

# Statutes Pertaining to the Foster Care Review Office

## Foster Care Review Act

### Section 43-1301

#### *Terms, defined.*

For purposes of the Foster Care Review Act, unless the context otherwise requires:

(1) Local board means a local foster care review board created pursuant to section 43-1304;

(2) Office means the Foster Care Review Office created pursuant to section 43-1302;

(3) Foster care facility means any foster home, group home, child care facility, public agency, private agency, or any other person or entity receiving and caring for foster children;

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

(5) Person or court in charge of the child means (a) the Department of Health and Human Services, an association, or an individual who has been made the guardian of a neglected, dependent, or delinquent child by the court and has the responsibility of the care of the child and has the authority by and with the assent of the court to place such a child in a suitable family home or institution or has been entrusted with the care of the child by a voluntary placement made by a parent or legal guardian, (b) the court which has jurisdiction over the child, or (c) the entity having jurisdiction over the child pursuant to the Nebraska Indian Child Welfare Act;

(6) Voluntary placement means the placement by a parent or legal guardian who relinquishes the possession and care of a child to a third party, individual, or agency;

(7) Family unit means the social unit consisting of the foster child and the parent or parents or any person in the relationship of a parent, including a grandparent, and any siblings with whom the foster child legally resided prior to placement in foster care, except that for purposes of potential sibling placement, the child's family unit also includes the child's siblings even if the child has not resided with such siblings prior to placement in foster care;

(8) Child-caring agency has the definition found in section 71-1902;

(9) Child-placing agency has the definition found in section 71-1902; and

(10) Siblings means biological siblings and legal siblings, including, but not limited to, half-siblings and stepsiblings.

**Source:**

Laws 1982, LB 714, § 1  
Laws 1985, LB 255, § 40  
Laws 1985, LB 447, § 36  
Laws 1987, LB 239, § 1  
Laws 1990, LB 1222, § 4  
Laws 1996, LB 1044, § 194  
Laws 1997, LB 307, § 75  
Laws 2012, LB 998, § 3

**Cross References:**

Nebraska Indian Child Welfare Act, see section 43-1501

**Section 43-1301.01*****Entering foster care; determination of time.***

For the purpose of determining the timing of review hearings, permanency hearings, and other requirements under the Foster Care Review Act, a child is deemed to have entered foster care on the earlier of the date of the first judicial finding that the child has been subjected to child abuse or neglect or the date that is sixty days after the date on which the child is removed from the home.

**Source:**

Laws 1998, LB 1041, § 35

**Section 43-1302*****Agency and Advisory Committee established; members; terms; expenses.***

(1)(a) The Foster Care Review Office is hereby established. The purpose of the office is to provide information and direct reporting to the courts, the Department of Health and Human Services, and the Legislature regarding the foster care system in Nebraska; to provide oversight of the foster care system; and to make recommendations regarding foster care policy to the Legislature. The executive director of the office shall provide information and reporting services, provide analysis of information obtained, and oversee foster care file audit case reviews and tracking of cases of children in the foster care system. The executive director of the office shall, through information analysis and with the assistance of the Foster Care Advisory Committee, (i) determine key issues of the foster care system and ways to resolve the issues and to otherwise improve the system and (ii) make policy recommendations.

(b) All equipment and effects of the State Foster Care Review Board on the operative date of this act shall be transferred to the Foster Care Review Office, and all staff of the board, except the executive director and interim executive director, shall be transferred to the office. The State Foster Care Review Board shall terminate on the operative date of this act. Beginning on the operative date of this act, the data coordinator of the board, as such position existed prior to such date, shall serve as the executive director of the office until the Foster Care Advisory Committee hires an executive

director as prescribed by this section. It is the intent of the Legislature that the staff of the board employed prior to the operative date of this act shall continue to be employed by the office until such time as the executive director is hired by the committee.

(c) It is the intent of the Legislature that the funds appropriated to the State Foster Care Review Board be transferred to the Foster Care Review Office for FY2012-13.

(2)(a) The Foster Care Advisory Committee is created. The committee shall have five members appointed by the Governor. The members shall have no pecuniary interest in the foster care system and shall not be employed by the office, the Department of Health and Human Services, a county, a child-caring agency, a child-placing agency, or a court.

