

Nebraska Foster Care Review Board

2008 Annual Report Recommendations for the Legal System

“Children and youth are directly affected by much of the judicial activity in our state. As one would expect, we receive few, if any, direct complaints from children about the way we conduct our courtrooms and our court business.



Despite the fact that children’s voices are largely silent, they are our most vulnerable and most valuable constituency. Children

are the Nebraska citizens most in need of, and most deserving of a just, efficient and responsive court system.

When, as judges and lawyers, we view the court system through the eyes of a child, our perspective shifts. We no longer accept a system that allows children to languish in out of home care for months and years. Instead we work to change that system to provide justice in a timeframe that makes sense to a child while maintaining fairness and due process to all parties.”

– Chief Justice Mike Heavican

From the Executive Director ...



**Carolyn K. Stitt,
Executive Director**

The Foster Care Review Board is pleased to report that progress continues to be made.

Look at these key statistics:

- 1) **Fewer children in out-of-home care:** 4,620, down from 5,043 in 2007.
- 2) **Fewer children were adjudicated due to Abuse/Neglect (3a)** – 2,865 children had been adjudicated for abuse and/or neglect, compared to 3,152 in 2007 (-9.1%).
- 3) **572 children were adopted during 2008**, as compared to the 462 in 2007.

In the last four years, the legal system has renewed focus on the best interests of children in foster care. The goal has been to reduce the length of time a child remains in foster care, and a key element in reaching that goal is to make critical decisions at the 12-month permanency hearing as required by law.

We gratefully acknowledge the success of this vital work by members of the Judiciary, and we commend them for their efforts. In partnership with DHHS case-workers, the 12-month time frame is now everyone's priority, resulting in dramatic increases in parental relinquishments and subsequent adoptions.

We specifically commend the many prosecutors in 2008 who filed more petitions to terminate parental rights, one of the key factors in the increase in adoptions that we have seen in 2008. Additionally, the effective use of the pre-hearing conference to identify potential placements with a family member, to work with parents on expectations, and to determine paternity (resulting in more timely relinquishment of parental rights) has been vital in this trend of more adoptions. The attention by individuals throughout the Judiciary and the child welfare system on these strategies has resulted in more children moving more quickly to stable, permanent placements through adoption.

The 2008 Annual Report of the Foster Care Review Board is summarized here for those who work in the Nebraska legal system, with our top recommendations for assuring the children are not in foster care too long:
Calling attention to the rate of children returning to foster care.

A key issue of this report (see page 9) is the high rate – **41%** – of the number of children returning to care. The Courts should insist on appropriate case plans that

detail realistic and timely improvement for parents to be successful when their children are returned home.

In addition the Board recommends continued focus on the following:

1) Pre-hearing conferences.

Effective use of pre-hearing conferences at the initial or protective custody hearing phase of the case can produce positive gains prior to adjudication. Such conferences can:

- a) focus on reasons why the child entered into out-of-home care,
- b) determine ways to re-direct the child's home environment,
- c) initiate the plan of counseling treatments, and
- d) monitor the early return of the child to his or her home. The pre-hearing conference can also establish paternity and the feasibility of placing the child with a relative.

2) Guardian ad litem representation.

The Board applauds the Nebraska Supreme Court's guidelines to help guardians ad litem improve their representation of children. We acknowledge many guardians ad litem go above and beyond for their clients (see Commendations List on page 16). Adequate legal representation and vigilant advocacy of the child's best interests are vital in order to assure the child's safety and permanency.

3) 12-month permanency hearings.

Effective use of these hearings can result in timely permanency for children and could be used to help reduce the number of children who later return to foster care.

4) Use of aggravated circumstances hearings.

The Board recommends the expanded use of "aggravated circumstances" in those cases where the nature of the abuse and/or neglect is so severe or repetitive that reunification with the child's parents jeopardizes and compromises the child's safety and well-being. Reunification could expose the child to an unreasonable risk of being repeatedly abused and/or neglected in the future.

Finally, we are grateful for the leadership of the Supreme Court and Chief Justice Heavican, and we agree when he wrote:

"Children are the Nebraska citizens most in need of, and most deserving of, a just, efficient and responsive court system."

A handwritten signature in black ink, appearing to read "Carolyn K. Stitt". The signature is fluid and cursive.

Special Study conducted by FCRB and DHHS examined why children have remained in foster care for two years or longer.



Under the direction of Governor Dave Heineman, the Foster Care Review Board (FCRB) and the Department of Health and Human Services (DHHS) collaborated to study a specific group of children who had not yet achieved permanency after being in foster care for two years or longer. We wanted to learn what barriers prevented these children from finding the permanency they need to recover from the trauma they have endured and to heal in a stable home.

Following input from Nebraska Chief Justice Mike Heavican and DHHS Director Todd Landry as to what data to collect, DHHS caseworkers and supervisors joined FCRB staff to study these children, focusing on parental compliance and placement issues.

The study was announced July 10, 2008, at a joint press conference by Governor Heineman, Chief Justice Heavican, and Georgina Scurfield, Chair of the State Foster Care

Review Board of Directors. In the fall of 2008, we examined cases first identified in April 2008 involving 572 children and youth who had been in care for two years or longer with the permanency plan of reunification. When data collection began, permanency plans for many of those children had already changed. Plans for 320 children changed from reunification to adoption, guardianship, or other plans.

When we looked at the cases of the remaining 230 children, here's what we found:

Alarming, almost half of these children (113, or 49.1%) were ten years of age or younger, and **23.9% of the children were birth to age 5**. Their case plan called for returning to their abusive and/or neglectful parents who had received services but made little or no progress. After meeting on the 230 children's cases, 111 case plan objectives were changed.

Number of Placements Over The Lifetime of the 230 Children	
1-3 Placements	86 children (37.4%)
4-6 Placements	65 children (28.2%)
7-9 Placements	26 children (11.3%)
10-19 Placements	39 children (17.0%)
20-Plus Placements	14 children (6.1%)

Positive trends for children in foster care

The study found that several areas previously identified as needing improvement have moved in a positive direction in recent years:

- ▶ **Services were provided within 60 days** of removal for 192 children (83.5%).
- ▶ Current **services were appropriate** for 183 children (79.6%).

- ▶ Children's court **hearings were occurring every six months** for 82.2% of the children.
- ▶ **Paternity was established** for 173 children (75.2%).
- ▶ **Permanency plans changed** for 111 of the 230 youth because of this special study.
- ▶ Over half (50.9%) of the **children had three or fewer caseworkers** over the lifetime of their cases.

