

LEGISLATIVE BILL 566

Approved by the Governor May 27, 2015

Introduced by Coash, 27; Crawford, 45; Davis, 43; Lindstrom, 18; Scheer, 19.

A BILL FOR AN ACT relating to Indian child welfare; to amend sections 43-512.04, 43-1406, 43-1501, 43-1502, 43-1504, 43-1505, 43-1506, 43-1507, 43-1508, 43-1509, and 43-1514, Reissue Revised Statutes of Nebraska, and sections 43-279.01 and 43-1503, Revised Statutes Cumulative Supplement, 2014; to require inquiry by juvenile courts regarding Indian children; to provide for recognition of tribal law in paternity determinations; to change provisions of the Nebraska Indian Child Welfare Act; to provide requirements for voluntary and involuntary proceedings under the act; to define and redefine terms; to provide powers and duties for the Department of Health and Human Services; to harmonize provisions; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 43-279.01, Revised Statutes Cumulative Supplement, 2014, is amended to read:

43-279.01 (1) When the petition alleges the juvenile to be within the provisions of subdivision (3)(a) of section 43-247 or when termination of parental rights is sought pursuant to subdivision (6) of section 43-247 and the parent, custodian, or guardian appears with or without counsel, the court shall inform the parties of the:

(a) Nature of the proceedings and the possible consequences or dispositions pursuant to sections 43-284, 43-285, and 43-288 to 43-295;

(b) Right of the parent to engage counsel of his or her choice at his or her own expense or to have counsel appointed if the parent is unable to afford to hire a lawyer;

(c) Right of a stepparent, custodian, or guardian to engage counsel of his or her choice and, if there are allegations against the stepparent, custodian, or guardian or when the petition is amended to include such allegations, to have counsel appointed if the stepparent, custodian, or guardian is unable to afford to hire a lawyer;

(d) Right to remain silent as to any matter of inquiry if the testimony sought to be elicited might tend to prove the party guilty of any crime;

(e) Right to confront and cross-examine witnesses;

(f) Right to testify and to compel other witnesses to attend and testify;

(g) Right to a speedy adjudication hearing; and

(h) Right to appeal and have a transcript or record of the proceedings for such purpose.

(2) The court shall have the discretion as to whether or not to appoint counsel for a person who is not a party to the proceeding. If counsel is appointed, failure of the party to maintain contact with his or her court-appointed counsel or to keep such counsel advised of the party's current address may result in the counsel being discharged by the court.

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

(4) In the case of a denial, the court shall allow a reasonable time for preparation if needed and then proceed to determine the question of whether the juvenile falls under the provisions of section 43-247 as alleged. After hearing the evidence, the court shall make a finding and adjudication to be entered on the records of the court as to whether the allegations in the petition have been proven by a preponderance of the evidence in cases under subdivision (3)

(a) of section 43-247 or by clear and convincing evidence in proceedings to terminate parental rights. The court shall inquire as to whether any party believes an Indian child is involved in the proceedings prior to the advisement of rights pursuant to subsection (1) of this section. If an Indian child is involved, the standard of proof shall be in compliance with the Nebraska Indian Child Welfare Act, if applicable.

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

Sec. 2. Section 43-512.04, Reissue Revised Statutes of Nebraska, is amended to read:

43-512.04 (1) An action for child support or medical support may be brought separate and apart from any action for dissolution of marriage. The complaint initiating the action shall be filed with the clerk of the district court and may be heard by the county court or the district court as provided in section 25-2740. Such action for support may be filed on behalf of a child:

(a) Whose paternity has been established (i) by prior judicial order in this state, (ii) by a prior determination of paternity made by any other state

or by an Indian tribe as described in subsection (1) of section 43-1406, or (iii) by the marriage of his or her parents as described in section 42-377 or subsection (2) of section 43-1406; or

(b) Whose paternity is presumed as described in section 43-1409 or subsection (2) of section 43-1415.

