

**Nebraska State Laws Relating to Protecting
the Best Interests of the Child
in Divorce, Custody and Other Cases.**

These laws were extracted from:

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Paragraph 57 on Page 16, of the Ohio custody case "In re Julie Anne, 121 Ohio Misc.2d 20, 2002-Ohio-4489" says:

The Ohio "best interests of the child" statute 70 sets a mandatory, not discretionary, standard. In statutory construction, the word "may" is construed as permissive and the word "shall" is construed as mandatory. 71 *In crystal-clear language, the statute directs that "the court shall consider all relevant factors" and "physical health factors" in determining the "best interests of the child" in visitation and custody matters.* An avalanche of authoritative scientific studies cited in this opinion is clear and convincing evidence that secondhand smoke constitutes a real and substantial danger to children because it causes and aggravates serious diseases in children, *which danger is both a "relevant factor" and a "physical health factor" that a family court is mandated to consider under the statute.*

Following are some Nebraska laws that should help protect children's health and lives from exposure to secondhand smoke. This is because it is well established that exposure to secondhand smoke does harm the health of otherwise healthy children.

28-710

Terms, defined.

For purposes of sections 28-710 to 28-727, unless the context otherwise requires:

(1) Abuse or neglect means knowingly, intentionally, or negligently causing or permitting a minor child to be:

(a) Placed in a situation that endangers his or her life or physical or mental health;

(b) Cruelly confined or cruelly punished;

(c) Deprived of necessary food, clothing, shelter, or care;

(d) Left unattended in a motor vehicle if such minor child is six years of age or younger;

(e) Sexually abused; or

(f) Sexually exploited by allowing, encouraging, or forcing such person to solicit for or engage in prostitution, debauchery, public indecency, or obscene or pornographic photography, films, or depictions;

(2) Department means the Department of Health and Human Services;

(3) Law enforcement agency means the police department or town marshal in incorporated municipalities, the office of the

sheriff in unincorporated areas, and the Nebraska State Patrol; and

(4) Out-of-home abuse or neglect means abuse or neglect occurring in day care homes, foster homes, day care centers, group homes, and other child care facilities or institutions.

Source:

Laws 1977, LB 38, § 149; Laws 1979, LB 505, § 1;
Laws 1982, LB 522, § 3; Laws 1985, LB 447, § 10;
Laws 1988, LB 463, § 42; Laws 1992, LB 1184, § 9;
Laws 1994, LB 1035, § 2; Laws 1996, LB 1044, § 71;
Laws 1997, LB 119, § 1.

28-711

Child subjected to abuse or neglect; report; contents; toll-free number.

(1) When any physician, medical institution, nurse, school employee, social worker, or other person has reasonable cause to believe that a child has been subjected to abuse or neglect or observes such child being subjected to conditions or circumstances which reasonably would result in abuse or neglect, he or she shall report such incident or cause a report to be made to the proper law enforcement agency or to the department on the toll-free number established by subsection (2) of this section. Such report may be made orally by telephone with the caller giving his or her name and address, shall be followed by a written report, and to the extent available shall contain the address and age of the abused or neglected child, the address of the person or persons having custody of the abused or neglected child, the nature and extent of the abuse or neglect or the conditions and circumstances which would reasonably result in such abuse or neglect, any evidence of previous abuse or neglect including the nature and extent, and any other information which in the opinion of the person may be helpful in establishing the cause of such abuse or neglect and the identity of the perpetrator or perpetrators. Law enforcement agencies receiving any reports of abuse or neglect under this subsection shall notify the state central registry on the next working day by telephone or mail.

(2) The department shall establish a statewide toll-free number to be used by any person any hour of the day or night, any day of the week, to make reports of abuse or neglect. Reports of abuse or neglect not previously made to or by a law enforcement agency shall be made immediately to such agency by the department.

Source:

Laws 1977, LB 38, § 150; Laws 1979, LB 505, § 2; Laws 1982, LB 522, § 4;
Laws 1988, LB 463, § 43; Laws 2002, LB 1105, § 432.

28-717

Violations; penalty.

Any person who willfully fails to make any report required by the provisions of sections 28-710 to 28-717, or knowingly releases confidential information other than as provided by sections 28-710 to 28-717, shall be guilty of a Class III misdemeanor.

Source:

Laws 1977, LB 38, § 156; Laws 1994, LB 1035, § 6.