Continuing Concerns:

- ▶ The number one barrier to reunification is the **parent not being able or willing to parent** (121 children, or 52.6% of cases).
- ▶ In approximately one-third of the cases, the **guardian ad litem was apparently not actively involved**.
- ▶ There were **aggravated circumstances** at the time of the child's removal for 26 youth (11.3%) and yet the **permanency plan remained reunification with the abusive and/or neglectful parent**.
- ▶ Many **children with special needs** (physical and/or mental disabilities) did not receive appropriate services.

Lessons Learned:

- ▶ **Parental willingness needs to be assessed** early, and **parental compliance monitored** throughout the case.
- ▶ Of those 26 children's cases where aggravated circumstances existed, **expedited permanency was sought** (a court ruling that efforts to reunify were not necessary) **for only 3**.
- ▶ A consistent effort is needed to **identify cases of extreme abuse and/or neglect** and then to request a hearing where a court may be able to find **aggravated circumstances** exist and that efforts to reunify are not necessary.

The Supreme Court Commission on Children in the Courts continues to seek responsiveness to the needs of children in foster care.

by Judge Douglas F. Johnson
of the Douglas County Separate Juvenile Court

The Supreme Court Commission on Children in the Courts, created in 2005, is co-chaired by Judge Everett O. Inbody, Chief Judge of the Court of Appeals and Douglas County Separate Juvenile Court Judge Douglas F. Johnson and consists of judges, lawyers, representatives of the legislative and executive branches, and children's advocates. The Commission was charged with studying and making recommendations regarding various aspects of the judicial system to insure that the court system is as responsive as possible for children who interact with, or are directly affected by the courts.

The Commission met quarterly in the first three years of its existence but has met semi-annually since 2008. The main work of the Commission is done in subcommittees.

Some of the accomplishments to date include:

- The Nebraska Supreme Court adopted mandatory training requirements for Guardians ad litem (effective January 1, 2008).
- The Supreme Court adopted the Guidelines for Guardians Ad Litem (July 18, 2007).
- The Court of Appeals has cut an average of three

months for the appeal of abuse/neglect of termination of parental rights cases.

- The statewide Children's Summit was held in September 2006.



Judge
Douglas F. Johnson

- The Supreme Court approved and made available the Caregiver Information Form for foster parent participation in hearings.

Work is underway to:

- Revise case progression standards.
- Develop and implement guidelines for parenting time that reflect current science regarding child development and best interests of children.
- Study immigration issues in juvenile court (training was provided in 2009).
- Study the National Council of Juvenile and Family Court Judges recently developed guidelines for delinquency cases.

Judge Inbody currently serves as the Chief Judge of the Court of Appeals and has been an active member of the Court Improvement Project, which is dedicated to serving children within the court system.

Judge Douglas Johnson is a Separate Juvenile Court Judge in Omaha. He is the President-Elect of the National Council of Juvenile & Family Court Judges. He was sworn in as President at the NCJFCJ's Annual Conference in Chicago, July 2009.

“Through the Eyes of the Child” continues its progress.

by Judge Lawrence Gendler
of Sarpy County
Separate Juvenile Court

Three years ago our Supreme Court established the “Through the Eyes of a Child” initiative. We established 25 Judge-led teams across the state to work on a variety of issues including establishing best practices, working towards and establishing permanency goals sooner, and increasing the cooperation and collaboration of those actively participating in our juvenile justice system. Our initiative just finished hosting another summit in Grand Island celebrating our three years of existence while providing



Judge
Lawrence Gendler

participants with a wide range of presentations on topics of interest. Over 400 professionals attended our meeting including every Judge with juvenile court jurisdiction.

Nobody is suggesting that we have achieved our goals and solved all of the issues. But, all of us remain engaged in establishing new procedures and practices to ensure that those families in our system receive the proper attention they deserve and that no child is left to linger with an indefinite future. Together, I remain optimistic that our efforts will benefit the youngsters and families we serve.

The Foster Care Review Board suggests these steps that judges and members of the legal system can follow to improve case progression.



Local foster care review boards have identified that one of the main issues for the legal system to address is the need to reduce the length of time children spend in foster care. We acknowledge that the courts have made significant efforts in this area, particularly the use of pre-hearing conferences, focusing the parents on the decisions needed and the timeframes for completion, and focusing on permanency at the 12-month hearings.

The boards have identified missed opportunities for permanency. The following are some of the ways the judiciary, guardians ad litem, and/or county attorneys can better recognize and act on those opportunities:

- 1) ***Insist on appropriate case plans*** that detail specific and timely improvements that parents need to demonstrate to show that a return of the children to the parent's care could be safe and successful (see article on children returning to foster care on page 10).
- 2) ***Hold parents accountable*** and act if and when parents make little or no effort to comply. If parents are unwilling or unable to parent their children, courts need to focus on alternate permanency.
- 3) ***Assure that appropriate parenting time is ordered*** to reinforce the attachments between parent and child, and promote timely reunification by measuring parental willingness/ability to parent (see article by Judge Linda Caster Sennf on page 8).
- 4) ***Guardians ad litem need to advocate*** for services for their clients and their families, recognizing that families are most likely to change in the first six weeks following a child's removal (see article by Christine Costantakos on page 11).

- 5) Specify in court orders that ***ordered services are to be successfully completed*** so that services and treatments are not ended prematurely.
- 6) ***Assure timely adjudications occur so that parents will begin services*** to correct the reasons that children came into out-of-home care (see page 7).
- 7) ***Utilize 12-month hearings to effectively address permanency objectives*** (see article by Judge Robert Ide on page 9).
- 8) ***Continue use of pre-hearing conferences***, and continue to follow-up on those decisions (see article by Judge Anne Paine on page 6).
- 9) Continue to utilize the ***FCRB recommendation reports***, which identify the major issues in each case reviewed and offer recommendations for alleviating those issues and other major barriers to permanency.
- 10) ***Continue to work with the Through the Eyes of the Child Teams*** to increase understanding and collaboration among the entities that make up the child welfare system.

The Foster Care Review Board readily acknowledges the expanded concern of members throughout the judiciary and the legal system and the efforts you have made to improve the well-being of Nebraska children in out-of-home care. We are grateful for the partnership that we have forged together, and we look forward to strengthening those bonds and extending them further as we address remaining issues.

Strengthen the front end of the child welfare system through the use of pre-hearing conferences.



