

1. The Juvenile Court Process for Abuse or Neglect Cases

Note: The FCRO has the authority to review children's cases any time after the removal from the home. Typically the FCRO schedules reviews so that information gathered from the review can be shared with all legal parties just prior to a Court hearing, so that the Court can address the issues identified by the FCRO.

Report of abuse or neglect (also called a complaint) – is made by medical personnel, educators, neighbors, foster parents, social workers, policy, and/or others. State law requires anyone with reason to believe abuse or neglect is occurring to report this to authorities. This may be reported to the DHHS or a local law enforcement agency. Each of these agencies is to cross report to the other.

Report accepted or screened out – after CPS receives a report, it assesses the nature of the complaint and assigns a prioritization for investigation. Not all reports are accepted for an investigation. Some reports are screened out when a finding of no safety issues is found and other cases can be referred to Alternative Response. Alternative Response is a voluntary case during which DHHS case managers voluntarily work with a family to alleviate and prevent further involvement in the child welfare system.

Investigation– law enforcement and/or CPS (child protective services division of DHHS) investigates the allegations or issues identified in the report. The investigation determine whether or not there are safety issues within the family and provides the evidence for the County Attorney by which they determine whether or not to file a petition in juvenile court. The child may be removed from the home if an emergency safety situation exists.

County Attorney files a petition – The Petition must detail all of the abuse or neglect allegations. This is done within 48 hours of an emergency removal; if not an emergency removal, the County Attorney files a petition requesting removal from the home or requesting DHHS supervision of the home. Nothing is determined, found, or ordered at this point, that is done at the hearings described below. Parents who abuse their children can be tried in adult courts for the criminal part of their actions as well as being involved in a juvenile court action about the child and the child's future. Criminal charges are a totally separate legal action and not handled within the juvenile court system.

Petition definitions – Sections §43-247 is the basis for jurisdiction for juvenile court in the following types of cases:

- Subsection (1) includes juveniles who have committed an act other than a traffic offense which would constitute a misdemeanor or an infraction under state or local laws.

- Subsection (2) includes juveniles who have committed an act which would constitute a felony under Nebraska law.
- Subsection (3a) refers to children generally referred to as neglected, abused, or abandoned either due to the fault of the parent or no-fault of the parent. Children are considered dependent when it is due to no-fault of the parent;
- Subsection (3b) refers to children who have exhibited behavior problems by being incorrigible, runaway, or truant, and are called status offenders;
- Subsection (3c) refers to a juvenile who is mentally ill and dangerous as defined in §83-1009.

The petition must contain specific allegations, not merely conclusions, regarding each child or youth that is the subject of the petition and of the court's potential jurisdiction and the parent's alleged deficits in caring for each child or youth. This mandate applies to every initial, amended or supplemental petition that may be filed.

Each case progresses sequentially through three steps of court hearings: protective custody hearing; adjudication; and disposition. These steps can be combined and heard simultaneously or heard individually over a span of weeks or months. Depending on the case load of the juvenile court, a case may be heard immediately after the child or youth comes into care, or it may continue over many months.

1) Protective Custody Hearing is held – At this hearing, the legal rights are explained to the parents, a Guardian ad litem (special attorney) is appointed to represent the child's best interests, and counsel may be appointed for the parents. This hearing determines if probable cause exists to warrant the continuance of Court action and/or the child remaining in out-of-home care. The Court can only rule on the allegations in the petition. Affidavits and testimony can also be used.

- After the parents have been informed of their rights, the court may accept an in-court admission, an answer of "no contest," or a denial by the parents to all or any part of the allegations in the petition. The burden of proof is on the state, through the county attorney.
- If an emergency removal did not occur, the child may be removed from the home or may remain in the home under the supervision of DHHS. Services may be offered to the child and/or the parents after the protective custody hearing. This hearing does NOT determine whether the parent was at fault but rather just the appropriate placement for the child while the court action is pending. Sometimes parents are advised by their counsel not to accept services, as this may be an admission of guilt for the adjudication hearing to come.