(b) The Governor shall appoint three members from a list of twelve local board members submitted by the Health and Human Services Committee of the Legislature, one member from a list of four persons with data analysis experience submitted by the Health and Human Services Committee of the Legislature, and one member from a list of four persons who are residents of the state and are representative of the public at large submitted by the Health and Human Services Committee of the Legislature. The Health and Human Services Committee of the Legislature shall hold a confirmation hearing for the appointees, and the appointments shall be subject to confirmation by the Legislature, except that the initial members and members appointed while the Legislature is not in session shall serve until the next session of the Legislature, at which time a majority of the members of the Legislature shall approve or disapprove of the appointments.

(c) The terms of the members shall be for three years, except that the Governor shall designate two of the initial appointees to serve initial terms ending on March 1, 2014, and three of the initial appointees to serve initial terms ending on March 1, 2015. The Governor shall make the initial appointments within thirty days after the operative date of this act. Members shall not serve more than two consecutive terms, except that members shall serve until their successors have been appointed and qualified. The Governor shall appoint members to fill vacancies in the same manner as the original appointments to serve for the remainder of the unexpired term.

(d) The Foster Care Advisory Committee shall meet at least four times each calendar year. Each member shall attend at least two meetings each calendar year and shall be subject to removal for failure to attend at least two meetings unless excused by a majority of the members of the committee. Members shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177.

(e) The duties of the Foster Care Advisory Committee are to:

(i) Hire and fire an executive director for the office who has training and experience in foster care; and

(ii) Support and facilitate the work of the office, including the tracking of children in foster care and reviewing foster care file audit case reviews.

(3) The executive director of the office shall hire, fire, and supervise office staff and shall be responsible for the duties of the office as provided by law, including the annual report and other reporting, review, tracking, data collection and analysis, and oversight and training of local boards.

**Source:**

Laws 1982, LB 714, § 2

Laws 1987, LB 239, § 2

Laws 1990, LB 1222, § 5

Laws 2005, LB 761, § 1  
Laws 2007, LB 463, §1133  
Laws 2009, LB 679, §1  
Laws 2012, LB 998, § 4

### **Section 43-1303**

#### ***Registry; reports required; rules and regulations; visitation of facilities.***

(1) The office shall maintain the statewide register of all foster care placements occurring within the state, and there shall be a monthly report made to the registry of all foster care placements by the Department of Health and Human Services, any child-placing agency, or any court in a form as developed by the office in consultation with representatives of entities required to make such reports. For each child entering and leaving foster care, such monthly report shall consist of identifying information, placement information, and the plan or permanency plan developed by the person or court in charge of the child pursuant to section 43-1312. The department and every court and child-placing agency shall report any foster care placement within three working days. The report shall contain the following information:

(a) Child identification information, including name, social security number, date of birth, gender, race, and religion;

(b) Identification information for parents and stepparents, including name, social security number, address, and status of parental rights;

(c) Placement information, including initial placement date, current placement date, and the name and address of the foster care provider;

(d) Court status information, including which court has jurisdiction, initial custody date, court hearing date, and results of the court hearing;

(e) Agency or other entity having custody of the child;

(f) Case worker; and

(g) Permanency plan objective.

(2)(a) The office shall designate a local board to conduct foster care file audit case reviews for each case of children in foster care placement.

(b) The office may adopt and promulgate rules and regulations for the following:

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

(ii) Development of procedures for local boards;

(iii) Establishment of a central record-keeping facility for all local board files, including foster care file audit case reviews;

(iv) Accumulation of data and the making of annual reports on children in foster care. Such reports shall include (A) personal data on length of time in foster care, (B) number of placements, (C) frequency and results of foster care file audit case reviews and court review hearings, (D) number of children supervised by the foster care programs in the state annually, (E) trend data impacting foster care, services, and placements, (F) analysis of the data, and (G) recommendations for improving the foster care system in Nebraska;

(v) To the extent not prohibited by section 43-1310, evaluation of the judicial and administrative data collected on foster care and the dissemination of

such data to the judiciary, public and private agencies, the department, and members of the public; and

(vi) Manner in which the office shall determine the appropriateness of requesting a court review hearing as provided for in section 43-1313.

