

# **FOSTER CARE REVIEW OFFICE**

## **LOCAL BOARD MEMBER**

### **TRAINING MANUAL**

**Foster Care Review Office  
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# CHAPTER 1

## FOSTER CARE REVIEW OFFICE – OVERVIEW AND STATUTES

### I. Mission Statement

The Foster Care Review Office's mission is to ensure the best interests and safety needs of children in out-of-home care are being met through maintaining a statewide independent tracking system, conducting external citizen reviews, disseminating data, analysis, and recommendations to the public, the child welfare system, and the Legislature; and monitoring youth placements.

### II. Foster Care Review Office's Vision

The vision of the Foster Care Review Office is that every child and youth in foster care live in a safe, permanent home, experience an enduring relationship with one or more caring adults, and have every opportunity to grow up to become a responsible and productive adult.

### III. Creation of the Foster Care Review Board - LB 714

In 1980, the Congress passed PL 96-272. PL 96-272 required that a Permanency Plan be prepared for all children in out of home care. PL 96-272, also required that each child's plan be reviewed every six months.

The Nebraska Foster Care Review Board, the precursor of the Foster Care Review Office, was created in 1982 by the passage of LB 714. The Nebraska Foster and Adoptive Parents' Association initiated what became LB 714 due to concerns about the condition of Nebraska's foster care system. The primary focus of LB 714 was to set up a tracking system that would encourage and facilitate proper placement of foster children consistent with their physical, psychological, and sociological needs, and to set in place citizen reviews of children's cases in out-of-home care (in response to PL 96-272).

In order to make the case for citizen reviews compelling to the legislators and the public, in 1981, a group of Nebraska advocates put together a set of statistics and graphs on foster care in Nebraska. Information was developed from a review of 183 randomly selected cases of children in care of the state representing what was thought to be ten percent of the children in care through the Department of Social Services (now called the Department of Health and Human Services).

The group's 1981 findings were as follows:

- Nebraska taxpayers spent over \$12 million in foster care services in 1981.
- The cost of keeping one child in foster care for one month ranged from \$210 to \$5,000. This amount represented only the direct cost payable to the child

care provider; addition of administrative overhead would have increased costs significantly.

- No one knew how many children were in foster care in Nebraska. The Department of Social Services estimated they had over 1,800 state wards. Children were also in foster care as wards of counties, the Department of Corrections, the Department of Institutions, the Department of Education, and private agencies. At the end of 1982, 4,071 children were on the tracking system.
- The average four-year-old child spent 26 months or 54 percent of his/her total life span in foster care.
- The typical child in care had to adjust to an average of four different locations, each with its own set of rules and values.
- Other states found that trained citizen volunteers reviewing foster care cases on a regular basis increased efficiency of the system by assisting case workers, the courts, and others involved, rather than placing an additional burden on them. For example, in Oregon an intensive review of 500 children who had been in foster care over one year resulted in 78 percent being removed from the system and placed into permanent homes. In South Carolina, caseloads averaged 150 per worker before creation of local boards; after the creation of the boards they averaged 44 per worker. Only 4.8 percent of children entering foster care in that state left the system within that first year before review boards were initiated. After boards became active, 33 percent of entering children left within six months. In its early months of operation, an Ohio citizen review board examined cases of 99 children and caused 26 of them to be taken out of the system (25 percent).
- Those preparing the booklet included some startling specific cases that further illustrated the need for local citizen review boards. Those facts are as follows:
  - A 17-year-old boy who came into foster care when he was four had ten placements and no hearings in 13 years.
  - A 16-year-old child who had parental rights terminated at the age of one month, was never placed for adoption, and had not had a court review for 15 years.
  - A 6-year-old boy with no special needs had been in foster care since he was five months old. The plan for him was adoption, but he didn't have a court hearing for three years. He was not free for adoption.
  - A 16-year-old boy who came into foster care as a 12-year-old neglected child, had been in more than ten homes and had not had a court hearing for three years.
  - A 12-year-old girl had been in foster care eight years before parental rights were terminated, freeing her for adoption.

#### **IV. Why do Citizen Case Reviews**

People who care about children—in Nebraska and around the country—have become concerned about children in foster care. They found that many children who were removed from their own homes because of abuse or neglect by their parents were growing up drifting from home to foster home. Some of these children never knew the security of a permanent, caring family.

To make sure that foster children receive the attention they deserve, the Nebraska Legislature passed LB 714 in 1982. The legislature mandated that all children in out-of-home care should have a permanency plan which includes citizen reviews of all children in foster care. The goal of these reviews is to ensure that each child is currently placed in an appropriate home and he or she moves as quickly as possible into a permanent home. A permanent home could include being returned home or being placed permanently with a relative with appropriate legal status, by being freed for adoption, or by establishing a guardianship or the most desirable long-term foster care agreement.

#### **V. The Nebraska Foster Care Review Act**

The original Nebraska Foster Care Review Act, Neb. Rev. §43-1301 to §43-1318 was adopted in 1982 in response to the work of the Nebraska Foster and Adoptive Parents' Association and to Federal Law P.L. 96-272, specifically 42 U.S.C. § 671, which mandates the development of permanent plans and periodic reviews of those plans for children in a foster care placement.

**Through legislation, the Act was revised and effective July 1, 2012.**

#### **Foster Care Review Act Statutes Pertaining to the Foster Care Review Office**

##### **Section 43-1301**

##### ***Terms, defined.***

For purposes of the Foster Care Review Act, unless the context otherwise requires:

(1) Local board means a local foster care review board created pursuant to section 43-1304;

(2) Office means the Foster Care Review Office created pursuant to section 43-1302;

(3) Foster care facility means any foster home, group home, child care facility, public agency, private agency, or any other person or entity receiving and caring for foster children;

(4) Foster care placements means all placements of juveniles as described in subdivision (3)(b) of section 43-247, placements of neglected, dependent, or delinquent children, including those made directly by parents or by third parties, and placements of children who have been voluntarily relinquished pursuant to section 43-106.01 to the Department of Health and Human Services or any child placement agency licensed by the Department of Health and Human Services;

(5) Person or court in charge of the child means (a) the Department of Health and Human Services, an association, or an individual who has been made the guardian of a neglected, dependent, or delinquent child by the court and has the responsibility of the care of the child and has the authority by and with the assent of the court to place such a child in a suitable family home or institution or has been entrusted with the care of the child by a voluntary placement made by a parent or legal guardian, (b) the court which has jurisdiction over the child, or (c) the entity having jurisdiction over the child pursuant to the Nebraska Indian Child Welfare Act;

(6) 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;

(7) Family unit means the social unit consisting of the foster child and the parent or parents or any person in the relationship of a parent, including a grandparent, and any siblings with whom the foster child legally resided prior to placement in foster care, except that for purposes of potential sibling placement, the child's family unit also includes the child's siblings even if the child has not resided with such siblings prior to placement in foster care;

(8) Child-caring agency has the definition found in section 71-1902;

(9) Child-placing agency has the definition found in section 71-1902; and

(10) Siblings means biological siblings and legal siblings, including, but not limited to, half-siblings and stepsiblings.

