

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 1149

Introduced by McGill, 26.

Read first time January 19, 2012

Committee:

A BILL

1 FOR AN ACT relating to children; to amend sections 68-1207 and
2 68-1207.01, Reissue Revised Statutes of Nebraska, and
3 sections 43-285 and 43-905, Revised Statutes Supplement,
4 2011; to provide for guardianship by a designee of the
5 Department of Health and Human Services; to change
6 provisions relating to caseloads; to create and provide
7 duties for the Child Welfare Caseload Estimating
8 Committee; and to repeal the original sections.
9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 43-285, Revised Statutes Supplement,
2 2011, is amended to read:

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

15 (2) Following an adjudication hearing at which a juvenile
16 is adjudged to be under subdivision (3) of section 43-247, the court
17 may order the department to prepare and file with the court a
18 proposed plan for the care, placement, services, and permanency which
19 are to be provided to such juvenile and his or her family. The health
20 and safety of the juvenile shall be the paramount concern in the
21 proposed plan. The department shall include in the plan for a
22 juvenile who is sixteen years of age or older and subject to the
23 guardianship of the department a written independent living
24 transition proposal which meets the requirements of section
25 43-1311.03. The court may approve the plan, modify the plan, order

1 that an alternative plan be developed, or implement another plan that
2 is in the juvenile's best interests. In its order the court shall
3 include a finding regarding the appropriateness of the programs and
4 services described in the proposal designed to assist the juvenile in
5 acquiring independent living skills. Rules of evidence shall not
6 apply at the dispositional hearing when the court considers the plan
7 that has been presented.

8 (3) Within thirty days after an order awarding a juvenile
9 to the care of the department or its designee, an association, or an
10 individual and until the juvenile reaches the age of majority, the
11 department or its designee, association, or individual shall file
12 with the court a report stating the location of the juvenile's
13 placement and the needs of the juvenile in order to effectuate the
14 purposes of subdivision (1) of section 43-246. The department or its
15 designee, association, or individual shall file a report with the
16 court once every six months or at shorter intervals if ordered by the
17 court or deemed appropriate by the department or its designee,
18 association, or individual. The department or its designee,
19 association, or individual shall file a report and notice of
20 placement change with the court and shall send copies of the notice
21 to all interested parties at least seven days before the placement of
22 the juvenile is changed from what the court originally considered to
23 be a suitable family home or institution to some other custodial
24 situation in order to effectuate the purposes of subdivision (1) of
25 section 43-246. The court, on its own motion or upon the filing of an

1 objection to the change by an interested party, may order a hearing
2 to review such a change in placement and may order that the change be
3 stayed until the completion of the hearing. Nothing in this section
4 shall prevent the court on an ex parte basis from approving an
5 immediate change in placement upon good cause shown. The department
6 may make an immediate change in placement without court approval only
7 if the juvenile is in a harmful or dangerous situation or when the
8 foster parents request that the juvenile be removed from their home.
9 Approval of the court shall be sought within twenty-four hours after
10 making the change in placement or as soon thereafter as possible. The
11 department shall provide the juvenile's guardian ad litem with a copy
12 of any report filed with the court by the department pursuant to this
13 subsection.

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

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

23 (6) Whenever a juvenile is in a foster care placement as
24 defined in section 43-1301, the State Foster Care Review Board may
25 participate in proceedings concerning the juvenile as provided in

1 section 43-1313 and notice shall be given as provided in section
2 43-1314.

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

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

16 Sec. 2. Section 43-905, Revised Statutes Supplement,
17 2011, is amended to read:

18 43-905 (1) The Department of Health and Human Services or
19 its designee shall be the legal guardian of all children committed to
20 it. The department shall afford temporary care and shall use special
21 diligence to provide suitable homes for such children. The department
22 shall make reasonable efforts to accomplish joint-sibling placement
23 or sibling visitation or ongoing interaction between siblings as
24 provided in section 43-1311.02. The department is authorized to place
25 such children in suitable families for adoption, foster care, or

1 guardianship or, in the discretion of the department, on a written
2 contract.

3 (2) The contract shall provide (a) for the children's
4 education in the public schools or otherwise, (b) for teaching them
5 some useful occupation, and (c) for kind and proper treatment as
6 members of the family in which they are placed.

7 (3) Whenever any child who has been committed to the
8 department or its designee becomes self-supporting, the department or
9 its designee shall declare that fact and the guardianship of the
10 department or its designee shall cease. Thereafter the child shall be
11 entitled to his or her own earnings. Guardianship of and services by
12 the department or its designee shall never extend beyond the age of
13 majority, except that services by the department or its designee to a
14 child shall continue until the child reaches the age of twenty-one if
15 the child is a student regularly attending a school, college, or
16 university or regularly attending a course of vocational or technical
17 training designed to prepare such child for gainful employment.

18 (4) Whenever the parents of any ward, whose parental
19 rights have not been terminated, have become able to support and
20 educate their child, the department or its designee shall restore the
21 child to his or her parents if the home of such parents would be a
22 suitable home. The guardianship of the department or its designee
23 shall then cease.

24 (5) Whenever permanent free homes for the children cannot
25 be obtained, the department shall have the authority to provide and

1 pay for the maintenance of the children in private families, in
2 foster care, in guardianship, in boarding homes, or in institutions
3 for care of children.