(3) A local board shall send a written report to the office for each foster care file audit case review conducted by the local board. A court shall send a written report to the office for each foster care review hearing conducted by the court.

(4) The office shall report and make recommendations to the Legislature, department, local boards, and county welfare offices. Such reports and recommendations shall include, but not be limited to, the annual judicial and administrative data collected on foster care pursuant to subsections (2) and (3) of this section and the annual evaluation of such data. In addition, the office shall provide copies of such reports and recommendations to each court having the authority to make foster care placements. The executive director of the office or his or her designees from the office may visit and observe foster care facilities in order to ascertain whether the individual physical, psychological, and sociological needs of each foster child are being met. The executive director shall also provide, at a time specified by the Health and Human Services Committee of the Legislature, regular updates regarding child welfare data and information at least quarterly, and a fourth-quarter report which shall be the annual report. The executive director shall include issues, policy concerns, and problems which have come to the office and the executive director from analysis of the data. The executive director shall recommend alternatives to the identified problems and related needs of the office and the foster care system to the committee. The Health and Human Services Committee shall coordinate and prioritize data and information requests submitted to the office by members of the Legislature. The annual report of the office shall be completed by December 1 each year, beginning December 1, 2012.

**Source:**

Laws 1982, LB 714, § 3

Laws 1990, LB 1222, § 6

Laws 1996, LB 1044, § 195

Laws 1998, LB 1041, § 36

Laws 1999, LB 240, § 1

Laws 2012, LB 998, § 5

**Section 43-1304**

***Local foster care review boards; established; members.***

There shall be local foster care review boards to conduct the foster care file audit case reviews of children in foster care placement and carry out other powers and duties given to such boards under the Foster Care Review Act. Members of local boards serving on the operative date of this act shall continue to serve the unexpired portion of their terms. The executive director of the office shall select members to serve on local boards from a list of applications submitted to the office. Each local board shall consist of not less than four and not more than ten members as determined by the executive director. The members of the local board shall reasonably represent the various social, economic, racial, and ethnic groups of the county or counties from which its members may be

appointed. A person employed by the office, the Department of Health and Human Services, a child-caring agency, a child-placing agency, or a court shall not be appointed to a local board. A list of the members of each local board shall be sent to the department.

**Source:**

Laws 1982, LB 714, § 4  
Laws 1987, LB 239, § 3  
Laws 1996, LB 1044, § 196  
Laws 1999, LB 240, § 2  
Laws 2012, LB 998, § 6

**Section 43-1305**

*Local board; terms; vacancy.*

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

**Source:**

Laws 1982, LB 714, § 5  
Laws 1999, LB 240, § 3  
Laws 2012, LB 998, § 7

**Section 43-1306**

Repealed.

**Source:**

Laws 1982, LB 714, § 6  
Laws 2012, LB 998, § 20

**Section 43-1307**

*Child placed in foster care; court; duties.*

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

(2) The office may provide the designated local board with copies of the information provided by the court under subsection (1) of this section.

**Source:**

Laws 1982, LB 714, § 7

Laws 1998, LB 1041, § 37

Laws 2012, LB 998, § 8

**Section 43-1308**

***Powers and duties.***

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

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

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

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

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

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

**Source:**

Laws 1982, LB 714, § 8

Laws 1985, LB 255, § 41

Laws 1990, LB 1222, § 7

Laws 1998, LB 1041, § 38

Laws 2012, LB 998, § 9

**Cross References:** Nebraska Indian Child Welfare Act, see section 43-1501.

**Section 43-1309*****Records; release; when.***

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

**Source:**

Laws 1982, LB 714, § 9  
Laws 1990, LB 1222, § 8  
Laws 1996, LB 1044, § 197  
Laws 2012, LB 998, § 10

**Section 43-1310*****Records and information; confidential; unauthorized disclosure; penalty.***

All records and information regarding foster children and their parents or relatives in the possession of the office or local board shall be deemed confidential. Unauthorized disclosure of such confidential records and information or any violation of the rules and regulations adopted and promulgated by the Department of Health and Human Services or the office shall be a Class III misdemeanor.

