) The county attorney shall file appropriate pleadings to protect

1 the health, safety, and welfare of the child.

2 (4) Nothing in this section shall prevent the department from
3 placing the child with the child's parent or parents if the department
4 determines that the child's health, safety, and welfare are not at risk
5 of harm.

6 (5) The Department of Health and Human Services may adopt and
7 promulgate rules and regulations for the administration of this section.

8 Sec. 13. Section 43-1313, Reissue Revised Statutes of Nebraska, is
9 amended to read:

10 43-1313 (1) When a child is in foster care placement, the court
11 having jurisdiction over such child for the purposes of foster care
12 placement shall review the dispositional order for such child at least
13 once every six months, except as provided in subsection (10) of section
14 43-1312.01. The court may reaffirm the order or direct other disposition
15 of the child. Any review hearing by a court having jurisdiction over such
16 child for purposes of foster care placement shall be conducted on the
17 record as provided in sections 43-283 and 43-284, and any recommendations
18 of the office or designated local board concerning such child shall be
19 admissible in such proceedings if such recommendations have been provided
20 to all other parties of record.

21 (2) The court shall review a case on the record more often than
22 every six months and at any time following the original placement of the
23 child if the office or local board requests a hearing in writing
24 specifying the reasons for the review.

25 (3) If the court has previously determined that the exception in
26 subsection (3) of section 43-292.02 applies, such determination shall be
27 reviewed at each hearing conducted under this section.

28 (4) Members of the office or local board or its designated
29 representative may attend and be heard at any hearing conducted under
30 this section and may participate through counsel at the hearing with the
31 right to call and cross-examine witnesses and present arguments to the

1 court.

2 Sec. 14. Section 43-1318, Revised Statutes Cumulative Supplement,
3 2018, is amended to read:

4 43-1318 Sections 43-1301 to 43-1321 and sections 11 and 12 of this
5 act shall be known and may be cited as the Foster Care Review Act.

6 Sec. 15. Original sections 43-292, 43-292.01, 43-292.03, 43-533,
7 43-1311.01, 43-1312, 43-1312.01, and 43-1313, Reissue Revised Statutes of
8 Nebraska, and sections 43-283.01, 43-285, 43-292.02, and 43-1318, Revised
9 Statutes Cumulative Supplement, 2018, are repealed.