**Source:**

Laws 1982, LB 714, § 1  
Laws 1985, LB 255, § 40  
Laws 1985, LB 447, § 36  
Laws 1987, LB 239, § 1  
Laws 1990, LB 1222, § 4  
Laws 1996, LB 1044, § 194  
Laws 1997, LB 307, § 75  
Laws 2012, LB 998, § 3

**Cross References:**

Nebraska Indian Child Welfare Act, see section 43-1501

**Section 43-1301.01**

***Entering foster care; determination of time.***

For the purpose of determining the timing of review hearings, permanency hearings, and other requirements under the Foster Care Review Act, a child is deemed to have entered foster care on the earlier of the date of the first judicial finding that the child has been subjected to child abuse or neglect or the date that is sixty days after the date on which the child is removed from the home.

**Source:**

Laws 1998, LB 1041, § 35

## **Section 43-1302**

### ***Agency and Advisory Committee established; members; terms; expenses.***

(1)(a) The Foster Care Review Office is hereby established. The purpose of the office is to provide information and direct reporting to the courts, the Department of Health and Human Services, and the Legislature regarding the foster care system in Nebraska; to provide oversight of the foster care system; and to make recommendations regarding foster care policy to the Legislature. The executive director of the office shall provide information and reporting services, provide analysis of information obtained, and oversee foster care file audit case reviews and tracking of cases of children in the foster care system. The executive director of the office shall, through information analysis and with the assistance of the Foster Care Advisory Committee, (i) determine key issues of the foster care system and ways to resolve the issues and to otherwise improve the system and (ii) make policy recommendations.

(b) All equipment and effects of the State Foster Care Review Board on the operative date of this act shall be transferred to the Foster Care Review Office, and all staff of the board, except the executive director and interim executive director, shall be transferred to the office. The State Foster Care Review Board shall terminate on the operative date of this act. Beginning on the operative date of this act, the data coordinator of the board, as such position existed prior to such date, shall serve as the executive director of the office until the Foster Care Advisory Committee hires an executive director as prescribed by this section. It is the intent of the Legislature that the staff of the board employed prior to the operative date of this act shall continue to be employed by the office until such time as the executive director is hired by the committee.

(c) It is the intent of the Legislature that the funds appropriated to the State Foster Care Review Board be transferred to the Foster Care Review Office for FY2012-13.

(2)(a) The Foster Care Advisory Committee is created. The committee shall have five members appointed by the Governor. The members shall have no pecuniary interest in the foster care system and shall not be employed by the office, the Department of Health and Human Services, a county, a child-caring agency, a child-placing agency, or a court.

(b) The Governor shall appoint three members from a list of twelve local board members submitted by the Health and Human Services Committee of the Legislature, one member from a list of four persons with data analysis experience submitted by the Health and Human Services Committee of the Legislature, and one member from a list of four persons who are residents of the state and are representative of the public at large submitted by the Health and Human Services Committee of the Legislature. The Health and Human Services Committee of the Legislature shall hold a confirmation hearing for the appointees, and the appointments shall be subject to confirmation by the Legislature, except that the initial members and members appointed while the Legislature is not in session shall serve until the next session of the Legislature, at which time a majority of the members of the Legislature shall approve or disapprove of the appointments.

(c) The terms of the members shall be for three years, except that the Governor shall designate two of the initial appointees to serve initial terms ending on March 1, 2014, and three of the initial appointees to serve initial terms ending on March 1, 2015. The

Governor shall make the initial appointments within thirty days after the operative date of this act. Members shall not serve more than two consecutive terms, except that members shall serve until their successors have been appointed and qualified. The Governor shall appoint members to fill vacancies in the same manner as the original appointments to serve for the remainder of the unexpired term.

(d) The Foster Care Advisory Committee shall meet at least four times each calendar year. Each member shall attend at least two meetings each calendar year and shall be subject to removal for failure to attend at least two meetings unless excused by a majority of the members of the committee. Members shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177.

(e) The duties of the Foster Care Advisory Committee are to:

(i) Hire and fire an executive director for the office who has training and experience in foster care; and

(ii) Support and facilitate the work of the office, including the tracking of children in foster care and reviewing foster care file audit case reviews.

(3) The executive director of the office shall hire, fire, and supervise office staff and shall be responsible for the duties of the office as provided by law, including the annual report and other reporting, review, tracking, data collection and analysis, and oversight and training of local boards.

**Source:**

Laws 1982, LB 714, § 2

Laws 1987, LB 239, § 2

Laws 1990, LB 1222, § 5

Laws 2005, LB 761, § 1

Laws 2007, LB 463, §1133

Laws 2009, LB 679, §1

Laws 2012, LB 998, § 4

**Section 43-1303**

***Registry; reports required; rules and regulations; visitation of facilities.***

(1) The office shall maintain the statewide register of all foster care placements occurring within the state, and there shall be a monthly report made to the registry of all foster care placements by the Department of Health and Human Services, any child-placing agency, or any court in a form as developed by the office in consultation with representatives of entities required to make such reports. For each child entering and leaving foster care, such monthly report shall consist of identifying information, placement information, and the plan or permanency plan developed by the person or court in charge of the child pursuant to section 43-1312. The department and every court and child-placing agency shall report any foster care placement within three working days. The report shall contain the following information:

(a) Child identification information, including name, social security number, date of birth, gender, race, and religion;

(b) Identification information for parents and stepparents, including name, social security number, address, and status of parental rights;

(c) Placement information, including initial placement date, current placement date, and the name and address of the foster care provider;

(d) Court status information, including which court has jurisdiction, initial custody date, court hearing date, and results of the court hearing;

(e) Agency or other entity having custody of the child;

(f) Case worker; and

(g) Permanency plan objective.

(2)(a) The office shall designate a local board to conduct foster care file audit case reviews for each case of children in foster care placement.

(b) The office may adopt and promulgate rules and regulations for the following:

(i) Establishment of training programs for local board members which shall include an initial training program and periodic inservice training programs;

(ii) Development of procedures for local boards;

(iii) Establishment of a central record-keeping facility for all local board files, including foster care file audit case reviews;

(iv) Accumulation of data and the making of annual reports on children in foster care. Such reports shall include (A) personal data on length of time in foster care, (B) number of placements, (C) frequency and results of foster care file audit case reviews and court review hearings, (D) number of children supervised by the foster care programs in the state annually, (E) trend data impacting foster care, services, and placements, (F) analysis of the data, and (G) recommendations for improving the foster care system in Nebraska;

(v) To the extent not prohibited by section 43-1310, evaluation of the judicial and administrative data collected on foster care and the dissemination of such data to the judiciary, public and private agencies, the department, and members of the public; and

(vi) Manner in which the office shall determine the appropriateness of requesting a court review hearing as provided for in section 43-1313.