**Source:**

Laws 1982, LB 714, § 10  
Laws 1990, LB 1222, § 9  
Laws 1996, LB 1044, § 198  
Laws 2012, LB 998, § 11

**Section 43-1311*****Child removed from home; person or court in charge of child; duties.***

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

(1) Conduct or cause to be conducted an investigation of the child's circumstances designed to establish a safe and appropriate plan for the rehabilitation of the foster child and family unit or permanent placement of the child;

- (2) Require that the child receive a medical examination within two weeks of his or her removal from his or her home; and
- (3) Subject the child to such further diagnosis and evaluation as is necessary.

**Source:**

Laws 1982, LB 714, § 11  
Laws 1985, LB 255, § 42  
Laws 1998, LB 1041, § 39  
Laws 2012, LB 998, § 12

**Cross References:** Nebraska Indian Child Welfare Act, see section 43-1501.

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

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

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

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

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

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

**Source:**

Laws 1982, LB 714, § 12  
Laws 1998, LB 1041, § 40

**Annotations:**

Under subsection (3) of this section, a permanency hearing considers the appropriateness of a plan for a child in foster care with respect to the plan's likelihood of providing, inter alia, a safe, stable, and nurturing environment. Pursuant to subsection (3) of this section, a permanency hearing must be conducted no later than twelve months after the child enters foster care. In re Interest of Sarah K., 258 Neb. 52, 601 N.W.2d 780 (1999).

**Section 43-1313*****Review of dispositional order; when; procedure.***

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

**Source:**

Laws 1982, LB 714, § 13  
Laws 1990, LB 1222, § 10

**Section 43-1314*****Review of dispositional order; right to participate; notice.***

(1) Except as otherwise provided in the Nebraska Indian Child Welfare Act, notice of the court review or hearing and the right of participation in all court reviews and hearings pertaining to a child in a foster care placement shall be provided by the court having jurisdiction over such child for the purposes of foster care placement. The Department of Health and Human Services or contract agency shall have the contact information for all child placements available for all courts to comply with the notification requirements found in this section. The department or contract agency shall each have one telephone number by which any court seeking to provide notice may obtain up-to-date contact information of all persons listed in subdivisions (2)(a) through (h) of this section. All contact information shall be up-to-date within seventy-two hours of any placement change.

(2) Notice shall be provided to all of the following parties that are applicable to the case: (a) The person charged with the care of such child; (b) the child's parents or guardian unless the parental rights of the parents have been terminated by court action as provided in section 43-292 or 43-297; (c) the foster child if age fourteen or over; (d) the foster parent or parents of the foster child; (e) the guardian ad litem of the foster child; (f) the office and designated local board; (g) the preadoptive parent; and (h) the relative providing care for the child. Notice of all court reviews and hearings shall be mailed or personally delivered to the counsel or party, if the party is not represented by counsel, five full days prior to the review or hearing. The use of ordinary mail shall constitute sufficient compliance. Notice to the foster parent, preadoptive parent, or relative providing care shall not be construed to require that such foster parent, preadoptive parent, or relative is a necessary party to the review or hearing.

(3) The court shall inquire into the well-being of the foster child by asking questions, if present at the hearing, of any willing foster parent, preadoptive parent, or relative providing care for the child.

**Source:**

Laws 1982, LB 714, § 14  
Laws 1985, LB 255, § 43  
Laws 1988, LB 948, § 1  
Laws 1990, LB 1222, § 11  
Laws 1998, LB 1041, § 41  
Laws 2012, LB 998, § 13

**Cross References:** Nebraska Indian Child Welfare Act, see section 43-1501.

**Annotations:**

A foster parent does not have an interest in the placement of an adjudicated child sufficient to warrant intervention in juvenile proceedings as a matter of right, but is entitled to notice and an opportunity to participate in all court reviews pertaining to a child in foster care placement. *In re Interest of Destiny S.*, 263 Neb. 255, 639 N.W.2d 400 (2002).

Under this section and section 43-285, foster parents have standing to participate in foster care placement review hearings. *In re Interest of Jorius G. & Cheralee G.*, 249 Neb. 892, 546 N.W.2d 796 (1996).