Judge Anne Paine

**by Judge Anne Paine
of Willow County Court,
McCook**

One of the practical changes brought about by the Child Summit Meeting held in Nebraska City in September, 2006 (later titled “Through the Eyes of the Child Initiative”), was the use of pre-hearing conferences in juvenile cases.

Pre-hearing conferences are now held prior to adjudication in all 3(a) juvenile abuse and neglect cases. In most jurisdictions, the pre-hearing conference is held prior to any formal court appearances. Individuals required to attend the conferences include: the child’s parents; their attorneys who are appointed to represent them from the outset of the case; the guardian ad litem for the child; the caseworker for the Department of Health and Human Services; and in most jurisdictions, the county attorney is also present. A trained mediator generally facilitates the conference.

The primary purpose of the pre-hearing conference is to front-load services for the family in an effort to reduce the time a child remains in foster care. Prior to the use of pre-hearing conferences, services such as counseling, treatment, and supervision were frequently not implemented until after adjudication and generally not until the time of disposition. This meant that a child could be left in foster care for as long as six months before any rehabilitation efforts for the family had begun. The pre-hearing conference helps a family to identify voluntary services they can utilize to begin the process of changing the situation which brought them before the Court. In some cases, the parties will develop a safety plan and recommend to the Court that the child can be returned home immediately with the use of these voluntary services. If the parents make enough positive changes with the voluntary services, the county attorney may recommend dismissal of the case prior to adjudication.

Other goals of the pre-hearing conferences include identification of non-custodial parents, identification of family members for possible relative foster-care place-

ments, identification of possible ICWA issues, and working out visitation schedules. The pre-hearing conference provides a non-adversarial atmosphere where parties can cooperate and focus on the best interests of the children and identify the needs of the family and resources to address those needs.

Recently, legislation was passed making all comments made at the pre-hearing conferences confidential, so parties can exchange thoughts and concerns freely at that conference without fear of having the information used against them in a contested adjudication hearing or for any other purpose. See Neb. Rev. Stat. §43-247.01.

Statistics are still being compiled, however it is the consensus of the 25 local teams across the state that the pre-hearing conferences are reducing the length of juvenile cases and the length of time spent by children in out-of-home placements.

Judge Paine took office as county judge on July 2, 2007, serving the 11th Judicial District. Her primary court location is the Red Willow County Court in McCook.

Judge Anne Paine, McCook was presented the Judge Child Champion Award on September 11, 2009, at the 2009 Nebraska Children’s Summit in Grand Island. The award, presented by former Chief Justice John Hendry who founded the Through the Eyes of the Child Initiative, recognizes individuals with particular dedication and service in improving the court system for children.

The Nebraska Supreme Court Office of Public Information press release of September 10, 2009, continued, “The award recognizes her commitment to improvements in the juvenile court system regarding her dedication to abuse/neglect cases and her genuine concern for children and families. Judge Paine has devoted herself to finding creative solutions to the problems that cause children to become involved in the court system and is deeply involved with the 11th Judicial District team of the Through the Eyes of the Child Initiative.”

***“It will take a combination
of many remedies to create a
cure to the current problems
in the child protection
system.”***

– John P. Icenogle,
Judge of the 9th District Court

Length of time to adjudication

According to Neb. Rev. Stat. 43-278 the adjudication hearing is to occur within 90 days of the child's entering out-of-home care. As shown below, in practice the 90-day rule is not always followed.

Timely adjudication is important because it affects when some parents will begin services to correct the reasons why the child entered care.

Totals shown here are from a sample of unduplicated 1,938 children, state-wide, who were reviewed in 2008. The table below shows only those counties with five or

more children in the sample. Totals here will not equal the total number of children by

county listed on pages 14 and 15, which show all the children in out-of-home care on December 31, 2008. Please note that some of the children entered care in 2008 and others entered care prior to that time.



COUNTY	TOTAL	Age 0 to 5				Age 6 to 12				Age 13 to 18			
		1-3 Mos.	4-6 Mos.	7+ Mos.	TOTAL	1-3 Mos.	4-6 Mos.	7+ Mos.	TOTAL	1-3 Mos.	4-6 Mos.	7+ Mos.	TOTAL
Adams	30	11	4		15	1	4		5	8	1	1	10
Buffalo	26	6	6		12	10			10	4			4
Butler	6	1			1	3			3	1	1		2
Cass	29	6			6	7	2		9	14			14
Chase	5	1			1	2			2	1	1		2
Colfax	9	2	1		3	2			2	4			4
Cuming	8	1		2	3	1			1	2			4
Custer	6	2		1	3	1			1	1	1		2
Dakota	9	4		3	7	2			2				0
Dawson	7	4			4	2			2	1			1
Dodge	32	9	3	1	13	7	2		9	8	2		10
Douglas	975	213	119	29	361	210	115	27	352	158	83	21	262
Gage	15	6	2		8				0	6	1		7
Greeley	8		1		1	1	2		3	3	1		4
Hall	116	38	14	5	57	30	8	1	39	18	2		20
Harlan	11	5			5	2	3		5		1		1
Jefferson	8	2	1		3	2			2	3			3
Lancaster	325	100	22	15	137	62	32	12	106	54	22	6	82
Lincoln	12				0	1	1		2	9	1		10
Madison	51	16	3		19	17	2		19	10	2	1	13
Merrick	6	2			2	4			4				0
Otoe	5	1			1				0	3	1		4
Platte	18	5			5	4			4	6	2	1	9
Saline	6	1	1		2	2			2	2			2
Sarpy	87	12	9	1	22	18	12	6	36	12	10	7	29
Scotts Bluff	48	13	3		16	13	1	2	16	5	10	1	16
Valley	6				0	3			3	2	1		3
York	9	1			1	3			3	5			5
TOTAL	1,873	474	194	57	725	428	185	48	661	369	145	38	552



Use visitation orders to reinforce bonding between parent and child, to assess parental compliance, and to determine willingness and ability to parent the child.

Parenting Time – It’s Not Just Visitation

by Judge Linda S. Caster Senff
of the 5th Judicial District County Court

(Boone, Butler, Colfax, Hamilton, Merrick, Nance, Platte, Polk, Saunders, Seward, and York Counties)

The days of arranging visitation in an institutional setting for parents and their children in out of home care are on the way out. Nebraska is joining a nationwide trend in the development of parenting time protocols to ensure meaningful parenting time designed to strengthen the parent-child bond and provide an opportunity for development of needed parental skills. Hence the move to call the time that children and parents spend together “parenting time” rather than visitation. Courts in several states have developed or are in the process of developing parenting time protocols. The Polk County Iowa Model Court in its visitation philosophy states, “For parents, visitation is the time to: enhance the parents ability to adequately and appropriately care for and relate to the child; help the parent(s) develop appropriate parenting behaviors and identify and resolve problems before the child returns home.”