- **DHHS is given custody at the Protective Custody Hearing** – DHHS is then responsible for the child’s placement, plan, and services, if the court finds probably cause that the child should remain out-of-home. DHHS is responsible for developing the child’s case plan, submitting the plan to the court, and updating the plan at least every six months while the child remains in care. The Court can adopt the DHHS case plan and other legal parties can present evidence that the plan is not in the child’s best interest or the Court amends the case plan based on its own motion. If placed in out-of-home care, the child is always to be placed in the least restrictive type of placement.
- **DHHS makes a placement** – the child’s needs are to be evaluated and the child is to be placed in the most home-like setting possible that meets the child’s needs, whether through direct foster parents, relatives, or agency-based care. This may occur either before or after the detention hearing, depending on circumstances.

2) Adjudication Process

- **Plea-bargaining** –If there has been a plea agreement, there will not be a formal adjudication but rather a court order detailing the terms of the plea agreement and an admission/no contest by the parent(s). The reasons for this plea agreement due vary and should be considered during our case file review process.
- **Adjudication hearing is held** – facts are presented to prove the allegations in the petition. The burden of proof is on the State, through the county attorney.

At this hearing the finding of fact occurs, the allegations in the petition are found to be true or false, and the child is either made a state ward or not. The Court cannot order the parents to services prior to completion of the adjudication hearing. By law this must occur within 90 days of the child entering out-of-home care. In practice the 90-day rule is not always followed.

3) Dispositional/Review Hearing Process

- **Dispositional review hearings** – If it is found that a parent(s) committed the acts as alleged in the petition, or they admit to the acts, a disposition hearing is held. In Nebraska juvenile courts, the judge decides what disposition, or orders, will be in the "best interest of the child." These orders generally include what services are needed in order to rehabilitate the parents and/or child based upon the reasons that are adjudicated.

- Under State law, the Nebraska Department of Health and Human Services is to prepare and file with the court a proposed plan for the care, placement and services which are to be provided to such child and his or her family. The plan must relate to the alleviation of the conditions specified in the adjudication. The Department of Health and Human Services has the authority to determine, with the assent of the court, the care, placement, medical services, psychiatric services, training, and expenditures to be received by each juvenile committed to it.
- **Review Hearings** - After the initial dispositional hearing, review hearings are held every six months thereafter for every child or youth under the jurisdiction of the juvenile court. The department, association or individual who has care of the juvenile 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 an individual [§43-285 (3)].
- **Permanency hearing** – After the child has spent 12 months in foster care, the Court is to hold a special dispositional hearing to determine the most appropriate permanency plan for the child. Under Nebraska statutes, a permanency hearing must be held every 12 months. These hearings must include what is the permanency objective specified by the Court. Many areas of the State do combine a permanency planning hearing with a review hearing.
- **Exception Hearing** - When a child has been in care for 15 of the last 22 months, the court is required to hold a hearing to determine whether reasonable efforts are no longer needed and a termination of parental rights should be filed or to find that one of the statutory exceptions apply and termination is not needed.

Under Nebraska law (**§43-292.02**), if a child has been in out-of-home care for 15 of the most recent 22 months or if the Court determines that reasonable efforts are not required, the County Attorney must file a petition to terminate parental rights unless an exception applies. Exceptions include:

- The child is being cared for by a relative;
- The Department of Health and Human Services has documented in the case plan a compelling reason for determining that terminating parental rights would not be in the child’s best interest; or
- The child’s parents have not been given a reasonable opportunity to avail themselves of the services deemed necessary in the case plan.