(3) A local board shall send a written report to the office for each foster care file audit case review conducted by the local board. A court shall send a written report to the office for each foster care review hearing conducted by the court.

(4) The office shall report and make recommendations to the Legislature, department, local boards, and county welfare offices. Such reports and recommendations shall include, but not be limited to, the annual judicial and administrative data collected on foster care pursuant to subsections (2) and (3) of this section and the annual evaluation of such data. In addition, the office shall provide copies of such reports and recommendations to each court having the authority to make foster care placements. The executive director of the office or his or her designees from the office may visit and observe foster care facilities in order to ascertain whether the individual physical, psychological, and sociological needs of each foster child are being met. The executive director shall also provide, at a time specified by the Health and Human Services Committee of the Legislature, regular updates regarding child welfare data and information at least quarterly, and a fourth-quarter report which shall be the annual report. The executive director shall include issues, policy concerns, and problems which have come to the office and the executive director from analysis of the data. The executive director shall recommend alternatives to the identified problems and related needs of the office and the foster care system to the committee. The Health and Human Services Committee shall coordinate and prioritize data and

information requests submitted to the office by members of the Legislature. The annual report of the office shall be completed by December 1 each year, beginning December 1, 2012.

**Source:**

Laws 1982, LB 714, § 3  
Laws 1990, LB 1222, § 6  
Laws 1996, LB 1044, § 195  
Laws 1998, LB 1041, § 36  
Laws 1999, LB 240, § 1  
Laws 2012, LB 998, § 5

**Section 43-1304**

*Local foster care review boards; established; members.*

There shall be local foster care review boards to conduct the foster care file audit case reviews of children in foster care placement and carry out other powers and duties given to such boards under the Foster Care Review Act. Members of local boards serving on the operative date of this act shall continue to serve the unexpired portion of their terms. The executive director of the office shall select members to serve on local boards from a list of applications submitted to the office. Each local board shall consist of not less than four and not more than ten members as determined by the executive director. The members of the local board shall reasonably represent the various social, economic, racial, and ethnic groups of the county or counties from which its members may be appointed. A person employed by the office, the Department of Health and Human Services, a child-caring agency, a child-placing agency, or a court shall not be appointed to a local board. A list of the members of each local board shall be sent to the department.

**Source:**

Laws 1982, LB 714, § 4  
Laws 1987, LB 239, § 3  
Laws 1996, LB 1044, § 196  
Laws 1999, LB 240, § 2  
Laws 2012, LB 998, § 6

**Section 43-1305**

*Local board; terms; vacancy.*

All local board members shall be appointed for terms of three years. If a vacancy occurs on a local board, the executive director of the office shall appoint another person to serve the unexpired portion of the term. Appointments to fill vacancies on the local board shall be made in the same manner and subject to the same conditions as the initial appointments to such board. The term of each member shall expire on the second Monday in July of the appropriate year. Members shall continue to serve until a successor is appointed.

**Source:**

Laws 1982, LB 714, § 5

Laws 1999, LB 240, § 3

Laws 2012, LB 998, § 7

**Section 43-1306**

Repealed.

**Source:**

Laws 1982, LB 714, § 6

Laws 2012, LB 998, § 20

**Section 43-1307**

*Child placed in foster care; court; duties.*

(1) Each court which has placed a child in foster care shall send to the office (a) a copy of the plan or permanency plan, prepared by the person or court in charge of the child in accordance with section 43-1312, to effectuate rehabilitation of the foster child and family unit or permanent placement of the child and (b) a copy of the progress reports as they relate to the plan or permanency plan, including, but not limited to, the court order and the report and recommendations of the guardian ad litem.

(2) The office may provide the designated local board with copies of the information provided by the court under subsection (1) of this section.

**Source:**

Laws 1982, LB 714, § 7

Laws 1998, LB 1041, § 37

Laws 2012, LB 998, § 8

**Section 43-1308**

*Powers and duties.*

(1) Except as otherwise provided in the Nebraska Indian Child Welfare Act, the designated local board shall:

(a) Conduct a foster care file audit case review at least once every six months for the case of each child in a foster care placement to determine what efforts have been made to carry out the plan or permanency plan for rehabilitation of the foster child and family unit or for permanent placement of such child pursuant to section 43-1312;

(b) Submit to the court having jurisdiction over such child for the purposes of foster care placement, within thirty days after the foster care file audit case review, its findings and recommendations regarding the efforts and progress made to carry out the plan or permanency plan established pursuant to section 43-1312 together with any other recommendations it chooses to make regarding the child. The findings and recommendations shall include whether there is a need for continued out-of-home placement, whether the current placement is safe and appropriate, the specific reasons for the findings and recommendations, including factors, opinions, and rationale

considered in the foster care file audit case review, whether the grounds for termination of parental rights under section 43-292 appear to exist, and the date of the next foster care file audit case review by the designated local board;

(c) If the return of the child to his or her parents is not likely, recommend referral for adoption and termination of parental rights, guardianship, placement with a relative, or, as a last resort, another planned, permanent living arrangement; and

(d) Promote and encourage stability and continuity in foster care by discouraging unnecessary changes in the placement of foster children and by encouraging the recruitment of foster parents who may be eligible as adoptive parents.

(2) When the office or designated local board determines that the interests of a child in a foster care placement would be served thereby, the office or designated local board may request a court review hearing as provided for in section 43-1313.

**Source:**

Laws 1982, LB 714, § 8

Laws 1985, LB 255, § 41

Laws 1990, LB 1222, § 7

Laws 1998, LB 1041, § 38

Laws 2012, LB 998, § 9

**Cross References:** Nebraska Indian Child Welfare Act, see section 43-1501.

**Section 43-1309**

*Records; release; when.*

Upon the request of the office or designated local board, any records pertaining to a case assigned to such local board, or upon the request of the Department of Health and Human Services, any records pertaining to a case assigned to the department, shall be furnished to the office or designated local board or department by the agency charged with the child or any public official or employee of a political subdivision having relevant contact with the child. Upon the request of the office or designated local board, and if such information is not obtainable elsewhere, the court having jurisdiction of the foster child shall release such information to the office or designated local board as the court deems necessary to determine the physical, psychological, and sociological circumstances of such foster child.