In Nebraska, the Hall County Through the Eyes of a Child team recently adopted a parenting time protocol whose stated purpose of parenting time is: “to reinforce the attachments between parent and child and to promote timely reunification.” The Hall County protocol, adopted by the protocol committee in June of 2009, provides guidance and recommendations on a variety of issues, such as: frequency and length of visits, location of visits, and suggested activities for the parenting time. The protocol also outlines the responsibilities of the participants and the documentation necessary to make meaningful assessments of the parenting time. Also in Nebraska, a subcommittee of the Supreme Court’s Commission on Children in the Courts recently developed and reported to the Commission regarding proposed “Guidelines for Children in Out of

Home Care.” Those guidelines were developed to ensure that children are provided meaningful and safe parenting time from the time they enter care until reunification is accomplished. The guidelines recognize the role that the juvenile court can play to ensure that a meaningful parenting time plan is developed and put into place as soon as possible. The proposed guidelines envision that the Court will play an ongoing role to ensure that the visitation plan is case specific, progressive and consistent with the permanency objective adopted by the Court. The guidelines also recognize that input from parents, the child, the guardian ad litem, the CASA worker, foster parent, the County Attorney and any agency working with child are important and suggest that the parenting time plan be developed in a family conference with as many of those participants present as possible. The relationship between



Judge
Linda S. Caster Senff

siblings is also considered and sibling contact is seen as at least as important as contact between children and their parents.

These Nebraska efforts in developing protocols are an effort to highlight the importance of developing a meaningful parenting time plan for each case and are designed to promote discussion among participants in the child welfare system. They are a step forward in the ever evolving process of developing best practices guidelines to ensure that the best interests of our children are protected.

Sources: Foundations Supporting Visitation, Polk County Iowa Model Court. Parenting Time Protocol, Hall County Through the Eyes of a Child team, adopted by Protocol Committee, June 2009. Guidelines for Parenting Times for Children in Out of Home Care, Subcommittee of Supreme Court Commission for Children in the Courts.

Utilize the 12-month permanency hearing to reach critical decisions regarding a child's case plan objective and future placement.



by Judge Robert Ide
County Court Presiding Judge
of the 10th Judicial District
(Adams, Clay, Fillmore, Franklin, Harlan, Kearney,
Nuckolls, Phelps, and Webster Counties)

Judge Ide serves as Chair of the
Nebraska County Judges Association.

As required by law, the 12-month permanency planning hearing presents a pivotal point in each child's case at which time the Court should determine whether the pursuit of reunification remains a viable option, or whether alternative permanency for the child should be pursued. To make this determination, adequate evidence is needed, as well as clear focus on the purpose of these special hearings.

Whenever possible, this hearing should be the moment where case direction is decided. Even when there are good reasons for waiting before making the final decisions, such as a brief wait for parents and/or child to complete a particular service or have a particular evaluation, the 12-month permanency hearing can and must serve a useful function. In those cases where delays may be warranted, the hearing should reinforce that the only delays to permanency that the Court will tolerate are those that are in the child's best interests, and that children not only deserve permanency, it is a basic developmental need.

Courts and legal parties should be aware that delays in making permanency decisions increase the probability that the child will experience more moves to different placements. "Placement drift" has detrimental effects to children's sense of stability, to their educational progress, and to their mental and physical health. Therefore, the delays to decision-making need to be purposeful and temporary.

True permanency planning requires a concerted focus by all the professionals involved in both meeting children's needs which they are in foster care and in helping children exit foster care safely as quickly as possible. This

type of focus needs to be the standard for practice in Nebraska.

The requirement to hold regular permanency planning hearings applies not only to abuse-neglect cases, but the Nebraska Supreme Court has held that the Juvenile Court is obliged to hold permanency planning hearings in delinquency cases, as well [See *In re Interest of Spencer O.*, 277 Neb. 776 (2009)].

The permanency planning hearing provides a valuable checkpoint for the case professionals and the juvenile judge to ascertain the progress of the case, from numerous vantage points, such as: 1) the appropriateness of the permanency plan that has been determined for the child; 2) whether the child will be returned to the parent; 3) whether the case will be referred to the State for the filing of proceedings for termination of parental rights; and 4) whether the child will be placed for adoption or referred for legal guardianship.

In some cases the permanency hearing is occurring within a few months prior to the "15 month" hearing required by 43-292.03, Neb. Rev. Stat. The review should specifically encompass the issues set forth in 43-292.02(a), (b) & (c) Neb. Rev. Stat. and further focus attention and energies of the parties toward implementing the plan adopted by the court.

These issues that are reviewed at the permanency planning hearing create a meaningful opportunity for the Court to assess the plan's likelihood to provide a safe, stable, and nurturing environment for the child and to make any necessary adjustments to the child's case plan.



Judge
Robert Ide

***Whenever possible the
12-month hearing should
be the moment where case
direction is decided.***



Failed reunifications mean children are removed from their home more than once and sent back to out-of-home care.

The Foster Care Review Board wants to highlight an alarming reality: For most of the past twenty years, the percentage of children who re-enter foster care is at a disturbingly high level.

Some progress had been recorded during recent years in reducing the percentage of children re-entering foster care. The rate of return is computed by taking the number of those children who had been removed from their home more than once as a percentage of the total children entering foster care.

1,664 (41.0%) of the children who entered care in 2008 had been previously removed from their home.

Effective planning is needed to prevent children from experiencing re-abuse and future removals from the home. There have been a number of reasons identified for why children return to care, including:

- Caseworker changes and high caseloads lead to problems with documenting parental compliance or non-compliance, which then affects the available evidence.
- Contracted visitation supervision has been problematic because sometimes parental progress issues have not been documented.
- Some children have been returned home even though there were indications that parents could not or would not safely parent their children.
- Children too often have “cookie cutter” plans, rather than plans that are specific to the reasons that children entered care (The federal CFSR review found this also).
- Children have assessments, but often do not get the treatment recommended or are not allowed to complete the treatment due to managed care funding issues and denials.

