

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 or another minor child 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, (iv) committed a felony assault which results in serious bodily injury to the juvenile or another minor child of the parent, or (v) been convicted of felony sexual assault of the other parent of the juvenile under section 28-319.01 or 28-320.01 or a comparable crime in another state; 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.

Source

1. Laws 1998, LB 1041, § 24;
2. Laws 2009, LB517, § 1.

Effective Date: August 30, 2009

Annotations

A detention hearing is a parent's opportunity to be heard on the need for the removal and the satisfaction of the State's obligations under this section, and it is not optional when a child is detained for any significant period of time. *In re Interest of Mainor T. & Estela T.*, 267 Neb. 232, 674 N.W.2d 442 (2004).

A finding of a fact that excuses the requirement of reasonable efforts at reunification under subsection (4) of this section must be based on clear and convincing evidence. *In re Interest of Jac'Quez N.*, 266 Neb. 782, 669 N.W.2d 429 (2003).

The term "aggravated circumstances," as used in subsection (4)(a) of this section, embodies the concept that the nature of the abuse or neglect must have been so severe or repetitive that to attempt reunification would jeopardize and compromise the safety of the child and would place the child in a position of an unreasonable risk to be reabused. *In re Interest of Jac'Quez N.*, 266 Neb. 782, 669 N.W.2d 429 (2003).

The plain language of this section contains no directive granting a parent or any other party the right to bring a motion requesting a separate hearing on the issue of reasonable efforts to preserve and reunify. The Legislature intended that the issue of reasonable efforts required under this section must be reviewed by the juvenile court (1) when removing from the home a juvenile adjudged to be under subsections (3) or (4) of section 43-247 pursuant to section 43-284, (2) when the court continues a juvenile's out-of-home placement pending adjudication pursuant to section 43-254, (3) when the court reviews a juvenile's status and permanency planning pursuant to section 43-1315, and (4) when termination of parental rights to a juvenile is sought by the State under subsection (6) of section 43-292. *In re Interest of DeWayne G., Jr. & Devon G.*, 263 Neb. 43, 638 N.W.2d 510 (2002).

Pursuant to subsection (6) of section 43-292, termination of parental rights requires a finding that following a determination that the juvenile is one as described in subsection (3)(a) of section 43-247, reasonable efforts to preserve and reunify the family if required under this section, under the direction of the court, have failed to correct the conditions leading to the determination. *In re Interest of Stacey D. & Shannon D.*, 12 Neb. App. 707, 684 N.W.2d 594 (2004).

Pursuant to subsection (4)(b) of this section, clear and convincing evidence that the parent of the juvenile has committed first or second degree murder of another child of the parent, or has committed voluntary manslaughter of another child of the parent, excuses the Department of Health and Human Services from the requirement to make reasonable efforts to reunify the family. In re Interest of Anthony V., 12 Neb. App. 567, 680 N.W.2d 221 (2004).

A finding of "felony child abuse" does not satisfy the requirements of subsection (4)(b)(iv) of this section, and there is no crime called "felony child abuse" in Nebraska. In re Interest of Janet J., 12 Neb. App. 42, 666 N.W.2d 741 (2003).

Where the State removes a child from the family, this section requires the State to make reasonable efforts to preserve and reunify the family, and if properly raised, a parent is entitled to a ruling on whether the State has complied with the legislative mandate of this section. In re Interest of DeWayne G. & Devon G., 10 Neb. App. 177, 625 N.W.2d 849 (2001).

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 section 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 or another minor child to aggravated circumstances, including, but not limited to, abandonment, torture, chronic abuse, or sexual abuse;

(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; or

(11) One parent has been convicted of felony sexual assault of the other parent under section 28-319.01 or 28-320.01 or a comparable crime in another state.

Source

1. Laws 1981, LB 346, § 48;
2. Laws 1992, LB 1184, § 15;
3. Laws 1996, LB 1044, § 143;
4. Laws 1998, LB 1041, § 27;
5. Laws 2009, LB517, § 2.

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Annotations

1. Abandonment

2. Neglect

3. Mental illness or deficiency

4. Rehabilitation or reunification plan

5. Appeal

6. Miscellaneous

1. Abandonment

Pursuant to subsection (1) of this section, abandonment requires a finding that a parent intentionally withheld from a child, without just cause or excuse, the parent's presence, care, love, protection, maintenance, and the opportunity for the display of parental affection for the child. In re Interest of Mainor T. & Estela T., 267 Neb. 232, 674 N.W.2d 442 (2004).

Pursuant to subsection (1) of this section, evidence of abandonment was insufficient when the mother had been involuntarily removed from the United States and had made efforts to return in order to participate in juvenile proceedings and to inquire about her children, despite her removal and the Department of Health and Human Services' failure to show that it had informed the mother how contact with her children could be accomplished. In re Interest of Mainor T. & Estela T., 267 Neb. 232, 674 N.W.2d 442 (2004).

Even though a juvenile court ordered a mother to have no visitation with her children approximately 7 weeks before the State filed a petition to terminate her parental rights based on abandonment, it was determined that the mother did abandon her children within the meaning of subsection (1) of this section where the mother failed to present any evidence which would show a continuing interest in the children or a genuine effort to maintain communication and a meaningful relationship with the children. *In re Interest of Dustin H. et al.*, 259 Neb. 166, 608 N.W.2d 580 (2000).