- **Permanency** – is obtained through any of the following: 1) a safe return to the parent’s home, 2) adoption, 3) guardianship, 4) independent living or 5) by reaching adulthood. Adoption or guardianship can occur following either a relinquishment of parental rights or by a Court-ordered termination of parental rights.
- **Trial Home Visits** – Anytime during the life of the case, the child/youth could be returned home and still be under the jurisdiction of the court. The FCRO does have authority to review any case where children have been returned home but remain wards of the State.
- **Termination of parental rights hearings** – If the State through a county attorney proceeds to a termination of parental rights action, the parents have the right to counsel. In such a trial, the burden of proof is greater than the level of proof needed in juvenile court proceedings.

Many county attorneys have equated the time to establish grounds and proceed to trial as being equal to involvement in a murder trial. The role of the defense counsel is adversarial—that is the parental attorney has an obligation to defend the client against the allegations in the petition. There is a right to appeal, and many parental attorneys automatically appeal any decision to terminate parental rights.

A **termination of parental rights** is not an end unto itself but rather a means to meet another permanency objective. The objective of preference always is adoption, because it provides the greatest degree of legal protection for the child and family, on a short term and long term basis, including establishment of all parent-child rights and responsibilities.

In Nebraska, the legal grounds which govern termination of parental rights are as follows:

- Abandonment of the child or youth for six months or more immediately prior to the filing of the complaint;
- Substantial, continuous, or repeated neglect of the child or youth, or a sibling, and refusal to give the child or youth the necessary parental care and protection;
- Despite the financial ability to do so, the willful failure to provide the child or youth with the subsistence, education, and other care necessary for his or her health, morals, or welfare;

- The willful failure to pay for the subsistence, education, and other necessary care when legal custody of the child or youth has been placed with others and such payment has been ordered by the court;
- The unfitness of parents by reason of "debauchery, habitual use of intoxicating liquor or narcotic drugs, or repeated lewd and lascivious behavior, which conduct is found by the court to be seriously detrimental to the health, morals or well-being of the juvenile;"
- Inability to discharge parental responsibilities because of mental illness or mental deficiency, where reasonable grounds exist to believe that the parents' mental condition will continue for a prolonged, indeterminate period;
- When there is a determination that the child or youth is one described in the subdivision (3)(a) of section §43-247, and reasonable efforts, if required, under the direction of the court have failed to correct the conditions leading to that determination;
- When the juvenile has been in an out-of-home placement for fifteen or more of the most recent twenty-two months;
- When the parent has inflicted upon the juvenile, by other than accidental means, serious bodily injury;
- When the parent of the juvenile has subjected the juvenile to aggravated circumstances, including abandonment, torture, chronic abuse, or sexual abuse;
- When the parent has committed murder, voluntary manslaughter, or a felonious assault that resulted in serious bodily injury either against the juvenile or another child of the parent.

Parents have the right to counsel at termination of parental rights hearings.

The role of this defense counsel is adversarial—that is, he or she has the ethical obligation to defend the client against the allegations in the petition. If the parent is incapacitated (mental illness, etc.), he or she is also entitled to the appointment of a Guardian ad litem in order to protect his or her interests. Defense counsel and Guardian ad litem will resist efforts to terminate parental rights. The parents also have the right to appeal a decision by the juvenile or county court.

- **Post-Termination Procedures** - A termination of parental rights is not an end unto itself but rather a means to meet another permanency objective. The permanency objective of preference is always adoption, because it provides the

greatest degree of legal protection for the child and family, on a short-term and long-term basis, including establishment of all parent-child rights and responsibilities. Depending upon the situation, guardianship can also be a permanency objective.

- **Relinquishing Parental Rights** -Often parents are aware that they are unable to parent their children and are satisfied with the placement that has been made for their children. Rather than resort to a termination of parental rights proceeding, many parents willingly relinquish their rights if they are assured of maintaining contact with the children, or of receiving information through an exchange of information contract.