**Source:**

Laws 1982, LB 714, § 9

Laws 1990, LB 1222, § 8

Laws 1996, LB 1044, § 197

Laws 2012, LB 998, § 10

**Section 43-1310**

*Records and information; confidential; unauthorized disclosure; penalty.*

All records and information regarding foster children and their parents or relatives in the possession of the office or local board shall be deemed confidential. Unauthorized disclosure of such confidential records and information or any violation of the rules

and regulations adopted and promulgated by the Department of Health and Human Services or the office shall be a Class III misdemeanor.

**Source:**

Laws 1982, LB 714, § 10  
Laws 1990, LB 1222, § 9  
Laws 1996, LB 1044, § 198  
Laws 2012, LB 998, § 11

**Section 43-1311**

***Child removed from home; person or court in charge of child; duties.***

Except as otherwise provided in the Nebraska Indian Child Welfare Act, immediately following removal of a child from his or her home pursuant to section 43-284, the person or court in charge of the child shall:

- (1) Conduct or cause to be conducted an investigation of the child's circumstances designed to establish a safe and appropriate plan for the rehabilitation of the foster child and family unit or permanent placement of the child;
- (2) Require that the child receive a medical examination within two weeks of his or her removal from his or her home; and
- (3) Subject the child to such further diagnosis and evaluation as is necessary.

**Source:**

Laws 1982, LB 714, § 11  
Laws 1985, LB 255, § 42  
Laws 1998, LB 1041, § 39  
Laws 2012, LB 998, § 12

**Cross References:** Nebraska Indian Child Welfare Act, see section 43-1501.

**Section 43-1312**

***Plan or permanency plan for foster child; contents; investigation; hearing.***

(1) Following the investigation conducted pursuant to section 43-1311 and immediately following the initial placement of the child, the person or court in charge of the child shall cause to be established a safe and appropriate plan for the child. The plan shall contain at least the following:

- (a) The purpose for which the child has been placed in foster care;
- (b) The estimated length of time necessary to achieve the purposes of the foster care placement;
- (c) A description of the services which are to be provided in order to accomplish the purposes of the foster care placement;
- (d) The person or persons who are directly responsible for the implementation of such plan; and
- (e) A complete record of the previous placements of the foster child.

(2) If the return of the child to his or her parents is not likely based upon facts developed as a result of the investigation, the Department of Health and Human Services shall recommend termination of parental rights and referral for adoption,

guardianship, placement with a relative, or, as a last resort, another planned permanent living arrangement.

(3) Each child in foster care under the supervision of the state shall have a permanency hearing by a court, no later than twelve months after the date the child enters foster care and annually thereafter during the continuation of foster care. The court's order shall include a finding regarding the appropriateness of the permanency plan determined for the child and shall include whether, and if applicable when, the child will be:

- (a) Returned to the parent;
- (b) Referred to the state for filing of a petition for termination of parental rights;
- (c) Placed for adoption;
- (d) Referred for guardianship; or
- (e) In cases where the state agency has documented to the court a compelling reason for determining that it would not be in the best interests of the child to return home,
  - (i) referred for termination of parental rights, (ii) placed for adoption with a fit and willing relative, or (iii) placed with a guardian.

**Source:**

Laws 1982, LB 714, § 12

Laws 1998, LB 1041, § 40

**Annotations:**

Under subsection (3) of this section, a permanency hearing considers the appropriateness of a plan for a child in foster care with respect to the plan's likelihood of providing, inter alia, a safe, stable, and nurturing environment. Pursuant to subsection (3) of this section, a permanency hearing must be conducted no later than twelve months after the child enters foster care. In re Interest of Sarah K., 258 Neb. 52, 601 N.W.2d 780 (1999).

**Section 43-1313**

***Review of dispositional order; when; procedure.***

When a child is in foster care, the court having jurisdiction over such child for the purposes of foster care placement shall review the dispositional order for such child at least once every six months. The court may reaffirm the order or direct other disposition of the child. Any review hearing by a court having jurisdiction over such child for purposes of foster care placement shall be conducted on the record as provided in sections 43-283 and 43-284, and any recommendations of the office or designated local board concerning such child shall be included in the record. The court shall review a case on the record more often than every six months and at any time following the original placement of the child if the office or local board requests a hearing in writing specifying the reasons for the review. Members of the office or local board or its designated representative may attend and be heard at any hearing conducted under this section and may participate through counsel at the hearing with the right to call and cross-examine witnesses and present arguments to the court.

**Source:**

Laws 1982, LB 714, § 13

Laws 1990, LB 1222, § 10

## **Section 43-1314**

### ***Review of dispositional order; right to participate; notice.***

(1) Except as otherwise provided in the Nebraska Indian Child Welfare Act, notice of the court review or hearing and the right of participation in all court reviews and hearings pertaining to a child in a foster care placement shall be provided by the court having jurisdiction over such child for the purposes of foster care placement. The Department of Health and Human Services or contract agency shall have the contact information for all child placements available for all courts to comply with the notification requirements found in this section. The department or contract agency shall each have one telephone number by which any court seeking to provide notice may obtain up-to-date contact information of all persons listed in subdivisions (2)(a) through (h) of this section. All contact information shall be up-to-date within seventy-two hours of any placement change.

(2) Notice shall be provided to all of the following parties that are applicable to the case: (a) The person charged with the care of such child; (b) the child's parents or guardian unless the parental rights of the parents have been terminated by court action as provided in section 43-292 or 43-297; (c) the foster child if age fourteen or over; (d) the foster parent or parents of the foster child; (e) the Guardian ad litem of the foster child; (f) the office and designated local board; (g) the preadoptive parent; and (h) the relative providing care for the child. Notice of all court reviews and hearings shall be mailed or personally delivered to the counsel or party, if the party is not represented by counsel, five full days prior to the review or hearing. The use of ordinary mail shall constitute sufficient compliance. Notice to the foster parent, preadoptive parent, or relative providing care shall not be construed to require that such foster parent, preadoptive parent, or relative is a necessary party to the review or hearing.

(3) The court shall inquire into the well-being of the foster child by asking questions, if present at the hearing, of any willing foster parent, preadoptive parent, or relative providing care for the child.

#### **Source:**

Laws 1982, LB 714, § 14

Laws 1985, LB 255, § 43

Laws 1988, LB 948, § 1

Laws 1990, LB 1222, § 11

Laws 1998, LB 1041, § 41

Laws 2012, LB 998, § 13

**Cross References:** Nebraska Indian Child Welfare Act, see section 43-1501.

#### **Annotations:**

A foster parent does not have an interest in the placement of an adjudicated child sufficient to warrant intervention in juvenile proceedings as a matter of right, but is entitled to notice and an opportunity to participate in all court reviews pertaining to a child in foster care placement. *In re Interest of Destiny S.*, 263 Neb. 255, 639 N.W.2d 400 (2002).