In the context of subsection (1) of this section, "abandonment" is defined as a parent's intentionally withholding from a child, without just cause or excuse, the parent's presence, care, love, protection, maintenance, and the opportunity for the display of parental affection for the child. Under subsection (1) of this section, the question of abandonment is largely one of intent, to be determined in each case from all the facts and circumstances. Under subsection (1) of this section, if a parent voluntarily, but unreasonably or unjustifiably, departs from the state of residence of the parent's child or children, such departure may constitute parental abandonment of the child or children. Under subsection (1) of this section, abandonment is not an ambulatory thing, the legal effects of which a parent may dissipate at will by token efforts at reclaiming a discarded child. With respect to cases arising under subsection (1) of this section, parental obligation requires a continuing interest in the child and a genuine effort to maintain communication and association with that child. Under subsection (1) of this section, small tokens of parental affection for a child are an inadequate substitute for parental presence in a child's life. *In re Interest of Sunshine A. et al.*, 258 Neb. 148, 602 N.W.2d 452 (1999).

Mother abandoned her children when she voluntarily left the State of Nebraska temporarily to look for her common-law husband's children. *In re Interest of C.K., L.K., and G.K.*, 240 Neb. 700, 484 N.W.2d 68 (1992).

Parental incarceration may be considered in reference to abandonment as a basis for termination of parental rights under subsection (1) of this section. "Abandonment," for the purpose of subsection (1) of this section, is a parent's intentionally withholding from a child, without just cause or excuse, the parent's presence, care, love, protection, maintenance, and opportunity for the display of parental affection for the child. The question of abandonment is largely one of intent, to be determined in each case from all of the facts and circumstances. *In re Interest of L.V.*, 240 Neb. 404, 482 N.W.2d 250 (1992).

A father who makes no effort to secure his parental rights for over 3 years has abandoned his child within the meaning of subsection (1) of this section. *In re Interest of K.M.S.*, 236 Neb. 665, 463 N.W.2d 586 (1990).

"Abandonment," for the purpose of subsection (1) of this section, is a parent's intentionally withholding from a child, without just cause or excuse, the parent's presence, care, love, protection, maintenance, and the opportunity for the display of

parental affection for the child. In re Interest of C.A., 235 Neb. 893, 457 N.W.2d 822 (1990).

Whether a parent has abandoned a child within the meaning of subsection (1) of this section is a question of fact and depends on parental intent, which may be determined by circumstantial evidence. In re Interest of C.A., 235 Neb. 893, 457 N.W.2d 822 (1990).

A parent who has voluntarily chosen to violate the law so as to have been convicted of five separate felonies may have placed himself in a position where he has effectively abandoned the child pursuant to subsection (1) of this section. In re Interest of B.A.G., 235 Neb. 730, 457 N.W.2d 292 (1990).

"Abandonment" under subsection (1) of this section is a parent's intentionally withholding from a child, without just cause or excuse, the parent's presence, care, love, protection, maintenance, and the opportunity for the display of parental affection for the child. In re Interest of J.L.M. et al., 234 Neb. 381, 451 N.W.2d 377 (1990).

Pursuant to subsection (1) of this section, if a parent voluntarily, but unreasonably or unjustifiably, departs from the state of residence of the parent's child or children, such departure may constitute parental abandonment of the child and cannot be used as an excuse for noncompliance with a court-ordered plan for parental rehabilitation. In re Interest of J.L.M. et al., 234 Neb. 381, 451 N.W.2d 377 (1990).

Under subsection (1) of this section, abandonment is an intentional withholding from the child, without just cause or excuse, by the parent of the parent's presence, care, love, and protection; maintenance; and the opportunity for the display of filial affection. Abandonment is not an ambulatory thing the legal effects of which a parent may dissipate at will by token efforts at reclaiming a discarded child. In re Interest of J.M.D., 233 Neb. 540, 446 N.W.2d 233 (1989).

A specific condition of termination of parental rights under subsection (1) of this section is that the parent abandon the child for at least six months preceding the filing of the petition. In re Interest of M.B., R.P., and J.P., 222 Neb. 757, 386 N.W.2d 877 (1986).

Pursuant to subsection (1) of this section, a court may terminate parental rights if the parent has abandoned the juvenile for 6 months or more immediately prior to the filing of the petition. In re Interest of Crystal C., 12 Neb. App. 458, 676 N.W.2d 378 (2004).

Pursuant to subsection (1) of this section, abandonment, for purposes of determining whether termination of parental rights is warranted has been described as a parent's intentionally withholding from a child, without just cause or excuse, the parent's presence, care, love, protection, maintenance, and opportunity for the display of parental affection for the child. In re Interest of Crystal C., 12 Neb. App. 458, 676 N.W.2d 378 (2004).

Pursuant to subsection (1) of this section, the term "immediately prior" regarding abandonment means the time period determined by counting back 6 months from the filing date of the petition. *In re Interest of Crystal C.*, 12 Neb. App. 458, 676 N.W.2d 378 (2004).

Abandonment, for purposes of this section, is a parent's intentionally withholding from a child, without just cause or excuse, the parent's presence, care, love, protection, maintenance, and opportunity for display of parental affection for the child. *In re Interest of Joseph L.*, 8 Neb. App. 539, 598 N.W.2d 464 (1999).

A parent who has voluntarily chosen to violate the law, who has been imprisoned for the vast majority of his child's life, and who will continue to be imprisoned for several years may have placed himself in a position where he has effectively abandoned the child pursuant to subsection (1) of this section. A juvenile court may consider evidence of a parent's conduct prior to the birth of the child in proceedings to terminate parental rights pursuant to subsection (1) of this section. *In re Interest of Theodore W.*, 4 Neb. App. 428, 545 N.W.2d 119 (1996).

Evidence did not support juvenile court's finding that father abandoned children for 6 months prior to termination hearing, pursuant to subsection (1) of this section, when in fact visitations were discouraged by Department of Social Services until court order denying visitation was granted 2 months prior to termination hearing. *In re Interest of B.J.M. et al.*, 1 Neb. App. 851, 510 N.W.2d 418 (1993).

2. Neglect

One need not have physical possession of a child to demonstrate the existence of neglect contemplated by subsection (2) of this section. *In re Interest of Kalie W.*, 258 Neb. 46, 601 N.W.2d 753 (1999).