Lack of stability is costly. In addition to the psychological costs to the children, there are

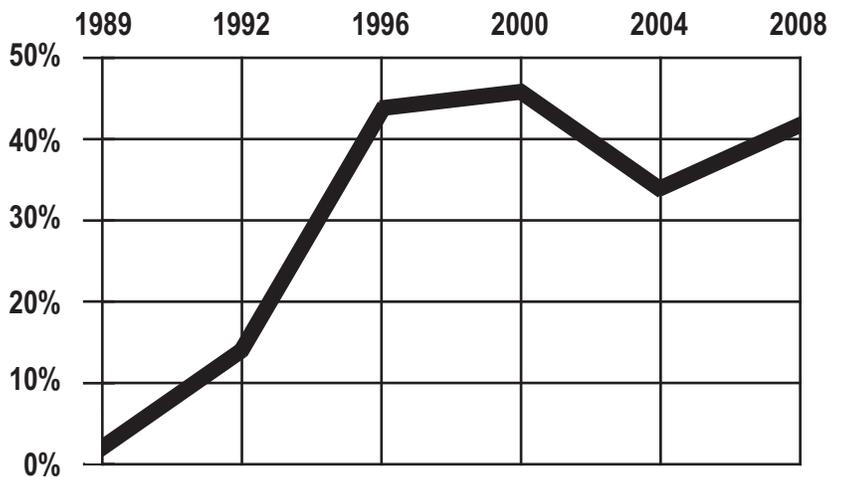
costs associated with room and board, with court cases, with treatments and mental health care, with treating educational impairments, delinquent behaviors, and with re-abused children who have a high probability of becoming abusive parents themselves. Other children born to parents who have not corrected the conditions that led to the children’s removal are also placed at risk.

Clearly, everyone in the system must increase focus on reunifying only when safe to do so. The legal system can assist with this goal in the following ways:

1. Judges can insist on timely, adequate and appropriate case plans that deal specifically with the reasons each particular child entered care. Reunification should not be allowed absent reasonable assurances of the child’s safety.
2. Guardians ad litem can more readily express objections to inappropriate plans of reunification.
3. County attorneys can file supplemental petitions if new information affecting health, safety, or well-being are disclosed.

The Foster Care Review Board encourages everyone to do his or her part to reduce the number of children returning to out-of-home care.

Percent of Children Entering Out-of-Home Care Who Had Been in Care Before



Calendar Year	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Entered Care During Year	3,466	3,361	3,464	3,824	3,516	4,111	4,563	5,490	5,844	5,985	4,884	5,281	5,232	5,321	4,773	4,839	4,714	4,768	4,437	4,057
Children with prior removals	73	153	287	532	695	1,143	1,702	2,308	2,451	2,364	2,022	2,405	2,238	2,211	1,875	1,631	1,386	1,877	1,701	1,664
Percent (%) Return to care	2.1	4.6	8.3	13.9	19.8	27.8	37.3	42.0	41.9	39.5	41.4	45.5	42.8	41.6	39.3	33.7	29.4	39.4	38.3	41.0

The Board supports continued emphasis on accountability for guardians ad litem by using Supreme Court Guidelines.



Progress in the Area of Guardians ad Litem Representation

by Christine P. Costantakos
J.D. Member of Nebraska Bar

The “Guidelines for Guardians ad Litem for Juveniles in Juvenile Court Proceedings” have been in effect for little over 2 years. These Guidelines were adopted by the Nebraska Supreme Court in an effort to further clarify for guardians ad litem throughout the State exactly what the Nebraska Supreme Court considers to be the “best practices” to ensure effective representation of children’s legal and best interests in dependency and abuse/neglect proceedings.

Some of the key concepts clarified by the Guidelines include the following: (1) the guardian ad litem has a duty to conduct an independent investigation and render an independent determination as to the juvenile’s best interests; and must also take necessary action to advocate and protect the legal and best interests of the juvenile; (2) “consultation” with the juvenile, as required by statute, means meeting in person with the juvenile, unless prohibited or made impracticable by exceptional circumstances. Such consultation is to take place within the first two weeks of appointment, and at least once every six months thereafter.

In addition, the Guidelines recommend that the guardian ad litem should also consult with the juvenile when the juvenile requests the guardian ad litem to meet with him or her, and also that the guardian ad litem should see the juvenile at least once in each placement; (3) the Guidelines spell out specific elements to be included in the guardian ad litem’s written report to the Court, and (4) the Guidelines make it clear that the guardian ad litem’s authority is subject to termination by removal of the guardian ad litem by the court for cause shown.

The Guidelines emphasize the fact that every guardian ad litem is expected to provide “quality representation” for the juveniles for whom he or she is appointed to represent, throughout the entirety of the case. To that end, the Guidelines express caution against

a guardian ad litem’s accepting workloads or caseloads that, by reason of their excessive size or demands, would impair or interfere with the guardian ad litem’s ability to provide such quality representation for each child.

Chief Justice Mike Heavican has asked judges with juvenile court jurisdiction to hold guardians ad litem accountable when they do not follow the Supreme Court’s guidelines. At the request of the Chief Justice Mike Heavican, the Foster Care Review Board has been engaged in the process of identifying cases where guardians ad litem are substantially failing to follow the Supreme Court’s Guidelines, and is including this information in the Review Board’s Recommendation in the “top concerns” section of Board reports.

The Board believes that the adoption and utilization of the Guidelines represents a substantial step forward in assisting Nebraska guardians ad litem in enhancing and improving their performance on behalf of children involved in juvenile court proceedings.

Examples of how a guardian ad litem concern will be documented:

- “Contrary to Section V.A.3.d. of the Supreme Court’s guidelines on best practice, the guardian ad litem has not seen [name of child] in his placement, even though he has been there for two years.”
- “The guardian ad litem report shows no contact or communication with the child in the past eight months. Statute §43-272.01(2)(d) requires that contact occur at least every six months.”

Chief Justice Mike Heavican has asked citizen reviewers to identify cases where guardians ad litem are not following the Supreme Court’s Guidelines, and include this in the Review Board’s Recommendation in the top concerns section. The Chief Justice has asked Judges to hold guardians ad litem accountable when they do not follow the Supreme Court’s guidelines.



The Board recommends using aggravated circumstance hearings to accelerate permanent placements.