43-104.05

Child born out of wedlock; paternity claim; notice; filed; petition for adjudication of paternity; trial; guardian ad litem.

If a notice of intent to claim paternity and obtain custody is timely filed with the biological father registry pursuant to section 43-104.02, either the claimant-father, the mother, or her agent specifically designated in writing shall, within thirty days after filing the notice, file a petition for an adjudication of the claim of paternity and right to custody. The petition shall be filed in the county court in the county where such child was born or, if a separate juvenile court already has jurisdiction over the child, in such separate juvenile court. If such a petition is not filed within thirty days after filing the notice, the claimant-father's consent to adoption of the child shall not be required, he is not entitled to any further notice, and any alleged parental rights of the claimant-father shall not be recognized thereafter in any court. After the filing of such petition, the court shall set a trial date upon proper notice to the parties not less than twenty nor more than thirty days after such filing. If the mother contests the claim of paternity, the court shall take such testimony as shall enable it to determine the facts. The claimant-father's rights and the custody of the child shall be determined pursuant to section 43-104.22. The court shall appoint a guardian ad litem to represent the best interests of the child.

Source:

Laws 1975, LB 224, § 6; Laws 1995, LB 712, § 25;
Laws 1998, LB 1041, § 8; Laws 1999, LB 594, § 14.

43-111.01

Denial of petition; court; powers.

Except as otherwise provided in the Nebraska Indian Child Welfare Act, if, upon a hearing, the court shall deny a petition for adoption, the court may take custody of the child involved and determine whether or not it is in the best interests of the child to remain in the custody of the proposed

adopting parents. The court may also, on its own motion, appoint a legal guardian over the person and property of such minor and make disposition in the best interests of the child without further notice, relinquishments, or consents as may otherwise be required by sections 43-102 to 43-112.

Source:

Laws 1965, c. 231, § 1, p. 674; Laws 1971, LB 384, § 1;
Laws 1985, LB 255, § 24.

Cross Reference:

Nebraska Indian Child Welfare Act, see section 43-1501.

Annotations:

Where abandonment is found so as to permit substitute consent to be given, the county court may still refuse to allow the adoption, in which case the parental rights remain intact until a decree of adoption is in fact granted. In re Guardianship of Sain, 211 Neb. 508, 319 N.W.2d 100 (1982).

43-163

Guardian ad litem; appointment; order approving agreement; considerations.

(1) Before approving an agreement under section 43-162, the court shall appoint a guardian ad litem if the prospective adoptee is not already represented by a guardian ad litem, and the guardian ad litem of the prospective adoptee shall represent the best interests of the child concerning such agreement. The court may enter an order approving the agreement upon motion of one of the prospective adoptee's birth parents or one of the prospective adoptive parents if the terms of the agreement are approved in writing by the prospective adoptive parent or parents and the birth parent or parents and if the court finds, after consideration of the recommendations of the guardian ad litem and the Department of Health and Human Services and other factors, that such communication with the birth parent or parents and the maintenance of birth family history would be in the best interests of the prospective adoptee.

(2) In determining if the agreement is in the best interests of the prospective adoptee, the court shall consider the following factors as favoring communication with the birth parent or parents: Whether the prospective adoptee and birth parent or parents lived together for a substantial period of time; the prospective adoptee exhibits attachment or bonding to such birth parent or parents; and the adoption is a foster-parent adoption with the birth parent or parents having relinquished the prospective adoptee due to an inability to provide him or her with adequate parenting.

Source:

Laws 1993, LB 205, § 9; Laws 1996, LB 1044, § 125;
Laws 1998, LB 1041, § 18.

43-533

Family policy; guiding principles.

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

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

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

(3) To maximize resources the state shall develop methods to coordinate services and resources for families and children. Every child-serving department, agency, institution, committee, court, or commission shall recognize that the jurisdiction of such department, agency, institution, committee, court, or commission in serving multiple-need children is not mutually exclusive;

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

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

Source:

Laws 1987, LB 637, § 2; Laws 1995, LB 739, § 1; Laws 1996, LB 1001, § 3;
Laws 1998, LB 1041, § 34.

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.

Cross Reference:

Nebraska Indian Child Welfare Act, see section 43-1501.

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.

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.

43-1509

Return of custody; removal from foster care; procedures.

(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 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.

Source:

Laws 1985, LB 255, § 9.

43-1514

Emergency removal or placement of child; appropriate action.