Under this section and section 43-285, foster parents have standing to participate in foster care placement review hearings. In re Interest of Jorius G. & Cheralee G., 249 Neb. 892, 546 N.W.2d 796 (1996).

### **Section 43-1314.01**

#### ***Six-month case reviews; duties.***

1) The office shall be the only entity responsible for the conduct of periodic foster care file audit case reviews which shall be identified as reviews which meet the federal requirements for six-month case reviews pursuant to the federal Adoption Assistance and Child Welfare Act of 1980, Public Law 96-272. The office shall be fiscally responsible for any noncompliance sanctions imposed by the federal government related to the requirements for review outlined in the federal Adoption Assistance and Child Welfare Act of 1980, Public Law 96-272.

(2) It is the intent of the Legislature that any six month court review of a juvenile pursuant to sections 43-278 and 43-1313 shall be identified as a review which meets the federal requirements for six-month case reviews pursuant to the federal Adoption Assistance and Child Welfare Act of 1980, Public Law 96-272.

(3) The office may assist the Department of Health and Human Services as to eligibility under Title IV-E for state wards and eligibility for Supplemental Security Income, Supplemental Security Disability Income, Veterans Administration, or aid to families with dependent children benefits, for child support orders of the court, and for medical insurance other than medicaid.

#### **Source:**

Laws 1996, LB 642, § 1

Laws 1997, LB 307, § 76

Laws 1999, LB 240, § 4

Laws 2012, LB 998, § 14

### **Section 43-1315**

#### ***Status and permanency plan review; placement order.***

In reviewing the foster care status and permanency plan of a child and in determining its order for disposition, the court shall continue placement outside the home upon a written determination that return of the child to his or her home would be contrary to the welfare of such child and that reasonable efforts to preserve and reunify the family, if required under section 43-283.01, have been made. In making this determination, the court shall consider the goals of the foster care placement and the safety and appropriateness of the foster care plan or permanency plan established pursuant to section 43-1312.

#### **Source:**

Laws 1982, LB 714, § 15

Laws 1987, LB 635, § 4

Laws 1998, LB 1041, § 42

#### **Annotations:**

The Legislature intended that the issue of reasonable efforts required under section 43-283.01 must be reviewed by the juvenile court (1) when removing from the home a juvenile adjudged to be under subsections (3) or (4) of section 43-247 pursuant to section 43-284, (2) when the court continues a juvenile's out-of-home placement pending adjudication pursuant to section 43-254, (3) when the court reviews a juvenile's status and permanency planning pursuant to this section, and (4) when termination of parental rights to a juvenile is sought by the State under subsection (6) of section 43-292. *In re Interest of DeWayne G., Jr. & Devon G.*, 263 Neb. 43, 638 N.W.2d 510 (2002).

This section only applies to situations where the foster care status of a child is being reviewed, not all orders which are dispositional in nature. *In re Interest of Gloria F.*, 254 Neb. 531, 577 N.W.2d 296 (1998).

### **Section 43-1316**

*Status review; child's needs; determination.*

The court shall, when reviewing the foster care status of a child, determine whether the individual physical, psychological, and sociological needs of the child are being met. The health and safety of the child are of paramount concern in such review.

#### **Source:**

Laws 1982, LB 714, § 16

Laws 1998, LB 1041, § 43

### **Section 43-1317**

*Training for local board members.*

The office shall establish compulsory training for local board members which shall consist of initial training programs followed by periodic inservice training programs.

#### **Source:**

Laws 1982, LB 714, § 17

Laws 2012, LB 998, § 15

### **Section 43-1318**

*Act, how cited.*

Sections 43-1301 to 43-1318 shall be known and may be cited as the Foster Care Review Act.

#### **Source:**

Laws 1982, LB 714, § 18

Laws 1996, LB 642, § 2

Laws 1998, LB 1041, § 44

## **Other Related Statutes**

### **Section 43-1321**

#### ***Foster Care Review Office Cash Fund; created; use; investment.***

There is hereby created the Foster Care Review Office Cash Fund. The fund shall be administered by the Foster Care Review Office. The office shall remit revenue from the following sources to the State Treasurer for credit to the fund:

- (1) Registration and other fees received for training, seminars, or conferences fully or partially sponsored or hosted by the office;
- (2) Payments to offset printing, postage, and other expenses for books, documents, or other materials printed or published by the office; and
- (3) Money received by the office as gifts, grants, reimbursements, or appropriations from any source intended for the purposes of the fund. The fund shall be used for the administration of the Foster Care Review Office. The State Treasurer shall transfer any funds in the Foster Care Review Board Cash Fund on the operative date of this act to the Foster Care Review Office Cash Fund. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

#### **Source:**

Laws 1994, LB 1194, § 9

Laws 1995, LB 7, § 38

Laws 2012, LB 998, § 16

#### **Cross References:**

Foster Care Review Act, see section 43-1318.

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

### **Section 28-726**

#### ***Information; access.***

Except as provided in this section and sections 28-722 and 81-3126, no person, official, or agency shall have access to information in the tracking system of child protection cases maintained pursuant to section 28-715 or in records in the central register of child protection cases maintained pursuant to section 28-718 unless in furtherance of purposes directly connected with the administration of the Child Protection Act. Such persons, officials, and agencies having access to such information shall include, but not be limited to:

- (1) A law enforcement agency investigating a report of known or suspected child abuse or neglect;
- (2) A county attorney in preparation of a child abuse or neglect petition or termination of parental rights petition;
- (3) A physician who has before him or her a child whom he or she reasonably suspects may be abused or neglected;
- (4) An agency having the legal responsibility or authorization to care for, treat, or supervise an abused or neglected child or a parent, a guardian, or other person responsible for the abused or neglected child's welfare who is the subject of the report of child abuse or neglect;

- (5) Any person engaged in bona fide research or auditing. No information identifying the subjects of the report of child abuse or neglect shall be made available to the researcher or auditor;
- (6) The Foster Care Review Office and the designated local foster care review board when the information relates to a child in a foster care placement as defined in section 43-1301. The information provided to the office and local board shall not include the name or identity of any person making a report of suspected child abuse or neglect;
- (7) The designated protection and advocacy system authorized pursuant to the Developmental Disabilities Assistance and Bill of Rights Act of 2000, 42 U.S.C. 15001, as the act existed on January 1, 2005, and the Protection and Advocacy for Mentally Ill Individuals Act, 42 U.S.C. 10801, as the act existed on September 1, 2001, acting upon a complaint received from or on behalf of a person with developmental disabilities or mental illness;
- (8) The person or persons having custody of the abused or neglected child in situations of alleged out-of-home child abuse or neglect; and
- (9) For purposes of licensing providers of child care programs, the Department of Health and Human Services.