Changes of Law in Aggravated Circumstance Hearings by Christine P. Costantakos J.D. Member of Nebraska Bar

In cases where the parent has subjected a juvenile to “aggravated circumstances,” prosecutors can request the court to make a finding that will excuse the State from its duty to make reasonable efforts to preserve and unify the family. The phrase “aggravated circumstances” has been judicially interpreted to mean that the nature of the abuse or neglect is so severe or repetitive that reunification with the child’s parents jeopardizes and compromises the child’s safety and well-being. [See *In re Interest of Jac’Quez N.*, 266 Neb. 782, 669 N.W.2d 429 (2003)]

It is estimated that about 20-30 percent of the cases involve the types of parental behaviors that could provide a basis for the court to find an exception to the State’s duty to exercise reasonable efforts. Some examples include cases involving abandonment, torture, sexual abuse, or chronic abuse. There are other grounds in addition to “aggravated circumstances” upon which the court may find that an exception exists with respect to the State’s duty to make reasonable efforts: 1) parental involvement in the murder or voluntary manslaughter of another child of the parent, 2) situations where the parental rights to a sibling of the juvenile have been terminated involuntarily, 3) the commission of a felony assault which results in the serious bodily injury to either the juvenile or to another minor child of the parent, and 4) if the parent has been convicted of felony sexual assault of the other parent of the juvenile. [See Neb. Rev. Stat. §43-283.01(4)(b) and (4)(c)]

If the court has ruled that efforts to reunify are no longer necessary, then children can be transitioned more quickly into permanency, whether in the form of adoption or guardianship. [See Neb. Rev. Stat. §43-283.01(5)]

Prosecutors and guardians ad litem should review their cases in order to identify the existence of factual grounds upon which the court can make a determination that reasonable efforts to preserve and reunify the family are *not* required. Where such grounds exist, prosecutors and guardians ad litem can request the court to make such a finding. For example, such a determination can be requested from the court in the initial petition filed by the State, or in a motion subsequently filed by either the State, or the juvenile’s guardian ad litem.

The element of “aggravated circumstances” also constitutes a separate statutory ground upon which termination of parental rights can be sought immediately. Neb. Rev. Stat. §43-292(9) authorizes the court to terminate parental rights when the parent of the juvenile has subjected the juvenile to “aggravated circumstances,” including, but not limited to, abandonment, torture, sexual abuse, or chronic abuse. Note that the “aggravated circumstances” under Neb. Rev. Stat. §43-283.01 and the “aggravated circumstances” under Neb. Rev. Stat. §43-292(9) are in substance the same: subsection of either the juvenile *or another child of the parent* to “aggravated circumstances” will suffice to relieve the State from its duty to make reasonable efforts under Neb. Rev. Stat. §43-283.01 and will also provide a basis for termination of parental rights under Sec. 43-292(9). Thus, a parent’s conduct demonstrated toward another child – *not just his or her own child* – is now part of the calculation regarding reasonable efforts and the termination of parental rights based upon aggravated circumstances which to terminate parental rights under §43-292(9).

The following allegations could be used to support a judicial finding that reasonable efforts are not required in a given case:

“The father has been convicted of felony child abuse due to the abuse he inflicted upon his daughter. A certified copy of the judgment of his conviction is marked as Exhibit “A” and attached hereto.

As the result of said child abuse by her father, the minor child sustained numerous bruises and fractures.

The mother delayed unreasonably in seeking proper medical care and treatment for her daughter, as the result of which the daughter’s injuries were exacerbated.

Reasonable efforts to preserve and reunify the family are not required in this case due to the fact that both parents have subjected the minor child to aggravated circumstances within the meaning of Neb. Rev. Stat. §43-283.01(4)(a); and that the father committed a felony assault which resulted in serious bodily injury to the minor child, under Neb. Rev. Stat. §43-283.01(4)(b).

Wherefore, the undersigned requests this court to make a finding that reasonable efforts to preserve and reunify the family are not required, and to hold a permanency hearing within thirty days, as required by Neb. Rev. Stat. §43-283.01(5).”

Major Board activities in 2008

Tracking and reviewing children's cases ...

- **Board staff tracked 9,235 children** who were in care for some, or all, of 2008.

- **4,457 reviews of 3,236 children's plans**

The 43 local Foster Care Review Boards statewide, which volunteered 31,200 hours, conducted 4,457 reviews in 2008. The Foster Care Review Board is the IV-E review agency for the state (each child is reviewed every six months).

- **Staff appeared in court 629 times in 2008 to address concerns about the plan, placement or services.**

Many of these cases involved multiple children, with courts addressing the issues identified by the Board in about 70% of the cases.

- **31,199 case specific reports were issued.**

The Board issued these reports with recommendations to the courts, agencies, attorneys, guardians ad litem, county attorneys, and other legal parties.

Reviewing a child's case includes:

- o The FCRB staff reviews DHHS case files, gathers additional pertinent information regarding the child's welfare, provides information to local board members prior to local board meetings, and provides the means for pertinent parties to participate in the local board meetings.
 - o Volunteer local board members make recommendations and findings on placement, services, and plan; identify remaining barriers to achieving the permanency objective. A comprehensive recommendation report is issued to all legal parties to the child's case.
 - o Caseworkers, guardians ad litem, and others have been increasingly open to input from our review specialists and members of local review boards.
- **Conducted a special study.**

Under the leadership of Governor Dave Heineman in addressing child welfare reform in our state, the Department of Health and Human Services (DHHS) and the Foster Care Review Board (FCRB) collaborated to study a specific group of children who had not yet received permanency after being in foster care for two years or longer.

FCRB staff had **originally determined there were over 500 children who met the criteria.** Through the course of discussions with DHHS, **430 children's plans were changed** to one more appropriate to their circumstances (such as adoption or guardianship). The FCRB and DHHS held a joint press conference to announce the findings from this study. See pages 8-9 for details.



Promoting children's best interests ...