Trial court did not err in terminating parental rights where the children were traumatized to an extent that the mere presence of the parents sent them into a panic and the parent-child relationships were effectively destroyed by the neglect and cruelty of the parents. It is only when the State seeks to terminate parental rights pursuant to subsection (6) of this section that the State is required to prove that it has instituted a reasonable plan for rehabilitation of the parents and that they have failed to comply. In the absence of any reasonable alternative and as the last resort to dispose of an action brought pursuant to the Nebraska Juvenile Code, termination of parental rights is permissible when the basis for such termination is provided by clear and convincing evidence. *In re Interest of S.B.E. et al.*, 240 Neb. 748, 484 N.W.2d 97 (1992).

Because of mother's lack of insight and her lack of motivation to place the interests of her children ahead of her own, the trial court did not err in finding there was clear and convincing evidence to establish that the mother had substantially, continuously, and repeatedly neglected her children and had refused to give them the necessary parental care and protection. *In re Interest of B.B. et al.*, 239 Neb. 952, 479 N.W.2d 787 (1992).

A parent's failure to take proper measures to protect children from abuse by another furnishes sufficient cause to terminate parental rights under subsection (2) of this section. In re Interest of C.P., 235 Neb. 276, 455 N.W.2d 138 (1990).

A parent's fright does not, by itself, excuse his or her failure to extricate children from a dangerous environment. In re Interest of C.P., 235 Neb. 276, 455 N.W.2d 138 (1990).

A parent's failure to take proper measures to protect children from abuse by another furnishes sufficient cause to terminate parental rights under subsection (2) of this section. In re Interest of J.B. and A.P., 235 Neb. 74, 453 N.W.2d 477 (1990).

When a parent fails to protect some but not all children from the physical abuse by another, a court may terminate parental rights in the children not physically abused. In re Interest of J.B. and A.P., 235 Neb. 74, 453 N.W.2d 477 (1990).

Where poor housekeeping degenerates into a continuing health hazard, the best interests of the children require termination of parental rights. In re Interest of E.R., J.R., and A.R., 230 Neb. 646, 432 N.W.2d 834 (1988).

One need not have physical possession of a child to demonstrate the existence of the neglect contemplated by this provision. In re Interest of J.N.V., 224 Neb. 108, 395 N.W.2d 758 (1986).

Under this statute, to justify the termination of parental rights, the state must prove by clear and convincing evidence that a parent has substantially and continuously or repeatedly neglected the child. In re Interest of L.J., J.J., and J.N.J., 220 Neb. 102, 368 N.W.2d 474 (1985).

Pursuant to subsection (2) of this section, termination of parental rights requires a finding that a parent has substantially and continuously or repeatedly neglected and refused to give the juvenile necessary parental care and protection. In re Interest of Stacey D. & Shannon D., 12 Neb. App. 707, 684 N.W.2d 594 (2004).

Pursuant to subsection (2) of this section, lack of proper parental care of one child in a family can be a ground for termination of parental rights with respect to another child of the parents. In re Interest of Jaden H., 10 Neb. App. 87, 625 N.W.2d 218 (2001).

While a decision from the Nebraska Court of Appeals affirming a juvenile court's termination of parental rights may be further reviewed by the Nebraska Supreme Court, under subsection (2) of this section, the Court of Appeals' decision is final for collateral estoppel purposes. In re Interest of Jaden H., 10 Neb. App. 87, 625 N.W.2d 218 (2001).

3. Mental illness or deficiency

Subsection (5) of this section authorizing termination of parental rights for mental illness or mental deficiency means only those mental illnesses or mental deficiencies which

render the parents unable to discharge their parental responsibilities. In re Interest of Michael B. et al., 258 Neb. 545, 604 N.W.2d 405 (2000).

Under subsection (5) of this section, when a natural parent suffers from a mental deficiency and cannot be rehabilitated within a reasonable period of time, the best interests of the child require that a final disposition be made without delay. A "mental deficiency", as used in subsection (5) of this section, includes an impairment in capacity such that a parent is unable to profit from instruction and acquire parenting skills. Under subsection (5) of this section, the State must show that termination of parental rights is in the best interests of the children. In re Interest of Natasha H. & Sierra H., 258 Neb. 131, 602 N.W.2d 439 (1999).

When a natural parent suffers from a mental deficiency and cannot be rehabilitated within a reasonable period of time, the best interests of the children require that a final disposition be made without delay. In re Interest of D.A.B. and J.B., 240 Neb. 653, 483 N.W.2d 550 (1992).

A borderline personality disorder is a mental illness or deficiency for purposes of statute. In re Interest of B.M., 239 Neb. 292, 475 N.W.2d 909 (1991).

A guardian ad litem appointed for a parent pursuant to subsection (5) of this section is entitled to participate fully in the proceeding to terminate parental rights. In re Interest of D.S. and T.S., 236 Neb. 413, 461 N.W.2d 415 (1990).

The parental rights of a parent who is unable to discharge parental duties because of a mental illness or deficiency may be terminated under subdivision (5) of this section, while the parental rights of a parent who is unable to discharge parental duties because of a physical illness or deficiency may be terminated under subdivision (2) or (6) of this section; thus, the statutory scheme for termination of parental rights does not unconstitutionally differentiate between a parent with a mental deficiency and one with a physical deficiency. In re Interest of S.L.P., 230 Neb. 635, 432 N.W.2d 826 (1988).

"Mental deficiency", as used in subdivision (5) of this section, includes an impairment in learning capacity such that one is unable to profit from instruction and acquire parenting skills. In re Interest of D.L.S., 230 Neb. 435, 432 N.W.2d 31 (1988).