**Source:**

Laws 1979, LB 505, § 14  
Laws 1982, LB 522, § 9  
Laws 1988, LB 463, § 47  
Laws 1990, LB 1222, § 1  
Laws 1992, LB 643, § 2  
Laws 1994, LB 1035, § 7  
Laws 1997, LB 119, § 4  
Laws 2001, LB 214, § 2  
Laws 2002, LB 642, § 8  
Laws 2005, LB 116, § 18  
Laws 2012, LB 998, § 1

**Section 43-285**

***Care of juvenile; authority of guardian; placement plan and report; when; FCRO legal standing; participation authorized; immunity.***

- 1) When the court awards a juvenile to the care of the Department of Health and Human Services, an association, or an individual in accordance with the Nebraska Juvenile Code, the juvenile shall, unless otherwise ordered, become a ward and be subject to the guardianship of the department, association, or individual to whose care he or she is committed. Any such association and the department shall have authority, by and with the assent of the court, to determine the care, placement, medical services, psychiatric services, training, and expenditures on behalf of each juvenile committed to it. Such guardianship shall not include the guardianship of any estate of the juvenile.
- (2) Following an adjudication hearing at which a juvenile is adjudged to be under subdivision (3) of section 43-247, the court may order the department to prepare and file with the court a proposed plan for the care, placement, services, and permanency which are to be provided to such juvenile and his or her family. The health and safety of the juvenile shall be the paramount concern in the proposed plan. The department

shall include in the plan for a juvenile who is sixteen years of age or older and subject to the guardianship of the department a written independent living transition proposal which meets the requirements of section 43-1311.03. The court may approve the plan, modify the plan, order that an alternative plan be developed, or implement another plan that is in the juvenile's best interests. In its order the court shall include a finding regarding the appropriateness of the programs and services described in the proposal designed to assist the juvenile in acquiring independent living skills. Rules of evidence shall not apply at the dispositional hearing when the court considers the plan that has been presented.

(3) Within thirty days after an order awarding a juvenile to the care of the department, an association, or an individual and until the juvenile reaches the age of majority, the department, association, or individual shall file with the court a report stating the location of the juvenile's placement and the needs of the juvenile in order to effectuate the purposes of subdivision (1) of section 43-246. The department, association, or individual 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 individual. The department, association, or individual shall file a report and notice of placement change with the court and shall send copies of the notice to all interested parties at least seven days before the placement of the juvenile is changed from what the court originally considered to be a suitable family home or institution to some other custodial situation in order to effectuate the purposes of subdivision (1) of section 43-246. The court, on its own motion or upon the filing of an objection to the change by an interested party, may order a hearing to review such a change in placement and may order that the change be stayed until the completion of the hearing. Nothing in this section shall prevent the court on an ex parte basis from approving an immediate change in placement upon good cause shown. The department may make an immediate change in placement without court approval only if the juvenile is in a harmful or dangerous situation or when the foster parents request that the juvenile be removed from their home. Approval of the court shall be sought within twenty-four hours after making the change in placement or as soon thereafter as possible. The department shall provide the juvenile's Guardian ad litem with a copy of any report filed with the court by the department pursuant to this subsection.

(4) The court shall also hold a permanency hearing if required under section 43-1312.

(5) When the court awards a juvenile to the care of the department, an association, or an individual, then the department, association, or individual shall have 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.

(6) Whenever a juvenile is in a foster care placement as defined in section 43-1301, the Foster Care Review Office or the designated local foster care review board may participate in proceedings concerning the juvenile as provided in section 43-1313 and notice shall be given as provided in section 43-1314.

(7) Any written findings or recommendations of the Foster Care Review Office or the designated local foster care review board with regard to a juvenile in a foster care placement submitted to a court having jurisdiction over such juvenile shall be admissible in any proceeding concerning such juvenile if such findings or recommendations have been provided to all other parties of record.

(8) The executive director and any agent or employee of the Foster Care Review Office or any member of any local foster care review board participating in an investigation or making any report pursuant to the Foster Care Review Act or participating in a judicial proceeding pursuant to this section shall be immune from any civil liability that would otherwise be incurred except for false statements negligently made.

**Source:**

Laws 1981, LB 346, § 41  
Laws 1982, LB 787, § 17  
Laws 1984, LB 845, § 31  
Laws 1985, LB 447, § 25  
Laws 1989, LB 182, § 12  
Laws 1990, LB 1222, § 3  
Laws 1992, LB 1184, § 14  
Laws 1993, LB 103, § 1  
Laws 1996, LB 1044, § 133  
Laws 1998, LB 1041, § 26  
Laws 2012, LB 998, § 2

**Annotations:**

Pursuant to subsection (3) of this section, when a separate juvenile court or county court sitting as a juvenile court awards custody of a minor to the Department of Health and Human Services, the court has authority to award custody to a family the department has designated as suitable guardians without resorting to a proceeding under section 30-2608. *In re Guardianship of Rebecca B. et al.*, 260 Neb. 922, 621 N.W.2d 289 (2000).

The terms "care" and "custody" as used in this section are not synonymous. *In re Interest of Jeremy T.*, 257 Neb. 736, 600 N.W.2d 747 (1999).

A dispositional order in which a juvenile court declines to order a rehabilitation plan for parents of a child adjudicated under section 43-247(3)(a) is a final, appealable order. A juvenile court is not required to order or implement a rehabilitation plan for the parent of a child adjudicated under section 43-247(3)(a) if the plan has very little chance of success and is not in the best interests of the child. Where a child's substantial medical needs resulting from injury caused by parental abuse necessitated 24-hour daily nursing care for the child, the juvenile court did not err in accepting recommendation of the Department of Health and Human Services that no rehabilitation plan be implemented to reunite a child with his or her parents. *In re Interest of Tabatha R.*, 255 Neb. 818, 587 N.W.2d 109 (1998).

Because statutory provisions do not overcome constitutional rights, the provisions of subsection (6) of this section do not apply to proceedings brought under the Nebraska Juvenile Code to terminate parental rights. Despite subsection (6) of this section, the hearsay report of the State Foster Care Review Board is not necessarily admissible in a hearing on termination of parental rights. *In re Interest of Constance G.*, 254 Neb. 96, 575 N.W.2d 133 (1998).

Pursuant to subsection (1) of this section, deciding whether to remove one from life support measures and whether to resuscitate one constitute medical services. In re Tabatha R., 252 Neb. 687, 564 N.W.2d 598 (1997).

Where a proceeding to obtain the juvenile court's assent to the medical services determined by the department under subsection (1) of this section results in the functional equivalent of a proceeding to terminate parental rights, the same due process must be afforded in the assent proceeding as is required in a proceeding to terminate parental rights. In re Interest of Tabatha R., 252 Neb. 687, 564 N.W.2d 598 (1997).