(2) The father, not having entered into a judicially approved settlement or being in default in the performance of the same, may be made a respondent in such action. The mother of the child may also be made a respondent in such an action. Such action shall be commenced by a complaint of the mother of the child, the father of the child whose paternity has been established, the guardian or next friend of the child, the county attorney, or an authorized attorney.

(3) The complaint shall set forth the basis on which paternity was previously established or presumed, if the respondent is the father, and the fact of nonsupport and shall ask that the father, the mother, or both parents be ordered to provide for the support of the child. Summons shall issue against the father, the mother, or both parents and be served as in other civil proceedings, except that such summons may be directed to the sheriff of any county in the state and may be served in any county. The method of trial shall be the same as in actions formerly cognizable in equity, and jurisdiction to hear and determine such actions for support is hereby vested in the district court of the district or the county court of the county where the child is domiciled or found or, for cases under the Uniform Interstate Family Support Act if the child is not domiciled or found in Nebraska, where the parent of the child is domiciled.

(4) In such proceeding, if the defendant is the presumed father as described in subdivision (1)(b) of this section, the court shall make a finding whether or not the presumption of paternity has been rebutted. The presumption of paternity created by acknowledgment as described in section 43-1409 may be rebutted as part of an equitable proceeding to establish support by genetic testing results which exclude the alleged father as being the biological father of the child. A court in such a proceeding may order genetic testing as provided in sections 43-1414 to 43-1418.

(5) If the court finds that the father, the mother, or both parents have failed adequately to support the child, the court shall issue a decree directing him, her, or them to do so, specifying the amount of such support, the manner in which it shall be furnished, and the amount, if any, of any court costs and attorney's fees to be paid by the father, the mother, or both parents. Income withholding shall be ordered pursuant to the Income Withholding for Child Support Act. The court may require the furnishing of bond to insure the performance of the decree in the same manner as is provided for in section 42-358.05 or 43-1405. Failure on the part of the defendant to perform the terms of such decree shall constitute contempt of court and may be dealt with in the same manner as other contempts. The court may also order medical support and the payment of expenses as described in section 43-1407.

Sec. 3. Section 43-1406, Reissue Revised Statutes of Nebraska, is amended to read:

43-1406 (1) A determination of paternity made by any other state or by an Indian tribe as defined in section 43-1503, whether established through voluntary acknowledgment, genetic testing, tribal law, or administrative or judicial processes, shall be given full faith and credit by this state.

(2) A child whose parents marry is legitimate.

Sec. 4. Section 43-1501, Reissue Revised Statutes of Nebraska, is amended to read:

43-1501 Sections 43-1501 to 43-1516 and sections 9 and 15 of this act shall be known and may be cited as the Nebraska Indian Child Welfare Act.

Sec. 5. Section 43-1502, Reissue Revised Statutes of Nebraska, is amended to read:

43-1502 The purpose of the Nebraska Indian Child Welfare Act is to clarify state policies and procedures regarding the implementation by the State of Nebraska of the federal Indian Child Welfare Act, ~~25 U.S.C. 1901 et seq.~~ It shall be the policy of the state to cooperate fully with Indian tribes in Nebraska in order to ensure that the intent and provisions of the federal Indian Child Welfare Act are enforced. This cooperation includes recognition by the state that Indian tribes have a continuing and compelling governmental interest in an Indian child whether or not the Indian child is in the physical or legal custody of a parent, an Indian custodian, or an Indian extended family member at the commencement of an Indian child custody proceeding or the Indian child has resided or is domiciled on an Indian reservation. The state is committed to protecting the essential tribal relations and best interests of an Indian child by promoting practices consistent with the federal Indian Child Welfare Act and other applicable law designed to prevent the Indian child's voluntary or involuntary out-of-home placement.