Appointment of a guardian ad litem for parents whose parental rights are sought to be terminated under subdivision (5) of this section is mandatory. Failure to appoint a guardian ad litem to protect the interests of such a parent is plain error which requires that the judgment be reversed. In re Interest of M.M., C.M., and D.M., 230 Neb. 388, 431 N.W.2d 611 (1988).

While no absolute definition of the term "mental deficiency" as used in subdivision (5) of this section is adopted, where a personality disorder is manifested by acts of extraordinary violence, the mental condition certainly rises to the level of mental deficiency. In re Interest of J.D.M., 230 Neb. 273, 430 N.W.2d 689 (1988).

Parental rights were properly terminated under subdivision (5) of this section where parents, who were both of limited intellectual ability, were unable to care for their daughter, who was developmentally and physically handicapped and required an extraordinary amount of care. In re Interest of A.M.K., 227 Neb. 888, 420 N.W.2d 718 (1988).

Supreme Court urges appointments of an attorney and of a guardian ad litem under subsection (5) of this section be separated. In re Interest of C.W., 226 Neb. 719, 414 N.W.2d 277 (1987).

Record supported termination of parental rights as in the best interests of the child where the parent was unable due to a mental deficiency to discharge her responsibilities and there existed reasonable grounds to believe that this condition would continue for a prolonged and indefinite period. In re Interest of Fant, 214 Neb. 692, 335 N.W.2d 314 (1983).

A trial court has discretionary authority to appoint a guardian ad litem in termination proceedings for a parent with a mental deficiency, regardless of whether mental illness or deficiency is pled as a ground for termination. In re Interest of Michael B. et al., 8 Neb. App. 411, 594 N.W.2d 674 (1999).

The presence of a mental deficiency in a parent does not preclude the State from seeking, or the courts from granting, termination of parental rights under subsections (2) and (4) of this section. In re Interest of Michael B. et al., 8 Neb. App. 411, 594 N.W.2d 674 (1999).

4. Rehabilitation or reunification plan

Pursuant to subsection (7) of this section, termination based on the ground that a child has been in out-of-home placement for 15 of the preceding 22 months is not in a child's best interests when the record demonstrates that a parent is making efforts toward reunification and has not been given a sufficient opportunity for compliance with a reunification plan. In re Interest of Mainor T. & Estela T., 267 Neb. 232, 674 N.W.2d 442 (2004).

The 15-month condition set forth in subsection (7) of this section serves the purpose of providing a reasonable timetable for parents to rehabilitate themselves. In re Interest of Mainor T. & Estela T., 267 Neb. 232, 674 N.W.2d 442 (2004).

The Legislature intended that the issue of reasonable efforts required under section 43-283.01 must be reviewed by the juvenile court (1) when removing from the home a juvenile adjudged to be under subsections (3) or (4) of section 43-247 pursuant to section 43-284, (2) when the court continues a juvenile's out-of-home placement pending adjudication pursuant to section 43-254, (3) when the court reviews a juvenile's status and permanency planning pursuant to section 43-1315, and (4) when termination of parental rights to a juvenile is sought by the State under subsection (6) of this section. In re Interest of DeWayne G., Jr. & Devon G., 263 Neb. 43, 638 N.W.2d 510 (2002).

Pursuant to subsection (2) of this section, termination of parental rights under this subsection does not require proof that a parent has failed to comply with a rehabilitation plan. *In re Interest of Clifford M. et al.*, 261 Neb. 862, 626 N.W.2d 549 (2001).

In order to terminate parental rights under subsection (6) of this section, the State must prove by clear and convincing evidence that (1) the parent has failed to comply, in whole or in part, with a reasonable provision material to the rehabilitative objective of the plan and (2) in addition to the parent's noncompliance with the rehabilitative plan, termination of parental rights is in the best interests of the child. In order to terminate parental rights under subsection (6) of this section, the State is required to prove that the parents have been provided with a reasonable opportunity to rehabilitate themselves according to a court-ordered plan and have failed to do so. The State is not required to show that noncompliance with a court-ordered rehabilitation plan is willful in order to prove that termination of parental rights should be ordered under subsection (6) of this section. *In re Interest of Kassara M.*, 258 Neb. 90, 601 N.W.2d 917 (1999).

Pursuant to subsection (6) of this section, the State need not prove in an action to terminate parental rights, that a parent's failure to comply with a court-ordered rehabilitation plan was willful. The purpose of subsection (6) of this section is to advance the best interests of the child by giving the juvenile court power to terminate parental rights where the grounds for adjudicating the child within section 43-247(3)(a) have not been corrected. Whether a parent is willful or not in his or her noncompliance with a rehabilitation plan is not directly relevant to this purpose. Mother's failure to comply with rehabilitation plan's requirement that she end contact with man who had sexually assaulted one of her children was sufficient evidence for termination of her parental rights under subsection (7) of this section. *In re Interest of Joshua M. et al.*, 251 Neb. 614, 558 N.W.2d 548 (1997).

In order to terminate parental rights pursuant to subsection (6) of this section, the State is required to prove that the parents have been provided with a reasonable opportunity to rehabilitate themselves according to a court-ordered plan and have failed to do so. Fact that parent partially complied with one provision of a rehabilitative plan does not prevent termination of his or her parental rights. *In re Interest of L.H. et al.*, 241 Neb. 232, 487 N.W.2d 279 (1992).

A rehabilitation plan is a court-ordered plan, judicially fashioned and judicially determined. The court may not delegate this authority to evaluators, counselors, social workers, child protection workers, or probation officers. *In re Interest of D.M.B.*, 240 Neb. 349, 481 N.W.2d 905 (1992).

In order to terminate parental rights, the requirement is not that all possible alternatives be exhausted, but that reasonable efforts be made to reunite the juvenile and his or her family. *In re Interest of S.R., D.R., and B.R.*, 239 Neb. 871, 479 N.W.2d 126 (1992).