- **Conducted joint FCRB/DHHS aggravated circumstances trainings across the state.**
- **Director served on Safe Haven Task Force, advocating in part for post-adoptive services.**
- **In addition to the Special Study, participated in monthly staffings with DHHS on over 500 cases of concern,** creating appropriate action plans to address case concerns.
- **The District Court affirmed the FCRB's authority to visit children's placements as granted by the Legislature and juvenile courts ordered to occur.** [The Nebraska Supreme Court concurred in 2009].
- **Provided statistics to senators, the Judiciary, DHHS, Kids Count, United Way, advocates, researchers, the press, and the public.**
- **Flagged cases for the judge's attention,** where it appeared that guardians ad litem were not following the Nebraska Supreme Court guidelines for representation of children in foster care.
- **Partnered in Adoption Day celebrations in Omaha, Lincoln, and Hastings,** with staff providing backpacks for the children.
- **Attended court hearings to address concerns** when, during a child's review, one or more of the following case concerns were identified:
 1. The board disagrees with the permanency plan.
 2. The child's placement is unsafe or inappropriate.
 3. The child has been restrained multiple times.
 4. The visitation arrangements are not in the child's best interest.
 5. Services are not in place for the child.
- **Staffed cases and/or contacted DHHS caseworkers,** supervisors, legal staff, adoption workers, or administration, guardians ad litem, investigators, or prosecutors on behalf of a child's case to help implement solutions to the local review board's case concerns.

Visiting foster care facilities...

In accordance with the Board's authority under Neb. Rev. Stat. 43-1303(3), the Board's staff and citizen reviewers made over 54 facility visits in 2008 to help assure that children's health and safety needs were being met. Visiting foster care facilities includes visiting foster homes, group homes and detention facilities.

Statistics on children in foster care ...

	Total Number of Children in Care	Children in care for two years or more	Removed from the home more than once	4 or more case workers	Age				Adjudication Status			Children placed in same county as parent	Number of Placements		
					Birth to 5	6 to 8	9 to 12	13 to 18	Abuse/Neglect	Status Offender	Other/Unk.		1 to 3	4 to 6	7 or More
ADAMS	99	27	36	28	21	12	13	53	61	14	24	39	45	21	33
ANTELOPE	4	2	4	3		2		2	2	1	1			2	2
ARTHUR	0														
BANNER	1							1		1			1		
BLAINE	0														
BOONE	1							1	1				1		
BOX BUTTE	10	1	3		3			7	3	1	6	3	6	3	1
BOYD	1	1						1			1	1			1
BROWN	1	0						1		1	1	1		1	
BUFFALO	69	5	28	14	16	8	11	34	35	8	26	39	36	13	20
BURT	10	1	3	1	4	1		5	7	1	3	3	5	1	4
BUTLER	31	9	8	5	7	9	6	9	27	1	4	7	12	13	6
CASS	50	11	27	11	8	8	7	27	28	8	22	12	18	11	21
CEDAR	0														
CHASE	5		5	2	1		2	2	3	2		1	1	3	1
CHERRY	8		3	3	1		3	4	6	2		5	2	4	2
CHEYENNE	21	2	10	9	2	1		18	5	8	8	2	8	3	10
CLAY	7		4	3			1	6	2	1	4	2	2		5
COLFAX	23		8	5	7	2	4	10	15	2	6	5	15	2	6
CUMING	16	4	6	4		2	3	11	10	2	4	1	7	3	6
CUSTER	14	2	3	3	5		2	7	11	1	2		9	3	2
DAKOTA	36	6	16	6	6	6	4	20	17		18	11	11	13	12
DAWES	6	1	5	1				6		1	5		1		5
DAWSON	55	5	32	7	10	2	5	38	14	21	34	12	19	12	24
DEUEL	3		1	1	2			1	2	1		2	1	1	1
DIXON	3		2	1				3		1	2	1	1		2
DODGE	91	15	38	24	32	3	16	40	60	5	19	35	44	14	33
DOUGLAS*	1,743	430	707	726	477	193	212	858	1,180	67	336	1,221	710	462	571
DUNDY	4	1	1	1		1		3	3		1	1	1	1	2
FILLMORE	15	2	4	2	4		5	6	14		1	1	8	4	3
FRANKLIN	4		1	1	2			2		2		1	3		1
FRONTIER	8	4	2	4	2	1	1	4	5	1	1	4	5	1	2
FURNAS	13	1	6	2	4	3	2	4	9	3	1	6	9	2	2
GAGE	33	9	12	10	5	3	4	21	18	2	8	17	18	4	11
GARDEN	1	1	0	1				1	1						1
GARFIELD	2	2	2	2				2	2				2		
GOSPER	1			1	1				1				1		
GRANT	0														
GREELEY	4	2	2	4		1		3	3	1				1	3
HALL	186	24	82	52	49	19	24	94	116	11	34	76	84	41	61
HAMILTON	14	1	8	2				14	1	5	7	2	4	2	8
HARLAN	9		4	3	3	1	3	2	7	1	1	3	5	3	1
HAYES	2		1	1				2		1			1		1
HITCHCOCK	1		1	1				1	1						1
HOLT	7	3	2	2	2		1	4	4	3		2	3	2	2
HOOKER	1	1	1					1	1						1
HOWARD	6	3	3	2				6	2		4	2	2	2	2
JEFFERSON	12	3	5	1	3	1	3	5	7		3	4	5	4	3