Sec. 6. Section 43-1503, Revised Statutes Cumulative Supplement, 2014, is amended to read:

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

(1) Active efforts shall mean and include, but not be limited to:

(a) A concerted level of casework, both prior to and after the removal of an Indian child, exceeding the level that is required under reasonable efforts to preserve and reunify the family described in section 43-283.01 in a manner consistent with the prevailing social and cultural conditions and way of life of the Indian child's tribe or tribes to the extent possible under the

circumstances;

(b) A request to the Indian child's tribe or tribes and extended family known to the department or the state to convene traditional and customary support and services;

(c) Actively engaging, assisting, and monitoring the family's access to and progress in culturally appropriate and available resources of the Indian child's extended family members, tribal service area, Indian tribe or tribes, and individual Indian caregivers;

(d) Identification of and provision of information to the Indian child's extended family members known to the department or the state concerning appropriate community, state, and federal resources that may be able to offer housing, financial, and transportation assistance and actively assisting the family in accessing such community, state, and federal resources;

(e) Identification of and attempts to engage tribally designated Nebraska Indian Child Welfare Act representatives;

(f) Consultation with extended family members known to the department or the state, or a tribally designated Nebraska Indian Child Welfare Act representative if an extended family member cannot be located, to identify family or tribal support services that could be provided by extended family members or other tribal members if extended family members cannot be located;

(g) Exhaustion of all available tribally appropriate family preservation alternatives; and

(h) When the department or the state is involved in a proceeding under the act, the department or the state shall provide a written report of its attempt to provide active efforts to the court at every hearing involving an Indian child. This report shall be sent to the Indian child's tribe or tribes within three days after being filed with the court and shall be deemed to be admissible evidence of active efforts in proceedings conducted under the act;

(2) Best interests of the Indian child shall include:

(a) Using practices in compliance with the federal Indian Child Welfare Act, the Nebraska Indian Child Welfare Act, and other applicable laws that are designed to prevent the Indian child's voluntary or involuntary out-of-home placement; and

(b) Whenever an out-of-home placement is necessary, placing the child, to the greatest extent possible, in a foster home, adoptive placement, or other type of custodial placement that reflects the unique values of the Indian child's tribal culture and is best able to assist the child in establishing, developing, and maintaining a political, cultural, and social relationship with the Indian child's tribe or tribes and tribal community;

(3 ~~1~~) Child custody proceeding shall mean and include:

(a) Foster care placement which shall mean any action removing an Indian child from his or her parent or Indian custodian for temporary or emergency placement in a foster home or institution or the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated;

(b) Termination of parental rights which shall mean any action resulting in the termination of the parent-child relationship;

(c) Preadoptive placement which shall mean the temporary placement of an Indian child in a foster home or institution after the termination of parental rights, but prior to or in lieu of adoptive placement; ~~and~~

(d) Adoptive placement which shall mean the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption; and ~~-~~

(e) Voluntary foster care placement which shall mean a non-court-involved proceeding in which the department or the state is facilitating a voluntary foster care placement or in-home services to families at risk of entering the foster care system. An Indian child, parent, or tribe involved in a voluntary foster care placement shall only be provided protections as provided in subsection (4) of section 43-1505 and sections 43-1506 and 43-1508.

Such term or terms shall not include a placement based upon an act which, if committed by an adult, would be deemed a crime or upon an award, in a divorce proceeding, of custody to one of the parents;

(4) The department or the state shall mean the applicable state social services entity that is involved with the provision of services to Indian children, specifically the Department of Health and Human Services and the Office of Probation Administration in certain cases;

(5 ~~2~~) Extended family member shall be as defined by the law or custom of the Indian child's primary tribe or, in the absence of such laws or customs of the primary tribe, the law or custom of the Indian child's other tribes or, in the absence of such law or custom tribe or, in the absence of such law or custom, shall mean be a person who has reached the age of eighteen and who is the Indian child's parent, grandparent, aunt or uncle, clan member, band member, sibling, brother-in-law or sister-in-law, niece or nephew, cousin, or stepparent;

(6) Federal Indian Child Welfare Act shall mean the federal Indian Child Welfare Act of 1978, 25 U.S.C. 1901 et seq.;

(7 ~~3~~) Indian shall mean means any person who is a member of an Indian tribe, or who is an Alaska Native and a member of a regional corporation defined in section 7 of the Alaska Native Claims Settlement Act, 43 U.S.C. 1606;

