

## Legal/Judicial Terminology / Working with the Courts

### **Evidence:**

Any sort of proof submitted to a court for the purpose of influencing the court's decision. FCRO recommendations are admissible in any Court proceedings concerning the juvenile if the findings or recommendations have been provided to all other parties of record or legal parties. §43-285 (6)

### **Types of Proof:**

In different Judicial proceedings, there are varying proof requirements.

- Beyond a reasonable doubt-99%
- Clear and Convincing-75%
- Preponderance of Evidence-It is more likely than not, 51%

### **Petition: (Done by County Attorney)**

- 43-247 (3a) abuse/neglect
- 43-247 (3b) status offender
- 43-247 (3c) mental health hold
- 43-247 (1) (2) misdemeanor/felony offenses

At this time the allegations of the problem/crime are stated, nothing is determined, found or ordered. The petition sets forth the allegations which, if proven true, form the basis for court intervention. A petition must be filed within 48 hours of a child being removed or the child goes home. Docket number is usually listed in the upper right hand corner. Track to see if both parents are listed in the petition in 3(a) cases.

### **Detention Hearing:**

Hearing which is to find if probable cause exists to warrant the continuance of court action, or the child remaining in foster care. At this time the case is either set for adjudication or the child is returned home or charges dropped. A Guardian ad litem should be appointed at this time. Neb. Law and Federal Law PL 96-272 require that any child in Court Proceedings have a guardian ad litem.

### **Adjudication Hearing:**

By law must occur within 90 days of the child entering foster care. An adjudication hearing can be either contested or non-contested. If it is contested that means the parents deny the allegations of the petition and full trial with evidence ensues. At this time the findings of fact occurs, either the allegations of the petition are found to be true or false, the child is either made a state ward or not. Rules of evidence apply which means hearsay is not allowed.

The FCRO cannot intervene at the adjudication level, only once a case has reached disposition. The burden of proof is based on the preponderance of evidence. The Court should make a finding if reasonable efforts have been made to prevent removal from the home.

### **Dispositional Hearing:**

At this time a plan is ordered which addresses the reason a child or youth came into care. (i.e. if the child is in foster care due to abuse/neglect a rehabilitation plan for the parents is ordered) If the adjudication was for a misdemeanor or felony of the child the Court will enter a dispositional order for the child such as probation, 30 day evaluation, community service, placement at the HRO program, etc. The Court is limited by the allegations adjudicated in

the petition as to what it can order at Disposition. (i.e. the child entered care for neglect then sexual abuse is later disclosed by the child. The Court cannot order the parents to participate in treatment for sexual offenders if it has never been adjudicated) Rules of evidence do not apply which means letters from doctors, school records, etc. are accepted.

**Dispositional Review Hearings:**

Per Federal Law PL 96-272 this hearing is to occur by the court every 6 months to review the progress made on the dispositional order. The focus should be if progress is being made to correct whatever the problem was. A Journal entry should be filed recording what was ordered. Also a finding should be made as to whether there is a continued need for out of home care at these hearings.

**Supplemental Petition:**

This is an additional allegation added onto an existing petition that uses the same docket number. This would be in cases where the original petition was for example due to neglect then it is disclosed there was abuse. It is necessary for the new allegations to be adjudicated (found to be true) in order for the Court to order services for the offense.

Other petitions can also be filed under new dockets. This can occur if a child was originally adjudicated under 3(a) then runs away, steals a car or as you have recently seen perpetrates on someone. The child is then adjudicated under 3(b) or (1) or (2) and this is usually under a new docket. You want to track this.

The type of hearing that is occurring or type of motion is usually listed in the upper right hand corner of the document.

**Journal Entry:**

This is the court's order/statement of what occurred at a hearing, usually from a regular dispositional review.

**Ex parte:**

Hearing without parties present, by review of records only.

**Motion to Recuse:**

When one of the parties has a conflict and wants to be removed from the case.

**Motion to Continue:**

File when one party cannot be at court on the date set. It is not so important to list all the motions to continue as it is to note the dates and number of continuances prior to the court hearing actually taking place.

Watch specifically for Court orders that may state one piece of evidence is not to be disclosed to parties without consent of the Court or for Court orders banning re-disclosure of certain information. This information would NEVER be included in the Board's recommendations.

**Termination of Parental Rights –**

A legal proceeding to free a child from the parent's claim. The rules of Evidence apply and the burden of proof is by clear and convincing except for Indian Children where the burden of proof is beyond a reasonable doubt that serious emotional or physical damage will occur if parental rights remain intact.

A petition is again filed by the County Attorney. Sometimes you will see this referred to as a supplemental petition in that it is an allegation onto the original reason the child entered care. (i.e. the parent has continuously/repeatedly neglected or abandoned the child)

The **arraignment hearing** is held where the petition is read and the parents are explained their rights. Following that the case is set for trial, this is usually set for over a few days period of time. Sometimes you may see this referred to as the adjudication on the supplemental petition. Always watch to make sure that the rights of any and all parents are addressed in the termination petitions. If a parent cannot be located then a motion to publish is filed. The Court will then have to receive evidence as to why the parent cannot be located to be served with the petition in person. The Court can then order the parent be notified of the termination proceedings by publication in the newspaper.