Under subsection (6) of this section, the court is not limited to reviewing the efforts of the parent under the reunification plan last ordered by the court; rather, the court looks at the

entire reunification program and the parent's compliance with the various plans involved in the program, as well as any effort not contained within the program which would bring the parent closer to reunification. In re Interest of L.J., M.J., and K.J., 238 Neb. 712, 472 N.W.2d 205 (1991).

A period of 1 year 2 months is a reasonable amount of time for a parent to comply with a plan of rehabilitation. In re Interest of C.E.E., 238 Neb. 260, 469 N.W.2d 782 (1991).

Under subsection (6) of this section, "reasonable efforts, under the direction of the court" means efforts in relation to a court-ordered plan for parental rehabilitation, not an extrajudicial agreement between a parent and an administrative agency. In re Interest of A.H., 237 Neb. 797, 467 N.W.2d 682 (1991).

Under subsection (6) of this section, the fact of participation in certain elements of the court-ordered plan of reunification does not necessarily prevent the court from entering an order of termination where the parent has not made satisfactory progress toward reunification. In re Interest of A.M.Y., F.E.Y., and K.C.Y., 237 Neb. 414, 466 N.W.2d 93 (1991).

Under subsection (6) of this section, there is no requirement that the parent's failure to comply with the plan for rehabilitation be willful. In re Interest of A.B. et al., 236 Neb. 220, 460 N.W.2d 114 (1990).

It is only to terminate parental rights pursuant to subsection (6) of this section that the State is required to prove that the parents have been provided with a reasonable opportunity to rehabilitate themselves according to a court-ordered plan and have failed to do so. In re Interest of L.C., J.C., and E.C., 235 Neb. 703, 457 N.W.2d 274 (1990).

A judgment terminating parental rights pursuant to subsection (6) of this section will be affirmed where the State has proved by clear and convincing evidence that (1) the parent has willfully failed to comply, in whole or in part, with a material provision of the rehabilitative plan, and (2) termination of parental rights is in the best interests of the children. In re Interest of L.K.Y. and A.L.Y., 235 Neb. 545, 455 N.W.2d 828 (1990).

A judgment terminating parental rights pursuant to subsection (6) of this section will be affirmed where the State has proved by clear and convincing evidence that (1) the parent has willfully failed to comply, in whole or in part, with a material provision of the rehabilitative plan, and (2) termination of parental rights is in the best interests of the children. In re Interest of L.B., A.B., and A.T., 235 Neb. 134, 454 N.W.2d 285 (1990).

Under subsection (6) of this section, participation in a court-ordered plan does not necessarily prevent the court from entering an order of termination where parent made no progress toward rehabilitation. In re Interest of M., 235 Neb. 61, 453 N.W.2d 589 (1990).

Pursuant to subsection (6) of this section, a parent's failure to make reasonable efforts to comply with a court-ordered plan of rehabilitation presents an independent reason

justifying termination of parental rights. A judgment terminating parental rights will be affirmed when the State has established by clear and convincing evidence that the parent has willfully failed to comply, in whole or in part, with a material provision of a plan, and termination of parental rights is in the best interests of the children. Where a parent is unable or unwilling to rehabilitate herself within a reasonable time, the best interests of the children require termination of the parental rights. *In re Interest of C.C. and E.C.*, 234 Neb. 218, 450 N.W.2d 392 (1990).

Under subsection (6) of this section, the record supports termination of parental rights where parent willingly failed to comply with reasonable plan of rehabilitation. *In re Interest of R.T. and R.T.*, 233 Neb. 483, 446 N.W.2d 12 (1989).

Regarding parental compliance with a court-ordered rehabilitative plan, under subsection (6) of this section, as a ground for termination of parental rights, the State must prove by clear and convincing evidence that the parent has willfully failed to comply in whole or in part with a reasonable provision material to the rehabilitative objective of the plan and the termination of parental rights is in the best interests of the child. *In re Interest of Q.R. and D.R.*, 231 Neb. 791, 438 N.W.2d 146 (1989).

Under subsection (6) of this section, a juvenile court has the discretionary power to prescribe a reasonable plan for parental rehabilitation to correct the conditions underlying the adjudication that a child is a juvenile within the Nebraska Juvenile Code. This court has held that to terminate parental rights under subsection (6) of this section, the State must prove by clear and convincing evidence that the parent has willfully failed to comply, in whole or in part, with a reasonable provision material to the rehabilitative objective of the plan and termination of parental rights is in the best interests of the child. *In re Interest of P.M.C.*, 231 Neb. 701, 437 N.W.2d 786 (1989).

A parent's failure to make reasonable efforts to comply with a court-ordered plan of rehabilitation designed to reunite the parent and child presents an independent reason justifying termination of parental rights under subdivision (6) of this section. The state must prove this failure by clear and convincing evidence. *In re Interest of P.D.*, 231 Neb. 608, 437 N.W.2d 156 (1989).

A parent's failure to make reasonable efforts to comply with a court-ordered plan of rehabilitation designed to reunite the parent and child presents an independent reason justifying termination of parental rights under subdivision (6) of this section. *In re Interest of D.L.S.*, 230 Neb. 435, 432 N.W.2d 31 (1988).

Regarding parental noncompliance with a court-ordered rehabilitative plan, under subsection (6) of this section, as a ground for termination of parental rights, the State must prove by clear and convincing evidence that the parent has willfully failed to comply, in whole or in part, with a reasonable provision material to the rehabilitative objective of the plan and, in addition to the parent's noncompliance with the rehabilitative plan, termination of parental rights is in the best interests of the child. *In re Interest of A.Z., B.Z., and R.Z.*, 230 Neb. 291, 430 N.W.2d 901 (1988).