(8 ~~4~~) Indian child shall mean means any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an

Indian tribe;

(9) Indian child's primary tribe shall mean, in the case of an Indian child that is a member or eligible for membership in multiple tribes, the tribe determined by the procedure enumerated in subsection (4) of section 43-1504;

~~(10 5) Indian child's tribe or tribes shall mean means (a) the Indian tribe or tribes in which an Indian child is a member or eligible for membership or (b) in the case of an Indian child who is a member of or eligible for membership in more than one tribe, the Indian tribe with which the Indian child has the more significant contacts;~~

~~(11 6) Indian custodian shall mean means any Indian person who has legal custody of an Indian child under tribal law or custom or under state law or to whom temporary physical care, custody, and control has been transferred by the parent of such child;~~

~~(12 7) Indian organization shall mean means any group, association, partnership, limited liability company, corporation, or other legal entity owned or controlled by Indians or a majority of whose members are Indians;~~

~~(13 8) Indian tribe shall mean means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the secretary because of their status as Indians, including any Alaska Native village as defined in section 3(c) of the Alaska Native Claims Settlement Act, as amended, 43 U.S.C. 1602(c);~~

~~(14 9) Parent means any biological parent or parents of an Indian child or any Indian person who has lawfully adopted an Indian child, including adoptions under tribal law or custom. It does not include the unwed father when paternity has not been acknowledged or established;~~

(15) Qualified expert witness shall mean one of the following persons, in descending priority order although a court may assess the credibility of individual witnesses:

(a) A member of the Indian child's tribe or tribes who is recognized by the tribal community as knowledgeable in tribal customs as they pertain to family and childrearing practices;

(b) A member of another tribe who is recognized to be a qualified expert witness by the Indian child's tribe or tribes based on his or her knowledge of the delivery of child and family services to Indians and the Indian child's tribe or tribes;

(c) A lay expert witness that possesses substantial experience in the delivery of child and family services to Indians and extensive knowledge of prevailing social and cultural standards and childrearing practices within the Indian child's tribe or tribes;

(d) A professional person having substantial education and experience in the area of his or her specialty who can demonstrate knowledge of the prevailing social and cultural standards and childrearing practices within the Indian child's tribe or tribes; or

(e) Any other professional person having substantial education in the area of his or her specialty;

~~(16 10) Reservation shall mean means Indian country as defined in 18 U.S.C. 1151 and any lands, not covered under such section, title to which is either held by the United States in trust for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to a restriction by the United States against alienation or a federally designated or established service area which means a geographic area designated by the United States where federal services and benefits furnished to Indians and Indian tribes are provided or which is otherwise designated to constitute an area on or near a reservation;~~

~~(17 11) Secretary shall mean means the Secretary of the United States Department of the Interior;~~

~~(18 12) Tribal court shall mean means a court with jurisdiction over child custody proceedings and which is either a Court of Indian Offenses, a court established and operated under the code or custom of an Indian tribe, or any other administrative body of a tribe which is vested with authority over child custody proceedings; and~~

~~(19 13) Tribal service area shall mean means a geographic area, as defined by the applicable Indian tribe or tribes, in which tribal services and programs are provided to Indians Native American people.~~

Sec. 7. Section 43-1504, Reissue Revised Statutes of Nebraska, is amended to read:

43-1504 (1) An Indian tribe shall have jurisdiction exclusive as to this state over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of such tribe, except when where such jurisdiction is otherwise vested in the state by existing federal law. When an Indian child is a ward of a tribal court, the Indian tribe shall retain exclusive jurisdiction, notwithstanding the residence or domicile of the child.

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

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

any point in the proceeding regardless of whether the intervening party is represented by legal counsel. The Indian child's tribe or tribes and their counsel are not required to associate with local counsel or pay a fee to appear pro hac vice in a child custody proceeding under the Nebraska Indian Child Welfare Act. Representatives from the Indian child's tribe or tribes have the right to fully participate in every court proceeding held under the act.