**Section 43-1314.01**

***Six-month case reviews; duties.***

1) The office shall be the only entity responsible for the conduct of periodic foster care file audit case reviews which shall be identified as reviews which meet the federal requirements for six-month case reviews pursuant to the federal Adoption Assistance and Child Welfare Act of 1980, Public Law 96-272. The office shall be fiscally responsible for any noncompliance sanctions imposed by the federal government related to the requirements for review outlined in the federal Adoption Assistance and Child Welfare Act of 1980, Public Law 96-272.

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

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

**Source:**

Laws 1996, LB 642, § 1  
Laws 1997, LB 307, § 76  
Laws 1999, LB 240, § 4  
Laws 2012, LB 998, § 14

**Section 43-1315**

***Status and permanency plan review; placement order.***

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

**Source:**

Laws 1982, LB 714, § 15  
Laws 1987, LB 635, § 4  
Laws 1998, LB 1041, § 42

**Annotations:**

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 this section, 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).

This section only applies to situations where the foster care status of a child is being reviewed, not all orders which are dispositional in nature. In re Interest of Gloria F., 254 Neb. 531, 577 N.W.2d 296 (1998).

**Section 43-1316**

*Status review; child's needs; determination.*

The court shall, when reviewing the foster care status of a child, determine whether the individual physical, psychological, and sociological needs of the child are being met. The health and safety of the child are of paramount concern in such review.

**Source:**

Laws 1982, LB 714, § 16

Laws 1998, LB 1041, § 43

**Section 43-1317**

*Training for local board members.*

The office shall establish compulsory training for local board members which shall consist of initial training programs followed by periodic inservice training programs.

**Source:**

Laws 1982, LB 714, § 17

Laws 2012, LB 998, § 15

**Section 43-1318**

*Act, how cited.*

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

**Source:**

Laws 1982, LB 714, § 18

Laws 1996, LB 642, § 2

Laws 1998, LB 1041, § 44

## **Other Related Statutes**

### **Section 43-1321**

#### ***Foster Care Review Office Cash Fund; created; use; investment.***

There is hereby created the Foster Care Review Office Cash Fund. The fund shall be administered by the Foster Care Review Office. The office shall remit revenue from the following sources to the State Treasurer for credit to the fund:

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

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

(3) Money received by the office as gifts, grants, reimbursements, or appropriations from any source intended for the purposes of the fund. The fund shall be used for the administration of the Foster Care Review Office. The State Treasurer shall transfer any funds in the Foster Care Review Board Cash Fund on the operative date of this act to the Foster Care Review Office Cash Fund. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

#### **Source:**

Laws 1994, LB 1194, § 9

Laws 1995, LB 7, § 38

Laws 2012, LB 998, § 16

#### **Cross References:**

Foster Care Review Act, see section 43-1318.

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

### **Section 28-726**

#### ***Information; access.***

Except as provided in this section and sections 28-722 and 81-3126, no person, official, or agency shall have access to information in the tracking system of child protection cases maintained pursuant to section 28-715 or in records in the central register of child protection cases maintained pursuant to section 28-718 unless in furtherance of purposes directly connected with the administration of the Child Protection Act. Such persons, officials, and agencies having access to such information shall include, but not be limited to:

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

(2) A county attorney in preparation of a child abuse or neglect petition or termination of parental rights petition;

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

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

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

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

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

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

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

**Source:**

Laws 1979, LB 505, § 14

Laws 1982, LB 522, § 9

Laws 1988, LB 463, § 47

Laws 1990, LB 1222, § 1

Laws 1992, LB 643, § 2

Laws 1994, LB 1035, § 7

Laws 1997, LB 119, § 4

Laws 2001, LB 214, § 2

Laws 2002, LB 642, § 8

Laws 2005, LB 116, § 18

Laws 2012, LB 998, § 1

**Section 43-285**

***Care of juvenile; authority of guardian; placement plan and report; when; FCRO legal standing; participation authorized; immunity.***