### **18 Month Requirement:**

As per LB 1184 the County Attorney must review the case of child who has been in foster care for 18 consecutive months for the appropriateness of termination. This has been added as one of the grounds for termination. Other grounds for TPR are:

### **43-292 Termination of parental rights; grounds.**

**The court may terminate all parental rights between the parents or the mother of a juvenile born out of wedlock and such juvenile when the court finds such action to be in the best interests of the juvenile and it appears by the evidence that one or more of the following conditions exist:**

- (1) The parents have abandoned the juvenile for six months or more immediately prior to the filing of the petition;
- (2) The parents have substantially and continuously or repeatedly neglected and refused to give the juvenile or a sibling of the juvenile necessary parental care and protection;
- (3) The parents, being financially able, have willfully neglected to provide the juvenile with the necessary subsistence, education, or other care necessary for his or her health, morals, or welfare or have neglected to pay for such subsistence, education, or other care when legal custody of the juvenile is lodged with others and such payment ordered by the court;
- (4) The parents are unfit 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;
- (5) The parents are unable to discharge parental responsibilities because of mental illness or mental deficiency and there are reasonable grounds to believe that such condition will continue for a prolonged indeterminate period;
- (6) Following a determination that the juvenile is one as described in subdivision (3)(a) of section 43-247, reasonable efforts to preserve and reunify the family if required under section 43-283.01, under the direction of the court, have failed to correct the conditions leading to the determination;

- (7) The juvenile has been in an out-of-home placement for fifteen or more months of the most recent twenty-two months;
- (8) The parent has inflicted upon the juvenile, by other than accidental means, serious bodily injury;
- (9) The parent of the juvenile has subjected the juvenile to aggravated circumstances, including, but not limited to, abandonment, torture, chronic abuse, or sexual abuse; or
- (10) The parent has (a) committed murder of another child of the parent, (b) committed voluntary manslaughter of another child of the parent, (c) aided or abetted, attempted, conspired, or solicited to commit murder, or aided or abetted voluntary manslaughter of the juvenile or another child of the parent, or (d) committed a felony assault that resulted in serious bodily injury to the juvenile or another minor child of the parent.

**Appeal:**

This is when the parents resort to a higher Court in the attempt to have the decision of the trial Court changed. The Adjudication, Disposition, or termination may be appealed. The appeal may first go to the District Court if it is on Adjudication or Disposition. If the appeal is on termination, it may first go to the Court of Appeals.

**Visitation:**

Watch for the Court order to address visitation in every case applicable, especially whether visits are to be supervised or unsupervised. Sometimes you will see a separate letter sent to the Judge asking him to approve visitation or a change in visitation. The Nebraska Supreme Court has found that: **The Department of Social Services does not have the authority to determine or place restrictions on visitations. The Court has the judicial authority to determine visitations.** In Re: CA, 1990, 235 Neb. 893,900)

## The Juvenile Court Process for Abuse or Neglect Cases

**Note: The Foster Care Review Office has the authority to review children's cases any time after the removal from the home. Typically the Board 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 Board's concerns.**

**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 Department of Health and Human Services (HHS-CPS) 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. Serious flaws in this system exist. (See the section on CPS response to child abuse reports for additional details.)

**Investigation**– law enforcement and/or CPS (child protective services division of HHS) investigates the allegations or concerns in the report. The investigation provides the evidence for the County Attorney to file a petition. The child may be removed from the home if an emergency situation exists.

**County Attorney files a petition** – detailing 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 HHS 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.

**Petition definitions** – petitions must contain specific allegations related to specific statutes in the Nebraska Juvenile Code. These are:

- §43-247 (3a) – children who are neglected, abused, or abandoned.
- §43-247 (3b) – children who have exhibited behaviors problems such as being disobedient, truant, or runaways
- §43-247 (3c) – juveniles who are mentally ill and dangerous as defined in §83-1009.
- §43-247 (1) – juveniles who have committed a misdemeanor other than a traffic offense.
- §43-247 (2) – juveniles who have committed a felony.

**Detention hearing is held** – legal rights are explained to the parents, a Guardian ad litem (special attorney) is appointed to represent the child's best interests, counsel may be appointed for the parents. This hearing determines if probable cause exists to warrant the continuance of Court action 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.

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 HHS. Services may be offered to the child and/or the parents after the detention hearing. Parents are frequently 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 detention hearing** – and is then responsible for the child’s placement, plan, and services, if the court finds grounds for adjudication. HHS 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 must adopt the HHS case plan unless other legal parties 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.

**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.

**Plea-bargaining** – because allegations can be hard to prove, many serious allegations are sometimes removed from the petition in an agreement between the County Attorney and the parents so that parents or youth will admit to lesser charges.

**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. If the parents deny the allegations, then a fact-finding hearing like a trial is held, where the parents have a right to counsel.

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.

**Dispositional hearing is held** – the Court sets the adjudication status for the case, if the parent admits the allegations or is adjudicated, the Court adopts the HHS rehabilitation plan for the parents (case plan) and orders services based on this plan. There is a statutory presumption that the HHS plan is in the best interests of the child. The onus is put on any other party to the proceedings to prove that a plan is not in the child’s best interests.

**Dispositional review hearings** – these court hearings occur at least once every six months to determine whether any progress is being made towards permanency for the child. The child’s plan should be updated to reflect the current situation. The Foster Care Review Office has legal standing to file as a party to any pleading or motion to be heard by the court at these hearings. The Review Board attempts to schedule its reviews in advance of this court hearing so that the Court can act on the Board’s concerns.

**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.

**When a child has been in care for 15 of the last 22 months** – the County Attorney is required to file a motion for a hearing either for a termination of parental rights, or to explain why termination is not in the best interest of the child.

**Permanency** – is obtained through any of the following: 1) a safe return to the parent’s home, 2) adoption, 3) guardianship, 4) a long-term foster care agreement, 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.

**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.

**Relinquishments** – relinquishments are actions of the parents to give HHS the rights to the child. HHS will only accept relinquishments if both parents sign or the other parent's parental rights have been terminated or the other parent is deceased. This is sometimes done to facilitate an open adoption.

**Open adoption** – 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.