(4) If the Indian child is eligible for membership or enrolled in multiple Indian tribes and more than one Indian tribe intervenes in a state court proceeding for the foster care placement of, or termination of parental rights to, an Indian child, the Indian child's primary tribe shall be determined in the following manner:

(a) The applicable Indian tribes shall enter into a unanimous agreement designating which Indian tribe is the Indian child's primary tribe for the underlying state court proceeding within thirty days after intervention by one or more additional Indian tribes, after consultation, if practicable, with the parents of the Indian child and with the Indian child if he or she is twelve years of age or older; or

(b) If unanimous agreement is not possible within the thirty-day period, the state court in which the proceeding is pending shall determine the Indian child's primary tribe based upon the amount and significance of the contacts between each Indian tribe and the Indian child.

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

Sec. 8. Section 43-1505, Reissue Revised Statutes of Nebraska, is amended to read:

43-1505 (1) In any involuntary proceeding in a state court, when the court knows or has reason to know that an Indian child is involved, the party seeking the foster care placement of, or termination of parental rights to, an Indian child shall send a notice conforming to the requirements of 25 C.F.R. 23.11 to notify the parents, the parent or Indian custodian, and the Indian child's tribe or tribes, by certified or registered mail with return receipt requested, of the pending proceedings and of their right of intervention. If the identity or location of the parent or Indian custodian and the tribe or tribes cannot be determined, such notice shall be given to the secretary in like manner, who may provide the requisite notice to the parent or Indian custodian and the tribe or tribes. No foster care placement or termination of parental rights proceedings shall be held until at least ten days after receipt of notice by the parent or Indian custodian and the tribe or tribes or the secretary. The parent or Indian custodian or the tribe or tribes shall, upon request, be granted up to twenty additional days to prepare for such proceeding.

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

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

(4) Any party seeking to effect a foster care placement of, or termination of parental rights to, an Indian child under state law shall satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family or unite the parent or Indian custodian with the Indian child and that these efforts have proved unsuccessful. Any written evidence showing that active efforts have been made shall be admissible in a proceeding under the Nebraska Indian Child Welfare Act. Prior to the court ordering placement of the child in foster care or the termination of parental rights, the court shall make a determination that active efforts have been provided or that the party seeking placement or termination has demonstrated that attempts were made to provide active efforts to the extent possible under the circumstances.

(5) The court shall not order No foster care placement under this section may be ordered in such proceeding in the absence of a determination by the court, supported by clear and convincing evidence, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

(6) The court shall not order No termination of parental rights under this section may be ordered in such proceeding in the absence of a determination by the court, supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

Sec. 9. (1) Notice of an involuntary proceeding in state court involving an Indian child shall conform with the requirements of 25 C.F.R. 23.11 and shall contain the following additional information, to the extent it is known,

and if this additional information is unknown, a statement indicating what attempts have been made to locate the information:

- (a) The name and last-known address of the Indian child;
- (b) The name and address of the Indian child's parents, paternal and maternal grandparents, and Indian custodians, if any;
- (c) The tribal affiliation of the parents of the Indian child or, if applicable, the Indian custodians;
- (d) A statement as to whether the Indian child's residence or domicile is on the tribe's reservation;
- (e) An identification of any tribal court order affecting the custody of the Indian child to which a state court may be required to accord full faith and credit; and
- (f) A copy of the motion for foster care placement of the Indian child and any accompanying affidavits in support thereof if such documents exist.

(2) A copy of the notice of an involuntary proceeding in state court involving an Indian child, as described in subsection (1) of this section, shall be filed with the court within three days after issuance.

Sec. 10. Section 43-1506, Reissue Revised Statutes of Nebraska, is amended to read:

43-1506 (1) When any parent or Indian custodian voluntarily consents (a) to a foster care placement or (b) to relinquishment or termination of parental rights, such consent shall not be valid unless executed in writing and recorded before a judge of a court of competent jurisdiction and accompanied by the presiding judge's certificate that the terms and consequences of the consent were fully explained in detail and were fully understood by the parent or Indian custodian. The court shall also certify that either the parent or Indian custodian fully understood the explanation in English or that it was interpreted into a language that the parent or Indian custodian understood. Any consent given prior to, or within ten days after, birth of the Indian child shall not be valid.