- **DHHS Requirements for Relinquishment:**

The following are the Department of Health and Human Services requirements for relinquishment of parental rights:

- Both parents sign relinquishments or there is an alternative plan to assure that rights of both parents can be terminated either by the court or by voluntary relinquishment, or that there is no other parent with legal rights to the child or youth;
 - The person signing is competent to relinquish;
 - The relinquishment does not involve fraud. The parent must be fully informed of the results of relinquishment and of signing the form;
 - The relinquishment does not involve duress. The decision must be that of the parent rather than the result of pressure from within the system, by relatives of the parent, by pending legal action, etc.;
 - Relinquishment be in the best interest of the child or youth;
 - Relinquishment not occur less than 48 hours after birth of the child; and
 - The parent has been provided with the opportunity for adequate counseling to ensure that the parent is making an informed decision, including other options which might assist in parenting the child and other agencies which could provide relinquishment services.
- **Adoption** - If adoption is sought, the department determines an appropriate adoptive family for the child or youth and continues to provide services and supervision to assist integration of the child or youth into the family, including assisting the family to be prepared to meet the future needs of the child or youth. When determination is made by the case manager and family that the family is ready for the actual adoption to occur, the case manager prepares the necessary

paperwork, including the agency's consent to adoption, and provides it to the family's attorney, for filing of the adoption petition and obtaining the decree. Until the decree is issued, DHHS continues to have guardianship responsibility and authority.

Open adoption is a legally enforceable exchange of information contract between biological parents who have relinquished rights and adoptive parents, that is agreed to by both parties. This is only applicable for children who are state wards.

- **Guardianship** - A guardianship is established, typically with the consent of the parents of the child or youth, however it can be court ordered. The parental rights remain intact so visitations, input on major decisions for the child or youth, and financial support can be part of the guardianship arrangement dictated by the court. Court and agency involvement typically ends at this time however guardianships can be subsidized.

The Guardian is empowered to facilitate the ward's education, social, or other activities and to authorize medical or other professional care, treatment, or advice. A guardian may consent to the marriage or adoption of his or her ward. This legally-sanctioned relationship is not broken except by court order or when the child reaches age of majority.

- **Independent Living** – DHHS will continue to serve as guardian for the child until the court discharges the child from custody, the child reaches age 19, or, in a small number of cases, the Department administratively discharges the child. During the time the child is in custody the Department must continue to meet the child's needs and plan for the child, including preparation for independent living. For youth age 14 and older an independent living plan must be in place. There must also be a transition plan within 90 days of the date the youth will “age out” of the system.

Voluntary Placements - There are a variety of reasons for parents to voluntarily place their child or youth in foster care. These include: an illness the child or youth suffers; a handicap, special impairment, mental illness or uncontrollable behaviors of the child or youth; a physical or mental illness of one or both parents; a disability of one or both parents; the death of a parent; or because their mothers are minors and not able to care for the child. 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. Placements can be arranged through the Department of Health and Human Services. Sometimes it may come through private agencies or hospitals.

Note: The current trend is that more families are being offered voluntary services by DHHS and children are often removed and placed with family members or other foster home during the period of time the parent/s are voluntarily agreeing to services (Voluntary CFS Case). DHHS may offer the parent/s services through a voluntary agreement, and as part of that agreement the parent could receive Family Support, Visitation, Therapy, Drug Treatment, or other needed services.

Keep in mind that Voluntary CFS cases **do not have court oversight**. The Foster Care Review Office may review the cases of children in voluntary out-of-home placements. A new law put into effect 2012 also gives Child Advocacy Centers and 1184 Teams the authority to review all voluntary cases.

Hierarchy of Least Restrictive Placements - The least restrictive or most family like placement is sought for children or youth. The hierarchical listing of placements are parents, other relatives, friends (persons known or familiar to the child or youth), foster parents, group homes, and treatment facilities.

FCRO Legal Standing in Cases. The FCRO also has legal 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. The FCRO reviews the child or youth's plan and makes recommendations concerning that plan as it relates to the best interests of the child and the permanency for that child.