4 Sec. 3. Section 68-1207, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 68-1207 (1) The Department of Health and Human Services
7 shall supervise all public child welfare services as described by
8 law. The department shall ~~establish and maintain~~ caseloads to carry
9 out child welfare services which provide for adequate, timely, and
10 indepth investigations and services to children and families. ~~In~~
11 ~~establishing the standards for such caseloads, the~~ The department
12 shall ~~(1)~~ include the workload factors that may differ due to
13 geographic responsibilities, office location, and the travel required
14 to provide a timely response in the investigation of abuse and
15 neglect, the protection of children, and the provision of services to
16 children and families in a uniform and consistent statewide manner.
17 ~~and (2) consider workload standards recommended by national child~~
18 ~~welfare organizations and factors related to the attainment of such~~
19 ~~standards. The department shall consult with the appropriate employee~~
20 ~~representative in establishing such standards.~~

21 (2) No caseload shall exceed by more than two children
22 the following standards:

23 (a) Initial assessment caseloads, twelve active cases;

24 (b) Ongoing caseloads, seventeen active cases;

25 (c) Not more than one new case shall be assigned to any

1 caseworker for every six open cases assigned to such caseworker;

2 (d) Ongoing caseload size shall be determined in the
3 following manner:

4 (i) If children are placed in the home, the family shall
5 count as one case regardless of how many children are placed in the
6 home;

7 (ii) If a child is placed out of his or her home, the
8 child shall count as one case;

9 (iii) If, within one family, one or more children are
10 placed in the home and one or more children are placed out of the
11 home, the children placed in the home shall count as one case and
12 each child placed out of the home shall count as one case; and

13 (iv) Any child receiving services from the department or
14 a private entity under contract with the department shall be counted
15 as provided in subdivisions (d)(i) through (iii) of this subsection
16 whether or not such child is a ward of the state;

17 (e) Each case manager supervisor shall supervise not more
18 than five caseworkers; and

19 (f) For purposes of this subsection, (i) a child is
20 considered to be placed in the home if the child is placed with his
21 or her biological or adoptive parent or a legal guardian and (ii) a
22 child is considered to be placed out of the home if the child is
23 placed in foster care, group home care, or any other setting which is
24 not the child's planned permanent home.

25 (3) The Health and Human Services Committee of the

1 Legislature shall annually review the caseload standards of the Child
2 Welfare League of America or its successor to determine whether to
3 recommend to the Legislature changes to the standards set out in
4 subsection (2) of this section.

5 (4) To carry out the provisions of this section, the
6 Legislature shall provide funds, if necessary, for additional staff.

7 Sec. 4. Section 68-1207.01, Reissue Revised Statutes of
8 Nebraska, is amended to read:

9 68-1207.01 (1) The Department of Health and Human
10 Services shall annually provide a report to the Legislature and
11 Governor outlining the caseloads of child protective services, ~~the~~
12 ~~factors considered in their establishment, and all private entities~~
13 under contract with the State of Nebraska to provide such services
14 and the fiscal resources necessary for their maintenance. Such report
15 shall include:

16 ~~(1) A comparison of caseloads established by the~~
17 ~~department with the workload standards recommended by national child~~
18 ~~welfare organizations along with the amount of fiscal resources~~
19 ~~necessary to maintain such caseloads in Nebraska;~~

20 ~~(2)(a)~~ (a)(i) The number of child welfare services
21 caseworkers and case managers employed by the State of Nebraska and
22 child welfare services workers, providing services directly to
23 children and families, who are under contract with the State of
24 Nebraska or employed by a private entity under contract with the
25 State of Nebraska and ~~(b)~~ (ii) statistics on the average length of

1 employment in such positions, statewide and by health and human
2 services area;

3 ~~(3)(a)~~—(b)(i) The average caseload of child welfare
4 services caseworkers and case managers employed by the State of
5 Nebraska and child welfare services workers, providing services
6 directly to children and families, who are under contract with the
7 State of Nebraska or employed by a private entity under contract with
8 the State of Nebraska and ~~(b)~~—(ii) the outcomes of such cases,
9 including the number of children reunited with their families,
10 children adopted, children in guardianships, placement of children
11 with relatives, and other permanent resolutions established,
12 statewide and by health and human services area; and

13 ~~(4)~~—(c) The average cost of training child welfare
14 services caseworkers and case managers employed by the State of
15 Nebraska and child welfare services workers, providing services
16 directly to children and families, who are under contract with the
17 State of Nebraska or employed by a private entity under contract with
18 the State of Nebraska, statewide and by health and human services
19 area.

20 (2) Failure to issue the report required by subsection
21 (1) of this section by July 1 of each year shall result in the unpaid
22 suspension of the chief executive officer of the department until the
23 report is issued.

24 Sec. 5. (1) The Child Welfare Caseload Estimating
25 Committee is created. The committee shall consist of the Legislative

1 Fiscal Analyst, the budget administrator of the budget division of
2 the Department of Administrative Services, and the Director of
3 Children and Family Services of the Department of Health and Human
4 Services.

5 (2) On or before September 1 of each even-numbered year
6 beginning in 2012, the committee shall use data provided by the
7 Division of Children and Family Services of the department to (a)
8 determine the number of families served by the division and the cost
9 of the direct services provided for the most recent complete fiscal
10 year and (b) estimate the number of families which will require
11 direct services from the division and the estimated cost of providing
12 such services for the biennium beginning the following July 1.

13 (3) It is the intent of the Legislature to use the
14 information provided by the committee to determine a formula to
15 provide adequate funding each biennium for the cost of child welfare
16 services.

17 Sec. 6. Original sections 68-1207 and 68-1207.01, Reissue
18 Revised Statutes of Nebraska, and sections 43-285 and 43-905, Revised
19 Statutes Supplement, 2011, are repealed.