Where the department's determination under subsection (1) of this section is likely to result in the juvenile's death, the juvenile court's assent is the functional equivalent of a judgment terminating parental rights. In re Tabatha R., 252 Neb. 687, 564 N.W.2d 598 (1997).

Pursuant to subsection (4) of this section (now subsection (5) of this section), the Department of Social Services acquires standing as a party only after a juvenile has been placed in its care. In re Interest of Archie C., 250 Neb. 123, 547 N.W.2d 913 (1996).

Foster parents are interested parties for the purposes of this section. Foster parents have standing to participate in foster care placement review hearings. In re Interest of Jorius G. & Cheralee G., 249 Neb. 892, 546 N.W.2d 796 (1996).

Standing alone, subsection (2) of this section appears to entitle the Department of Social Services to obtain an expedited review in any case; however, its reach is limited by the requirements set forth in sections 43-287.01 and 43-287.03, which require the application of a disjunctive test: First, the order must implement a different plan than that proposed by the department. Second, there must exist a belief in the department that the court-ordered plan is not in the best interests of the juvenile. Where this test is met, expedited review is the sole avenue of review available to the department. In re Interest of M.J.B., 242 Neb. 671, 496 N.W.2d 495 (1993).

When the Department of Social Services has custody of a child, the department retains authority similar to a guardian's authority. In re Interest of C.A., 235 Neb. 893, 457 N.W.2d 822 (1990).

The provision of this section which provides that the "Department of Social Services shall have the authority to determine the care, placement, medical services, psychiatric services, training, and expenditures on behalf of each child committed to it" by a juvenile court, does not contravene the distribution of powers clause contained in Neb. Const., art. II, sec. 1. In re Interest of G.B., M.B., and T.B., 227 Neb. 512, 418 N.W.2d 258 (1988).

This section provides standing for the Department of Social Services to file any pleading or motion or to seek review or relief, when the juvenile court orders a juvenile to the care of the department. In re Interest of C.G. and G.G.T., 221 Neb. 409, 377 N.W.2d 529 (1985).

When the court awards a juvenile to the Department of Health and Human Services, an association, or an individual in accordance with the Nebraska Juvenile Code, the juvenile shall, unless otherwise ordered, become a ward and be subject to the guardianship of the department, association, or individual to whose care he or she is committed. In re Interest of Eric O. and Shane O., 9 Neb. App. 676, 617 N.W.2d 824 (2000).

Pursuant to subsection (3) of this section, although the language of this section appears to authorize an expedited review in any case, its reach is limited by the requirements set forth in sections 43-287.01 and 43-287.03. In re Interest of Tanisha P. et al., 9 Neb. App. 344, 611 N.W.2d 418 (2000).

This section gives the court the power to assent and, by implication, to dissent from the placement and other decisions of the Department of Health and Human Services, as well as of other entities to whom the court might commit the care of a minor. This section indicates the Legislature's intent to remove from the Department of Health and Human Services the complete control of a minor whose care is given to the department under the Nebraska Juvenile Code. In re Interest of Crystal T. et al., 7 Neb. App. 921, 586 N.W.2d 479 (1998).

A juvenile court may not delegate to the Department of Social Services or any other third party the authority to determine the time, manner, and extent of parental visitation. In re Interest of Teela H., 3 Neb. App. 604, 529 N.W.2d 134 (1995).

### **Section 43-3001**

(1) Notwithstanding any other provision of law regarding the confidentiality of records and when not prohibited by the federal Privacy Act of 1974, as amended, juvenile court records and any other pertinent information that may be in the possession of school districts, school personnel, county attorneys, the Attorney General, law enforcement agencies, child advocacy centers, state probation personnel, state parole personnel, youth detention facilities, medical personnel, treatment or placement programs, the Department of Health and Human Services, the Department of Correctional Services, the Foster Care Review Office, local foster care review boards, child abuse and neglect investigation teams, child abuse and neglect treatment teams, or other multidisciplinary teams for abuse, neglect, or delinquency concerning a child who is in the custody of the state may be shared with individuals and agencies who have been identified in a court order authorized by this section.

(2) In any judicial proceeding concerning a child who is currently, or who may become at the conclusion of the proceeding, a ward of the court or state or under the supervision of the court, an order may be issued which identifies individuals and agencies who shall be allowed to receive otherwise confidential information concerning the child for legitimate and official purposes. The individuals and

agencies who may be identified in the court order are the child's attorney or guardian ad litem, the parents' attorney, foster parents, appropriate school personnel, county attorneys, the Attorney General, authorized court personnel, law enforcement agencies, state probation personnel, state parole personnel, youth detention facilities, medical personnel, court appointed special advocate volunteers, treatment or placement programs, the Department of Health and Human Services, the Office of Juvenile Services, the Department of Correctional Services, the Foster Care Review Office, local foster care review boards, child abuse and neglect investigation teams, child abuse and neglect treatment teams, other multidisciplinary teams for abuse, neglect, or delinquency, and other individuals and agencies for which the court specifically finds, in writing, that it would be in the best interest of the juvenile to receive such information. Unless the order otherwise states, the order shall be effective until the child leaves the custody of the state or until a new order is issued.

(3) All information acquired by an individual or agency pursuant to this section shall be confidential and shall not be disclosed except to other persons who have a legitimate and official interest in the information and are identified in the court order issued pursuant to this section with respect to the child in question. A person who receives such information or who cooperates in good faith with other individuals and agencies identified in the appropriate court order by providing information or records about a child shall be immune from any civil or criminal liability. The provisions of this section granting immunity from liability shall not be extended to any person alleged to have committed an act of child abuse or neglect.

(4) In any proceeding under this section relating to a child of school age, certified copies of school records relating to attendance and academic progress of such child are admissible in evidence.

(5) Except as provided in subsection (4) of this section, any person who publicly discloses information received pursuant to this section shall be guilty of a Class III misdemeanor.

**Source:**

Laws 2012, LB 998, § 17

**Space for Notes:**

## CHAPTER 2

### STRUCTURE OF THE FOSTER CARE REVIEW OFFICE

#### I. Independent State Agency Status

The Nebraska Foster Care Review Office, as established by Neb. Rev. Stat. §43-1301 - 1318, is an independent state agency; it is not affiliated with the courts or the Nebraska Department of Health and Human Services.

#### II. The Foster Care Review Office Advisory Committee

The FCRO Advisory Committee is comprised of 5 members who are appointed by the Governor. The Advisory Committee is charged with hiring the Director. Each Advisory Committee member is appointed to a three-year term. No person shall serve on the Advisory Committee for more than six consecutive years. See page 6 of this manual for more information. (**Section 43-1302** *Agency and Advisory Committee established; members; terms; expenses.*)

#### III. Local Boards

The FCRO is charged with establishing local boards to review the cases of children in a foster care placement. Each local board shall consist of four to ten members. Local board members are appointed for a term of three years. All terms expire on the second Monday in July. There is no limit to the number of terms that a local board member can serve. Local boards are located in communities across the state.