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

(2) Following an adjudication hearing at which a juvenile is adjudged to be under subdivision (3) of section 43-247, the court may order the department to prepare and file with the court a proposed plan for the care, placement, services, and permanency which are to be provided to such juvenile and his or her family. The health and safety of the juvenile shall be the paramount concern in the proposed plan. The department shall include in the plan for a juvenile who is sixteen years of age or older and subject to the guardianship of the department a written independent living transition proposal which meets the requirements of section 43-1311.03. The court may approve the plan, modify the plan, order that an alternative plan be developed, or implement another plan that is in the juvenile's best interests. In its order the court shall include a finding regarding the appropriateness of the programs and services described in the proposal designed to assist the juvenile in acquiring independent living skills. Rules of evidence shall not apply at the dispositional hearing when the court considers the plan that has been presented.

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

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

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

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

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

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

**Source:**

Laws 1981, LB 346, § 41  
Laws 1982, LB 787, § 17  
Laws 1984, LB 845, § 31  
Laws 1985, LB 447, § 25  
Laws 1989, LB 182, § 12  
Laws 1990, LB 1222, § 3  
Laws 1992, LB 1184, § 14  
Laws 1993, LB 103, § 1  
Laws 1996, LB 1044, § 133  
Laws 1998, LB 1041, § 26  
Laws 2012, LB 998, § 2

**Annotations:**

Pursuant to subsection (3) of this section, when a separate juvenile court or county court sitting as a juvenile court awards custody of a minor to the Department of Health and Human Services, the court has authority to award custody to a family the department has designated as suitable guardians without resorting to a proceeding under section 30-2608. In re Guardianship of Rebecca B. et al., 260 Neb. 922, 621 N.W.2d 289 (2000).

The terms "care" and "custody" as used in this section are not synonymous. In re Interest of Jeremy T., 257 Neb. 736, 600 N.W.2d 747 (1999).

A dispositional order in which a juvenile court declines to order a rehabilitation plan for parents of a child adjudicated under section 43-247(3)(a) is a final, appealable order. A juvenile court is not required to order or implement a rehabilitation plan for the parent of a child adjudicated under section 43-247(3)(a) if the plan has very little chance of success and is not in the best interests of the child. Where a child's substantial medical needs resulting from injury caused by parental abuse necessitated 24-hour daily nursing care for the child, the juvenile court did not err in accepting recommendation of the Department of Health and Human Services that no rehabilitation plan be implemented to reunite a child with his or her parents. In re Interest of Tabatha R., 255 Neb. 818, 587 N.W.2d 109 (1998).

Because statutory provisions do not overcome constitutional rights, the provisions of subsection (6) of this section do not apply to proceedings brought under the Nebraska

Juvenile Code to terminate parental rights. Despite subsection (6) of this section, the hearsay report of the State Foster Care Review Board is not necessarily admissible in a hearing on termination of parental rights. *In re Interest of Constance G.*, 254 Neb. 96, 575 N.W.2d 133 (1998).

Pursuant to subsection (1) of this section, deciding whether to remove one from life support measures and whether to resuscitate one constitute medical services. *In re Tabatha R.*, 252 Neb. 687, 564 N.W.2d 598 (1997).

Where a proceeding to obtain the juvenile court's assent to the medical services determined by the department under subsection (1) of this section results in the functional equivalent of a proceeding to terminate parental rights, the same due process must be afforded in the assent proceeding as is required in a proceeding to terminate parental rights. *In re Interest of Tabatha R.*, 252 Neb. 687, 564 N.W.2d 598 (1997).

Where the department's determination under subsection (1) of this section is likely to result in the juvenile's death, the juvenile court's assent is the functional equivalent of a judgment terminating parental rights. *In re Tabatha R.*, 252 Neb. 687, 564 N.W.2d 598 (1997).

Pursuant to subsection (4) of this section (now subsection (5) of this section), the Department of Social Services acquires standing as a party only after a juvenile has been placed in its care. *In re Interest of Archie C.*, 250 Neb. 123, 547 N.W.2d 913 (1996).

Foster parents are interested parties for the purposes of this section. Foster parents have standing to participate in foster care placement review hearings. *In re Interest of Jorius G. & Cheralee G.*, 249 Neb. 892, 546 N.W.2d 796 (1996).