As grounds for termination, the State must prove by clear and convincing evidence that the parent has willfully failed to comply with a reasonable provision material to the rehabilitative objective of the plan, and, in addition to the parent's noncompliance, termination is in the best interests of the child. *In re Interest of L.O. and B.O.*, 229 Neb. 889, 429 N.W.2d 388 (1988).

Regarding parental noncompliance with a court-ordered rehabilitation plan under subsection (6) of this section as a ground for termination of parental rights, the State must prove by clear and convincing evidence that (1) the parent has willfully failed to comply, in whole or in part, with a reasonable provision material to the rehabilitative objective of the plan and (2) termination of parental rights is in the best interests of the child. *In re Interest of J.S., A.C., and C.S.*, 227 Neb. 251, 417 N.W.2d 147 (1987).

When a rehabilitation plan is implemented, the plan must be reasonable and conducted under the direction of the juvenile court before failure to comply with the plan can be an independent reason for termination. *In re Interest of K.L.N. and M.J.N.*, 225 Neb. 595, 407 N.W.2d 189 (1987).

The primary consideration in termination proceedings is the best interests of the child and, while termination of parental rights should be considered as a last resort, this section requires that the best interests of the child and evidence of fault or neglect be considered together in reaching such a determination. The failure to comply with a court-ordered plan of rehabilitation, where a parent is ordered to make reasonable efforts to rehabilitate, presents an independent reason justifying termination of parental rights. *In re Interest of J.W.*, 224 Neb. 897, 402 N.W.2d 671 (1987).

The failure of a parent to follow a rehabilitation plan which is not conducted under the direction of the court is not sufficient reason to terminate parental rights under this statute. *In re Interest of M.L.B.*, 221 Neb. 396, 377 N.W.2d 521 (1985).

Parental rights terminated of mother who failed to comply with a plan of rehabilitation and who suffered from a personality disorder likely to last for an indefinite period. *In re Interest of R.L.T.*, 221 Neb. 251, 376 N.W.2d 310 (1985).

The state need not show harm to the child in order to terminate parental rights. The failure of the parent to follow a plan of rehabilitation is sufficient grounds for termination. *In re Interest of S.P., N.P., and L.P.*, 221 Neb. 165, 375 N.W.2d 616 (1985).

The trial court did not abuse its discretion by terminating the parental rights of a parent who failed to rehabilitate herself within a reasonable time after the adjudicative hearing. *In re Interest of S.W.*, 220 Neb. 734, 371 N.W.2d 726 (1985).

Pursuant to subsection (6) of this section, termination of parental rights requires a finding that following a determination that the juvenile is one as described in subsection (3)(a) of section 43â€247, reasonable efforts to preserve and reunify the family if required under section 43â€283.01, under the direction of the court, have failed to correct the

conditions leading to the determination. In re Interest of Stacey D. & Shannon D., 12 Neb. App. 707, 684 N.W.2d 594 (2004).

5. Appeal

A parent's failure to appeal from an adjudication order, dispositional order, or other final, appealable order leading to the termination of parental rights does not preclude an appellate court from reviewing the proceedings for a denial of due process in an appeal from a termination order. In re Interest of Mainor T. & Estela T., 267 Neb. 232, 674 N.W.2d 442 (2004).

The right to appeal from orders of a county court sitting as a juvenile court, insofar as that right is vested in the child's custodian, is vested only in individuals or entities having legal custody of such a child, and not in those persons having only possession of the child. In re Interest of S.R., 217 Neb. 528, 352 N.W.2d 141 (1984).

6. Miscellaneous

For a juvenile court to terminate parental rights under this section, it must find that termination is in the child's best interests and that one or more of the statutory grounds listed in this section have been satisfied. The State must prove these facts by clear and convincing evidence. In re Interest of Shelby L., 270 Neb. 150, 699 N.W.2d 392 (2005).

In a juvenile proceeding to terminate parental rights, the evidence adduced to prove termination on any statutory ground other than subsection (7) of this section is highly relevant to the best interests of the juvenile, as it would show abandonment, neglect, unfitness, or abuse. In re Interest of Shelby L., 270 Neb. 150, 699 N.W.2d 392 (2005).

Subsection (7) of this section operates mechanically and, unlike the other subsections of this section, does not require the State to adduce evidence of any specific fault on the part of a parent. Thus, it is in the context of analyzing the best interests of the juvenile that courts must respect a parent's commanding interest in the accuracy and justice of the decision to terminate parental rights. Where termination of parental rights is sought solely pursuant to subsection (7), proof that termination is nonetheless in a juvenile's best interests will, necessarily, require clear and convincing evidence of circumstances as compelling and pertinent to a child's best interests as those enumerated in the other subsections of this section. In re Interest of Aaron D., 269 Neb. 249, 691 N.W.2d 164 (2005).

The State cannot prove that termination of parental rights is in a child's best interests by implementing a case plan that precludes a parent's compliance. In re Interest of Mainor T. & Estela T., 267 Neb. 232, 674 N.W.2d 442 (2004).

In order to terminate parental rights, the State must prove by clear and convincing evidence that one of the statutory grounds enumerated in this section exists and that

termination is in the child's best interests. In re Interest of Joshua R. et al., 265 Neb. 374, 657 N.W.2d 209 (2003).

This section is not unconstitutional; adequate safeguards are provided to ensure that parental rights are not terminated based solely upon the length of time children are in an out-of-home placement. In re Interest of Ty M. & Devon M., 265 Neb. 150, 655 N.W.2d 672 (2003); In re Interest of Phyllisa B., 265 Neb. 53, 654 N.W.2d 738 (2002).

Two requirements must be met before parental rights may be terminated: requisite evidence must establish the existence of one or more of the circumstances described in subsections (1) to (10) of this section, and if a circumstance designated in subsections (1) to (10) is evidentially established, there must be the additional showing that termination of parental rights is in the best interests of the child. In re Interest of Ty M. & Devon M., 265 Neb. 150, 655 N.W.2d 672 (2003); In re Interest of Phyllisa B., 265 Neb. 53, 654 N.W.2d 738 (2002).