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 restore the child to the parent or Indian custodian, as may be appropriate.

Source:

Laws 1985, LB 255, § 14.

43-2902

Legislative findings.

The Legislature finds it is in the best interests of a minor child to maintain, to the greatest extent possible, the ongoing involvement of both parents in the life of the minor child. The Legislature further finds that parents should maintain continued communications to make as many joint decisions in performing such parenting functions as are necessary for the care and healthy development of the minor child.

In any proceeding between parents under Chapter 42 involving a minor child, the best interests of the minor child shall be the standard by which the court adjudicates and establishes the individual parental responsibilities. The state presumes the critical importance of the parent-child relationship and the child-parent relationship in the welfare and development of the minor child and that the relationship between the minor child and both parents should be fostered unless otherwise inconsistent with the best interests of the minor child. The best interests of the minor child are served by a parenting

arrangement which best serves a minor child's emotional growth, health, stability, and physical care.

The Legislature further finds that the best interests of the minor child are ordinarily addressed when both parents remain active and involved in parenting. It is the policy of this state to assure the right of children, when it is in their best interests, to frequent and continuing contact with parents who have shown the ability to act in the best interests of the children and to encourage parents to share in the rights and responsibilities of raising their children after divorce or separation.

Source:

Laws 1993, LB 629, § 2.

43-3710

Appointment of volunteer; procedure.

(1) A judge may appoint a court appointed special advocate volunteer in any proceeding brought pursuant to section 43-247 or 43-292 when, in the opinion of the judge, a child who may be affected by such proceeding requires services that a volunteer can provide and the court finds that the appointment is in the best interests of the child.

(2) A volunteer shall be appointed pursuant to a court order. The court order shall specify the volunteer as a friend of the court acting on the authority of the judge. The volunteer acting as a friend of the court may offer as evidence a written report with recommendations consistent with the best interests of the child, subject to all pertinent objections.

(3) A memorandum of understanding between a court and a court appointed special advocate program is required in any county where a program is established and shall set forth the roles and responsibilities of the court appointed special advocate volunteer.

(4) The volunteer's appointment shall conclude:

(a) When the court's jurisdiction over the child terminates;

(b) Upon discharge by the court on its own motion;

(c) With the approval of the court, at the request of the program director of the court appointed special advocate program to which the volunteer is assigned; or

(d) Upon successful motion of a party to the action for the removal of the volunteer because the party believes the volunteer has acted inappropriately, is unqualified, or is unsuitable for the appointment.

Source:

Laws 2000, LB 1167, § 33.

43-3712

Volunteer; duties.

(1) Upon appointment in a proceeding, a court appointed special advocate volunteer shall:

(a) Conduct an independent examination regarding the best interests of the child that will provide factual information to the court regarding the child and the child's family. The examination may include interviews with and observations of the child, interviews with other appropriate individuals, and the review of relevant records and reports; and

(b) Determine if an appropriate permanency plan has been created for the child, whether appropriate services are being provided to the child and the child's family, and whether the treatment plan is progressing in a timely manner.

(2) The volunteer, with the support and supervision of the court appointed special advocate program staff, shall make recommendations consistent with the best interests of the child regarding placement, visitation, and appropriate services for the child and the child's family and shall prepare a written report to be distributed to the court and the parties to the proceeding.

(3) The volunteer shall monitor the case to which he or she has been appointed to assure that the child's essential needs are being met.

(4) The volunteer shall make every effort to attend all hearings, meetings, and any other proceeding concerning the case to which he or she has been appointed.

(5) The volunteer may be called as a witness in a proceeding by any party or the court.

Source:

Laws 2000, LB 1167, § 35.

48-313

Children under sixteen; dangerous, unhealthy, or immoral employment.

No child under the age of sixteen years shall be employed in any work which by reason of the nature of the work or place of performance is dangerous to life or limb or in which his or her health may be injured or his or her morals may be depraved. No parent, guardian, or other person, who has under his or her control any child, shall cause or permit such child to work or be employed in violation of this section.

Source:

Laws 1907, c. 66, § 13, p. 268; R.S.1913, § 3587;

Laws 1919, c. 190, tit. IV, art. III, § 13, p. 558; C.S.1922, § 7681;

C.S.1929, § 48-313; R.S.1943, § 48-313; Laws 1977, LB 40, § 281;

Laws 1987, LB 35, § 6.