(2) When the department or the state offers the parent, Indian child, or Indian custodian services through a voluntary foster care placement or in-home services and the department or the state knows or has reason to know that an Indian child is involved, the department or the state shall notify the parent or Indian custodian and the Indian child's tribe or tribes, by telephone call, facsimile transmission, email, or registered mail with return receipt requested, of the provision of services and any pending child custody proceeding. If the identity or location of the parent or Indian custodian and the tribe or tribes cannot be determined, such notice shall be given to the secretary and the appropriate area director listed in 25 C.F.R. 23.11 in like manner who may provide the requisite notice to the parent or Indian custodian and the tribe or tribes. Notice shall be provided within five days after the initiation of voluntary services.

(3) When the department or the state offers the parent or Indian custodian services through a voluntary foster care placement or in-home services, the Indian custodian of the child and the Indian child's tribe or tribes have a right to participate in, provide, or consult with the department or the state regarding the provision of voluntary services.

(4) When the department or the state offers the parent or Indian custodian services through a voluntary foster care placement or in-home services, the department or the state shall provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family or unite the parent or Indian custodian with the Indian child until these efforts have proved unsuccessful.

(5) Prior to any voluntary relinquishment or termination of parental rights proceeding in which the department or the state is a party or was providing assistance to a parent or Indian custodian, the department or the state or its designee shall submit the following information, in writing, to the court if it has not previously been provided:

- (a) The jurisdictional authority of the court in the proceeding;
- (b) The date of the Indian child's birth and the date of any voluntary consent to relinquishment or termination;
- (c) The age of the Indian child at the time voluntary consent was given;
- (d) The date the parent appeared in court and was informed by the judge of the terms and consequences of any voluntary consent to relinquishment or termination;
- (e) The parent fully understood the explanation of such terms and consequences in English or, when necessary, the explanation was interpreted into a language that the parent understood and the parent fully understood the explanation of such terms and consequences in the language into which such terms and consequences were translated;
- (f) The name and address of any prospective adoptive parent whose identity is known to the consenting parent;
- (g) The promises, if any, made to the parent, as a condition of the parent's consent, including promises regarding the tribal affiliation or health, ethnic, religious, economic, or other personal characteristics of any adoptive family with which the child would be placed; and
- (h) The details, if any, of an enforceable communication or contact agreement authorized by section 43-162.

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

(7) In any voluntary proceedings for termination of parental rights to,

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

(8 4) After the entry of a final decree of adoption of an Indian child in any state court, the parent may withdraw consent thereto upon the grounds that consent was obtained through fraud or duress and may petition the court to vacate such decree. Upon a finding that such consent was obtained through fraud or duress, the court shall vacate such decree and return the child to the parent. No adoption which has been effective for at least two years may be invalidated under the provisions of this subsection unless otherwise permitted under state law.

Sec. 11. Section 43-1507, Reissue Revised Statutes of Nebraska, is amended to read:

43-1507 Any Indian child who is the subject of any action for foster care placement or termination of parental rights under state law, any parent or Indian custodian from whose custody such child was removed, and the Indian child's primary tribe may petition any court of competent jurisdiction to invalidate such action upon a showing that such action violated any provision of sections 43-1504 to 43-1506 and section 9 of this act.