In order to terminate parental rights with respect to a child on the basis of neglect under subsection (2) of this section, as amended, the State must prove by clear and convincing evidence that (1) the parents have substantially and continuously or repeatedly neglected and refused to give the child or a sibling of said child necessary parental care and protection and (2) termination of parental rights is in the best interests of the child. In re Interest of Lisa W. & Samantha W., 258 Neb. 914, 606 N.W.2d 804 (2000).

In order to terminate parental rights, the State must prove by clear and convincing evidence that one of the statutory grounds enumerated in this section exists and that termination is in the children's best interests. In re Interest of Michael B. et al., 258 Neb. 545, 604 N.W.2d 405 (2000); In re Interest of Kalie W., 258 Neb. 46, 601 N.W.2d 753 (1999).

The fact that children benefit from foster placement after they are removed from the custody of a natural parent does not lend support to an argument that termination of parental rights is not in their best interests. Where a parent is unable or unwilling to rehabilitate himself or herself within a reasonable time, the best interests of the child require termination of the parental rights. A significant piece of evidence bearing on the issue of whether termination of parental rights is in the best interests of the child is the fact that while in foster care, the child's "arrested state of development" at the time of removal from custody is being reversed. Children cannot, and should not, be suspended in foster care or be made to await uncertain parental maturity. The concept of permanency is not simply a "buzzword", but, rather, a recognition that when there is no reasonable expectation that a natural parent will fulfill his or her responsibility to a child, the child should be given an opportunity to live with an adult who has demonstrated a willingness and ability to assume that responsibility and has a permanent legal obligation to do so. In re Interest of Sunshine A. et al., 258 Neb. 148, 602 N.W.2d 452 (1999).

The language of this section imposes two requirements before parental rights may be terminated. First, requisite evidence must establish the existence of one or more of the

circumstances described in subsections (1) to (10) of this section. Second, if a circumstance designated in subsections (1) to (10) of this section is evidentially established, there must be the additional showing that termination of parental rights is in the best interests of the child, the primary consideration in any question concerning termination of parental rights. Each of the requirements imposed by this section must be proved by clear and convincing evidence. In re Interest of Sunshine A. et al., 258 Neb. 148, 602 N.W.2d 452 (1999).

Through the plain language of this section, the Legislature has demonstrated its intent that under certain circumstances, prior court action or an adjudication may be required before parental rights can be terminated. The plain and ordinary meaning of this section and section 43-291, taken together, is that parental rights may be terminated in an original proceeding. In re Interest of Joshua M. et al., 256 Neb. 596, 591 N.W.2d 557 (1999).

Pursuant to subsection (3) of this section, a court cannot deny a natural parent custody based on the fact that he or she has limited resources or financial problems, or because the parent's lifestyle is different or unusual. Pursuant to subsection (4) of this section, the children need not be present while the parent commits acts described in the section for this section to apply. Gomez v. Savage, 254 Neb. 836, 580 N.W.2d 523 (1998).

A court may terminate parental rights when such action is in the best interests of the child and one or more of the statutorily specified conditions exist. The special needs of the child in question do not provide a basis for terminating parental rights if the record does not clearly and convincingly establish that the parent is not capable of providing the required special attention. In re Interest of Constance G., 254 Neb. 96, 575 N.W.2d 133 (1998).

Before parental rights may be terminated, requisite evidence must establish existence of one or more of the circumstances described in subsections (1) to (6) of this section, and there must be an additional showing that termination is in the best interests of the child. In re Interest of C.K., L.K., and G.K., 240 Neb. 700, 484 N.W.2d 68 (1992); In re Interest of L.V., 240 Neb. 404, 482 N.W.2d 250 (1992).

In the absence of any reasonable alternative and as the last resort to dispose of an action brought pursuant to the Nebraska Juvenile Code, termination of parental rights is permissible when the basis for such termination is proved by clear and convincing evidence. In re Interest of M.P., 238 Neb. 857, 472 N.W.2d 432 (1991); In re Interest of C.C., 226 Neb. 263, 411 N.W.2d 51 (1987); In re Interest of T.C., 226 Neb. 116, 409 N.W.2d 607 (1987).

A juvenile court may terminate parental rights under the various grounds specified in subsections (1) through (5) of this section without providing the parent with a reasonable opportunity to rehabilitate himself or herself. In re Interest of L.C., J.C., and E.C., 235 Neb. 703, 457 N.W.2d 274 (1990).

In order to terminate parental rights, it must be shown that termination of parental rights is in the child's best interests and that at least one of six bases provided in this section exists. In re Interest of J.B. et al., 235 Neb. 530, 455 N.W.2d 817 (1990).

In order to terminate parental rights, the State must prove by clear and convincing evidence that termination of parental rights is in the child's best interests and that at least one of the six bases provided in this section exists. In re Interest of C.D.C., 235 Neb. 496, 455 N.W.2d 801 (1990).

In order to terminate parental rights under this section, there must be clear and convincing evidence of the existence of one or more of the circumstances described in subsections (1) to (6), and if one of the conditions described in subsections (1) to (6) has been evidentially established, there must be an additional showing by clear and convincing evidence that termination of parental rights is in the child's best interests. In re Interest of J.B. and A.P., 235 Neb. 74, 453 N.W.2d 477 (1990).

Subsection (6) of this section does not require the court to proceed under that subsection whenever a determination has been made under section 43-247; the court may terminate parental rights when it appears that any one of the six conditions under this section has been met. In re Interest of J.A. and T.A., 229 Neb. 271, 426 N.W.2d 277 (1988).