Standing alone, subsection (2) of this section appears to entitle the Department of Social Services to obtain an expedited review in any case; however, its reach is limited by the requirements set forth in sections 43-287.01 and 43-287.03, which require the application of a disjunctive test: First, the order must implement a different plan than that proposed by the department. Second, there must exist a belief in the department that the court-ordered plan is not in the best interests of the juvenile. Where this test is met, expedited review is the sole avenue of review available to the department. *In re Interest of M.J.B.*, 242 Neb. 671, 496 N.W.2d 495 (1993).

When the Department of Social Services has custody of a child, the department retains authority similar to a guardian's authority. *In re Interest of C.A.*, 235 Neb. 893, 457 N.W.2d 822 (1990).

The provision of this section which provides that the "Department of Social Services shall have the authority to determine the care, placement, medical services, psychiatric services, training, and expenditures on behalf of each child committed to it" by a juvenile court, does not contravene the distribution of powers clause contained in Neb. Const., art. II, sec. 1. *In re Interest of G.B., M.B., and T.B.*, 227 Neb. 512, 418 N.W.2d 258 (1988).

This section provides standing for the Department of Social Services to file any pleading or motion or to seek review or relief, when the juvenile court orders a juvenile to the care of the department. *In re Interest of C.G. and G.G.T.*, 221 Neb. 409, 377 N.W.2d 529 (1985).

When the court awards a juvenile to the Department of Health and Human Services, an association, or an individual in accordance with the Nebraska Juvenile Code, the juvenile shall, unless otherwise ordered, become a ward and be subject to the guardianship of the department, association, or individual to whose care he or she is committed. *In re Interest of Eric O. and Shane O.*, 9 Neb. App. 676, 617 N.W.2d 824 (2000).

Pursuant to subsection (3) of this section, although the language of this section appears to authorize an expedited review in any case, its reach is limited by the requirements set forth in sections 43-287.01 and 43-287.03. *In re Interest of Tanisha P. et al.*, 9 Neb. App. 344, 611 N.W.2d 418 (2000).

This section gives the court the power to assent and, by implication, to dissent from the placement and other decisions of the Department of Health and Human Services, as well as of other entities to whom the court might commit the care of a minor. This section indicates the Legislature's intent to remove from the Department of Health and Human Services the complete control of a minor whose care is given to the department under the Nebraska Juvenile Code. *In re Interest of Crystal T. et al.*, 7 Neb. App. 921, 586 N.W.2d 479 (1998).

A juvenile court may not delegate to the Department of Social Services or any other third party the authority to determine the time, manner, and extent of parental visitation. *In re Interest of Teela H.*, 3 Neb. App. 604, 529 N.W.2d 134 (1995).

### **Section 43-3001**

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

(2) In any judicial proceeding concerning a child who is currently, or who may become at the conclusion of the proceeding, a ward of the court or state or under the supervision of the court, an order may be issued which identifies individuals and agencies who shall be allowed to receive otherwise confidential information concerning the child for legitimate and official purposes. The individuals and agencies who may be identified

in the court order are the child's attorney or guardian ad litem, the parents' attorney, foster parents, appropriate school personnel, county attorneys, the Attorney General, authorized court personnel, law enforcement agencies, state probation personnel, state parole personnel, youth detention facilities, medical personnel, court appointed special advocate volunteers, treatment or placement programs, the Department of Health and Human Services, the Office of Juvenile Services, the Department of Correctional Services, the Foster Care Review Office, local foster care review boards, child abuse and neglect investigation teams, child abuse and neglect treatment teams, other multidisciplinary teams for abuse, neglect, or delinquency, and other individuals and agencies for which the court specifically finds, in writing, that it would be in the best interest of the juvenile to receive such information. Unless the order otherwise states, the order shall be effective until the child leaves the custody of the state or until a new order is issued.

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

(4) In any proceeding under this section relating to a child of school age, certified copies of school records relating to attendance and academic progress of such child are admissible in evidence.

(5) Except as provided in subsection (4) of this section, any person who publicly discloses information received pursuant to this section shall be guilty of a Class III misdemeanor.

**Source:**

Laws 2012, LB 998, § 17