Sec. 12. Section 43-1508, Reissue Revised Statutes of Nebraska, is amended to read:

43-1508 (1) In any adoptive placement of an Indian child under state law, a preference shall be given, in the absence of good cause to the contrary, to a placement with the following in descending priority order:

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

(d) A non-Indian family committed to enabling the child to have extended family time and participation in the cultural and ceremonial events of the Indian child's tribe or tribes;

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

- (a) A member of the Indian child's extended family;
- (b) Other members of the Indian child's tribe or tribes;
- (c) A foster home licensed, approved, or specified by the Indian child's tribe or tribes;

(d) An Indian foster home licensed or approved by an authorized non-Indian licensing authority;

(e) A non-Indian family committed to enabling the child to have extended family time and participation in the cultural and ceremonial events of the Indian child's tribe or tribes;

(f) An Indian facility or program for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs; or

(g) A non-Indian facility or program for children approved by an Indian tribe.

~~(b) A foster home licensed, approved, or specified by the Indian child's~~ tribe;

~~(c) An Indian foster home licensed or approved by an authorized non-Indian~~ licensing authority; ~~or~~

~~(d) An institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's~~ needs.

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

(4) The standards to be applied in meeting the preference requirements of this section shall be the prevailing social and cultural standards of the Indian community in which the parent or extended family resides or with which the parent or extended family members maintain social and cultural ties. Good cause to deviate from the placement preferences in subsections (1) through (3) of this section includes: (a) The request of the biological parents or the Indian child when the Indian child is at least twelve years of age; (b) the extraordinary physical or emotional needs of the Indian child as established by testimony of a qualified expert witness; or (c) the unavailability of suitable families for placement after a diligent search has been completed for families meeting the preference criteria. The burden of establishing the existence of good cause to deviate from the placement preferences and order shall be by clear and convincing evidence on the party urging that the preferences not be

followed.

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

Sec. 13. Section 43-1509, Reissue Revised Statutes of Nebraska, is amended to read:

43-1509 (1) Notwithstanding any other state law to the contrary, whenever a final decree of adoption of an Indian child has been vacated or set aside or the adoptive parents voluntarily consent to the termination of their parental rights to the child, a biological parent or prior Indian custodian may petition for return of custody and the court shall grant such petition unless there is a showing, in a proceeding subject to the provisions of section 43-1505, that such return of custody is not in the best interests of the Indian child.

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

Sec. 14. Section 43-1514, Reissue Revised Statutes of Nebraska, is amended to read:

43-1514 (1) Nothing in the Nebraska Indian Child Welfare Act shall be construed to prevent the emergency removal of an Indian child who is a resident of or is domiciled on a reservation, but temporarily located off the reservation, from his or her parent or Indian custodian or the emergency placement of such child in a foster home or institution, under applicable state law, in order to prevent imminent physical damage or harm to the child. The state authority, official, or agency involved shall insure that the emergency removal or placement terminates immediately when such removal or placement is no longer necessary to prevent imminent physical damage or harm to the child and shall expeditiously initiate a child custody proceeding subject to the provisions of the Nebraska Indian Child Welfare Act, transfer the child to the jurisdiction of the appropriate Indian tribe or tribes, or restore the child to the parent or Indian custodian, as may be appropriate.

(2) During the course of each intake received by the statewide child abuse and neglect hotline provided by the Department of Health and Human Services, the hotline representative shall inquire as to whether the person calling the hotline believes one of the parties involved may be an Indian child or Indian person. If the hotline representative has any reason to believe that an Indian child or Indian person is involved in the intake, the representative shall immediately document the information and inform his or her supervisor.

Sec. 15. The department or the state, in consultation with Indian tribes, shall adopt and promulgate rules and regulations to establish standards and procedures for the department's or the state's review of cases subject to the Nebraska Indian Child Welfare Act and methods for monitoring the department's or the state's compliance with the federal Indian Child Welfare Act and the Nebraska Indian Child Welfare Act. The standards and procedures and the monitoring methods shall be integrated into the department's or the state's structure and plan for the federal government's child and family service review process and any program improvement plan resulting from that process.

Sec. 16. Original sections 43-512.04, 43-1406, 43-1501, 43-1502, 43-1504, 43-1505, 43-1506, 43-1507, 43-1508, 43-1509, and 43-1514, Reissue Revised Statutes of Nebraska, and sections 43-279.01 and 43-1503, Revised Statutes Cumulative Supplement, 2014, are repealed.