Language of this section imposes two requirements before parental rights may be terminated: First, requisite evidence must establish existence of one or more of the circumstances described in subsections (1) to (6); and second, there must be the additional showing that termination of parental rights is in the best interests of the child, the primary consideration in any question concerning termination of parental rights. The standard of proof for each of the two preceding requirements is evidence which is "clear and convincing." In re Interest of J.S., A.C., and C.S., 227 Neb. 251, 417 N.W.2d 147 (1987).

Clear and convincing evidence was before the trial court to show that reasonable efforts, under the court's direction, had failed to correct the conditions which had led to the determination that the child in question was a child as defined in section 43-247(3)(a). In re Interest of J.W., 224 Neb. 897, 402 N.W.2d 671 (1987).

In order to terminate parental rights, the State must prove by clear and convincing evidence that one of the statutory grounds enumerated in this section exists and that termination is in the child's best interests. In re Interest of Stacey D. & Shannon D., 12 Neb. App. 707, 684 N.W.2d 594 (2004).

Only one ground for termination under this section need be proved in order to terminate parental rights. In re Interest of Stacey D. & Shannon D., 12 Neb. App. 707, 684 N.W.2d 594 (2004).

Pursuant to subsection (7) of this section, termination of parental rights requires a finding that the juvenile has been in an out-of-home placement for 15 or more months of

the most recent 22 months. In re Interest of Stacey D. & Shannon D., 12 Neb. App. 707, 684 N.W.2d 594 (2004).

The plain language of subsection (10) of this section does not require a criminal conviction or proof beyond a reasonable doubt that a parent has committed voluntary manslaughter or murder of his or her child, but merely clear and convincing evidence that the parent "committed" murder or voluntary manslaughter of his or her child. In re Interest of Anthony V., 12 Neb. App. 567, 680 N.W.2d 221 (2004).

A combination of the best interests of the child and evidence of fault or neglect on the part of the parent is required to terminate a parent's natural right to the custody of his or her own child. In re Interest of Crystal C., 12 Neb. App. 458, 676 N.W.2d 378 (2004).

Whether termination of parental rights is in the best interests of a child involves consideration of two aspects: (1) what the child might gain or lose by a continued relationship with the parent and (2) what the child might gain by the prospects of new relationships which the termination might open for the child. In re Interest of Heather G. et al., 12 Neb. App. 13, 664 N.W.2d 448 (2003).

Although there may have been no prior juvenile court action, including adjudication, the juvenile court acquires jurisdiction to terminate parental rights when a motion to terminate parental rights containing the grounds for termination is filed under subsections (1) through (5) of this section. In re Interest of Brook P. et al., 10 Neb. App. 577, 634 N.W.2d 290 (2001).

In a hearing on the termination of parental rights without a prior adjudication, where such termination is sought under subsections (1) through (5) of this section, such proceedings must be accompanied by due process safeguards, as statutory provisions cannot abrogate constitutional rights. In re Interest of Brook P. et al., 10 Neb. App. 577, 634 N.W.2d 290 (2001).

The language of this section imposes two requirements before parental rights may be terminated: (1) the existence of one or more conditions listed in this section and (2) the best interests of the child. In re Interest of Azia B., 10 Neb. App. 124, 626 N.W.2d 602 (2001).

The essence of issue preclusion is that once parents have litigated their treatment of their child's sibling in an adjudication proceeding, they are not entitled to another opportunity to litigate the same issue in a subsequent proceeding involving the child under subsection (2) of this section. In re Interest of Jaden H., 10 Neb. App. 87, 625 N.W.2d 218 (2001).

The State may use factual findings from a sibling's case, when proved true by clear and convincing evidence, as a basis for termination of parental rights to a sibling. In re Interest of Jaden H., 10 Neb. App. 87, 625 N.W.2d 218 (2001).

Section 43-1505 provides specific statutory requirements for proving a case for termination of parental rights in a juvenile court action involving an Indian child, and the petition for termination of parental rights must include sufficient allegations of the requirements of section 43-1505 as well as this section to survive a demurrer. In re Interest of Sabrienia B., 9 Neb. App. 888, 621 N.W.2d 836 (2001).

In order to justify termination of parental rights pursuant to subsection (6) of this section, the State must prove by clear and convincing evidence that (1) the parent has failed to comply, in whole or in part, with a reasonable provision material to the rehabilitation objective of the plan and (2) that termination of parental rights is in the best interests of the child. In re Interest of Joseph L., 8 Neb. App. 539, 598 N.W.2d 464 (1999).

Pursuant to this section, a court may terminate parental rights when such action is in the best interests of the child and one or more of the statutorily specified conditions exist. In re Interest of Joseph L., 8 Neb. App. 539, 598 N.W.2d 464 (1999).

Parental incarceration is a factor which may be considered in determining whether parental rights should be terminated. A parent's failure to change a lifestyle of chemical dependency may constitute neglect under subsection (2) of this section. In re Interest of Joshua M. et al., 7 Neb. App. 872, 587 N.W.2d 131 (1998).

A parent's parental rights may not be terminated pursuant to the provisions of this section based solely upon the parent's refusal to waive his or her constitutional and statutory protections against self-incrimination. In re Interest of Clifford M. et al., 6 Neb. App. 754, 577 N.W.2d 547 (1998).

In the absence of an adjudication petition and hearing in compliance with section 43-247, an order purporting to terminate parental rights pursuant to this section is a nullity. In re Interest of Joelyann H., 6 Neb. App. 472, 574 N.W.2d 185 (1998).

Termination of parental rights is protected by due process under the U.S. and Nebraska Constitutions, and in the absence of a valid waiver by all parties to such proceedings, a verbatim transcript of those proceedings shall be made and preserved in the separate juvenile court. In re Interest of M.W. and R.W., 1 Neb. App. 378, 497 N.W.2d 396 (1992).