... by county, as of December 31, 2008

	Total Number of Children in Care	Children in care for two years or more	Removed from the home more than once	4 or more case workers	Age				Adjudication Status			Children placed in same county as parent	Number of Placements		
					Birth to 5	6 to 8	9 to 12	13 to 18	Abuse/Neglect	Status Offender	Other/Unk.		1 to 3	4 to 6	7 or More
JOHNSON	15	4	4	5	4	1	2	8	14		1	5	8	4	3
KEARNEY	4	1	1	1	2			2	3		1	1	3		1
KEITH	17	4	10	6	3		1	13	9	4	4	3	3	8	6
KEYA PAHA	0														
KIMBALL	8	1	3	1	3	1	1	3	6	1	1	2	5	2	1
KNOX	3	2		1				3	1		2		1		2
LANCASTER*	942	186	345	359	284	110	92	456	640	37	265	508	450	225	267
LINCOLN	151	28	78	41	45	12	15	79	85	35	31	71	69	36	46
LOGAN	0														
LOUP	0														
MADISON	71	13	28	23	20	6	7	38	43	7	21	35	29	19	23
McPHERSON	0														
MERRICK	19	3	5	2	5		5	9	9	2	3	4	11	3	5
MORRILL	11	2	7	3	4	2	2	3	8	1	2	4	4	6	1
NANCE	8	3	4	2	1			7	4	1	3		2	2	4
NEMAHA	12		1	3	3	4	2	3	8	1	3		8	4	
NUCKOLLS	3		1	1				3		1	2	2	2		1
OTOE	22	2	9	2	6	2	1	13	12	4	6	13	10	5	7
PAWNEE	4		3	1	3			1	3		1	2	1	3	
PERKINS	2		2	1				2	1	1				1	1
PHELPS	22	1	9	5	7	1	2	12	11	4	7	8	9	5	8
PIERCE	2	0						2		1	1		1	1	
PLATTE	46	8	14	7	14	6	3	23	32	1	13	14	27	9	10
POLK	4	0	2			1	1	2	3		1		2	1	1
RED WILLOW	23		12	6	5	1	3	14	6	5	12	9	9	6	8
RICHARDSON	6			1	2			4	3	1	2	2	4	2	
ROCK	0														
SALINE	18	3	10	4	3			15	8		10	4	7	2	9
SARPY	212	29	93	76	25	16	30	141	113	26	73	64	83	54	75
SAUNDERS	9	0	3	2	1		1	7	3	1	5	1	6	2	1
SCOTTS BLUFF	119	49	38	52	40	10	15	54	83	7	29	70	63	26	30
SEWARD	32	2	9	4	5	1	4	22	15	3	14	7	18	8	6
SHERIDAN	4	0	1					4	2		2		2		2
SHERMAN	4	4		4			2	2	4			3	4		
SIOUX	0														
STANTON	1		1					1			1				1
THAYER	4	1	1					4			4		1	1	2
THOMAS	0														
THURSTON	65	9	25	7	23	7	7	28	10		55	42	41	11	13
VALLEY	7	3	3	4	2		1	4	5	1	1	1	2	1	4
WASHINGTON	16	2	9	5			1	15	4	2		2	6	6	4
WAYNE	6	1	4	2			1	5	2	2	2	1	2	1	3
WEBSTER	2		1	1				2	1		1			1	1
WHEELER	0														
YORK	35	5	16	8	10	5	4	16	27		8	17	18	8	9
Unreported/Tribal*	60	20	8	1	2		2	43	3		57	37	52	4	4
TOTALS:	4,620	965	1,846	1,590	1,199	465	537	2,403	2,865	329	1,426	2,454	2,069	1,119	1,432

*Douglas County, Lancaster County and Unreported/Tribal totals for different ages do not include children whose age is unknown.

Top Commendations and “Thank You”

The Staff and Volunteers of the Foster Care Review Board would like to acknowledge the 2008 achievements and efforts of the following individuals and agencies:

Chief Justice Mike Heavican, for his continued active support of the *Through The Eyes of the Child* Initiative, focusing on use of pre-hearing conferences to identify relatives and paternity, 12-month permanency hearings, guardian ad litem performance, reducing continuances, and streamlining the appeals process for termination of parental rights. In addition, Chief Justice Heavican has continued the Nebraska Supreme Court Commission on Children in the Courts, and other improvements for court processes involving juveniles. The efforts he has initiated, along with judges with juvenile jurisdiction, regarding pre-hearing conferences and 12-month permanency hearings have reduced the length of time in foster care for many children.

Juvenile and County Court Judges, for their leadership in the *Through the Eyes of the Child* teams, for their responsiveness to the issues identified by the Board, and for their actions to monitor and, when necessary, expedite case progression as a means of helping to achieve permanency for children in a timely manner. The FCRB staff recommended recognition for over half of the Juvenile and County Court Judges – an indication of the extraordinary efforts underway on behalf of children.

Judge G. Glenn Camerer, for his long-term partnership with the Foster Care Review Board, for his assistance in training programs for local review board volunteers, for his piloting work on aggravated circumstances, and for his early involvement in establishing protocols for the Project Permanency program.

Attorney General Jon Bruning, for his leadership and focus on children’s issues, and his continued support of the special unit in his office that prosecutes crimes against children. Of special note this past year has been his office’s work on exploitation of children on the Internet. We highlight the work of Randy Stoll, who heads this special unit.

County Attorneys Gary Lacey and Alicia Henderson of Lancaster County; Don Kleine and Nicole Goaley of Douglas County; Rebecca Harling of Lincoln County; and Tiffany Wasserburger of Scotts Bluff County are commended for prioritizing cases involving serious abuse and requesting hearings to expedite permanency.

Other County Attorneys around the state are deserving of recognition for their many efforts to assure that Nebraska’s children are safe. In particular we commend: Patrick Calkins, Robert Cashoili, Jennifer Chrystal-Clark, Gail Collins, Amy Schuchman, and Mandi Schweitzer.

Alicia Henderson and Chris Costantakos are commended for prioritizing training on GAL guidelines and “aggravated circumstances.”

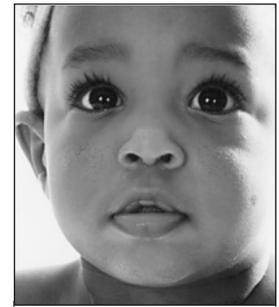
Child Advocacy Centers around the state, with special commendations for the efforts of the center in North Platte, which reviewed investigation decisions to prevent children from falling through the cracks in the system.

Guardians ad litem who do an outstanding job of advocating for their clients are commended. In particular we commend the work of Michael Baldwin, Claude Berreckman, Lynnette Boyle, Christina Boydston, Jon Braaten, Mary Pat Coe, Christine Costantakos, Susanne Dempsey, Erick Eisenhart, Audrey Elliott, Leta Fornoff, James Gallant, Nancy Garrelts, Robert Goodwin, Roger Harris, Kelly Henry-Turner, Katrine Herrboldt, Pamela Hopkins, Tom Incontro, Tanya Janulewicz, Jennifer Kearney, David Lepant, Wes Lubberstedt, Rebecca McClung, Angela Minahan, Dennis Morland, Maxie Morgan, Bill Morris, Jason Ossian, Jenniffer Panko-Rahe, Forrest Peetz, Shannon Prosocki, Janice Reeves, Susan Reff, Kathleen Rockey, Dick Seckman, Scott Sidwell, Michaela Skogerboe, James Stecker, John Sellers, Amanda Speichert, Gail Steen, Jacqueline Tessoroff, Mariclare Thomas, Dalton Tietjen, Bobie Touchstone, Dorothy Tubach, David Uher, and Karin Walton. Parental guardians ad litem commended include Adam Tripp.

Foster Care Review Board Volunteers who serve on 43 local boards, for their time, care, concern and commitment to Nebraska’s children in foster care. These 268 volunteers from across the state donated over 31,200 hours reviewing children’s cases in 2008.

Foster Parents and Placements, for showing their concern and dedication by providing children the nurturing care and attention they need to overcome their past traumas.

CASA Volunteers are commended for their time and dedication to the individual children and families they serve and for participating in local board meetings.



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