#### IV. Duties of the Foster Care Review Office

- Collect data on children in out-of-home care, updating data on children, evaluating judicial and administrative data collected on foster care, and disseminating data on children in out-of-home care,
- Disseminate data and findings through means such as an Annual Report, community meetings, and legislative hearings,
- Visit the placements of children in out-of-home care,
- Review the plan, services, and placements of children in out-of-home care whether in out-of-home care through the Department of Health and Human Services, through the Department of Corrections, or through private placement, by trained citizen volunteers,
- Make findings based on the review,
- Submit the board's findings to all the legal parties to the case,
- Attend court hearings and testify as to the board's recommendations and concerns,

- Through legal standing, petition the court at a dispositional or permanency hearing to present evidence on behalf of specific children in out-of-home care and their families,
- Advocate for children and their families through individual case review, legislation, and pressing for policy reform,
- Organize, sponsor, and participate in educational programs.

## **V. Roles and Responsibilities of Local Boards**

The local boards shall be responsible for, obtaining information concerning and making findings on the following points about the child's plan for permanency:

- The purpose for which the child has been placed in foster care.
- The estimated length of time necessary to achieve the purposes of foster care placements.
- A description of the services which are to be provided in order to accomplish the purposes of the foster care placement.
- The person or persons who are directly responsible for the implementation of such plan.
- A complete record of the previous placements of the foster child.
- If the placement is necessary.
- If the placement is appropriate.
- To list what barriers exist to the plan's success.

Local boards are central to the review process. Local boards review the cases of children and youth who are under the care of the Nebraska Department of Health and Human Services, the Lead Agency (pilot in the Eastern service area), the courts, and private agencies. All children in out-of-home care are eligible for review by the FCRO on a local board.

## **VI. Recruitment and Composition of Local Boards:**

The four to ten citizen volunteers who serve on the local boards come from a variety of disciplines and perspectives. What they share is a commitment to children and a willingness to donate their time to review children's permanency plans and to work to improve the child welfare system in Nebraska.

The Foster Care Review Office strives to recruit volunteers from different socio-economic levels, as well as a variety of racial and occupational backgrounds that reflect the makeup of the community as a whole.

Ideally, the boards are composed of persons with legal, medical, educational, and mental health backgrounds, as well as community members concerned with the well being of children.

No one employed by DHHS, the lead agency (ESA), or a child placing agency may be appointed to a local board. Court personnel, agency personnel, and persons employed by a child placement agency are not eligible to serve on local boards or the FCRO Advisory Committee.

## **VII Training:**

Prior to serving on a local board, volunteers will be required to complete an application, submit to a background check including a Child Protective Services check, sign a Confidentiality Form, and complete the training program.

Volunteers will be provided with initial and ongoing training in the following areas:

- History of the Foster Care Review Office;
- The importance of confidentiality in reviews;
- Reasonable efforts;
- The philosophy of permanency planning (PL 96-272);
- The role of the FCRO;
- Bonding and attachment/separation and loss;
- How the child or youth enters the legal system;
- How the Department of Health and Human Services becomes involved;
- Statutory guidelines; laws affecting the review process;
- Group dynamics;
- The review process, making appropriate recommendations, findings and identifying barriers to permanency;
- Techniques and skills required to review cases;
- Observing a board meeting.

This training is mandatory for a volunteer to participate in a review.

In some areas of the state, the Foster Care Review Office has held community-training programs on issues they believe need special attention. Some of the training topics are sexual abuse, permanency planning, child development, the Indian Child Welfare Act, cultural sensitivity, mental health, medications, working with older youth, gangs, attachment and bonding, etc. Local board members are strongly encouraged to attend these workshops/seminars whenever possible to upgrade their skills and learn new information.

### **VIII. Attendance at the Local Board Meeting:**

Board members are expected to attend all scheduled meetings. If a local board member is unable to attend, the Review Specialist should be contacted prior to the meeting. It is the local board member's responsibility to ensure that the board packet is promptly returned to the Review Specialist.

If a board meeting is canceled due to inclement weather (e.g., severe snow, tornado warning, etc.), the Review Specialist will attempt to notify each local board member by phone. If a board meeting is canceled or postponed for any reason, the Review Specialist will notify each local board member of the new date. Any material in the local board member's possession is to be delivered to the Review Specialist or returned at the next scheduled meeting time. The Review Specialist should also contact the Lincoln office to inform them of the canceled meeting along with the rescheduled date and time.

If a local board member is scheduled to be the lead questioner for a particular case and will not be able to attend the meeting, it is that member's responsibility to contact a fellow local board member or the board chairperson to take over the lead on the case.

### **IX Quorum:**

A quorum at a board meeting will consist of a majority of active board members assigned to the board, including the Review Specialist.

### **X. Local Board Member Participation:**

Each local board member shall actively participate in the review process by reading all information prior to the meeting, asking pertinent questions in accordance with the policies of the FCRO, and sharing thoughts and opinions with fellow local board members.

### **XI Confidentiality:**

Local board members shall, at all times, observe all applicable rules of confidentiality under penalty of law. This means that there is no discussion of cases outside of the board meetings. All employees and local board members will strive to protect the rights of all interested parties and will assure all parties that their privacy is respected. A board member can be removed from a board for divulging confidential information outside of a board meeting.

## **XII Conflict of Interest:**

Due to the variety of professions that are represented on each local board, it is inevitable that a board member may have a conflict of interest with a case that is being reviewed by their board. The following will give some direction as to the procedures to follow when a conflict does arise.

- If a board member knows a child or has had direct contact with the child or his/her family, it is the responsibility of the board member to inform the Review Specialist and excuse her/himself from that particular review and leave the meeting room for the length of time that case is being discussed.
- A board member with a conflict on a case should stop reading the information provided by the Review Specialist as soon as they become aware of the conflict. This maintains the confidentiality and objectivity of the board and protects those involved in the review process.
- It is inevitable that some of the board members will have knowledge of a child the board is reviewing, their family or foster parents. If a board member has **important** information on a case, they should notify the Review Specialist and attend the review as a participant.
- If any information is shared with the board by a board member, that board member's name must be added to the front of the recommendation as a party providing information to the board. This board member will not be allowed to participate in the board's discussion of the case and should be excused from the meeting room. Please note that the Foster Care Review Office's recommendations are sent to all legal parties in the case.
- If you have any questions regarding whether or not you have a conflict on a case, please contact your Review Specialist.

## **XIII. Grounds for Removal:**

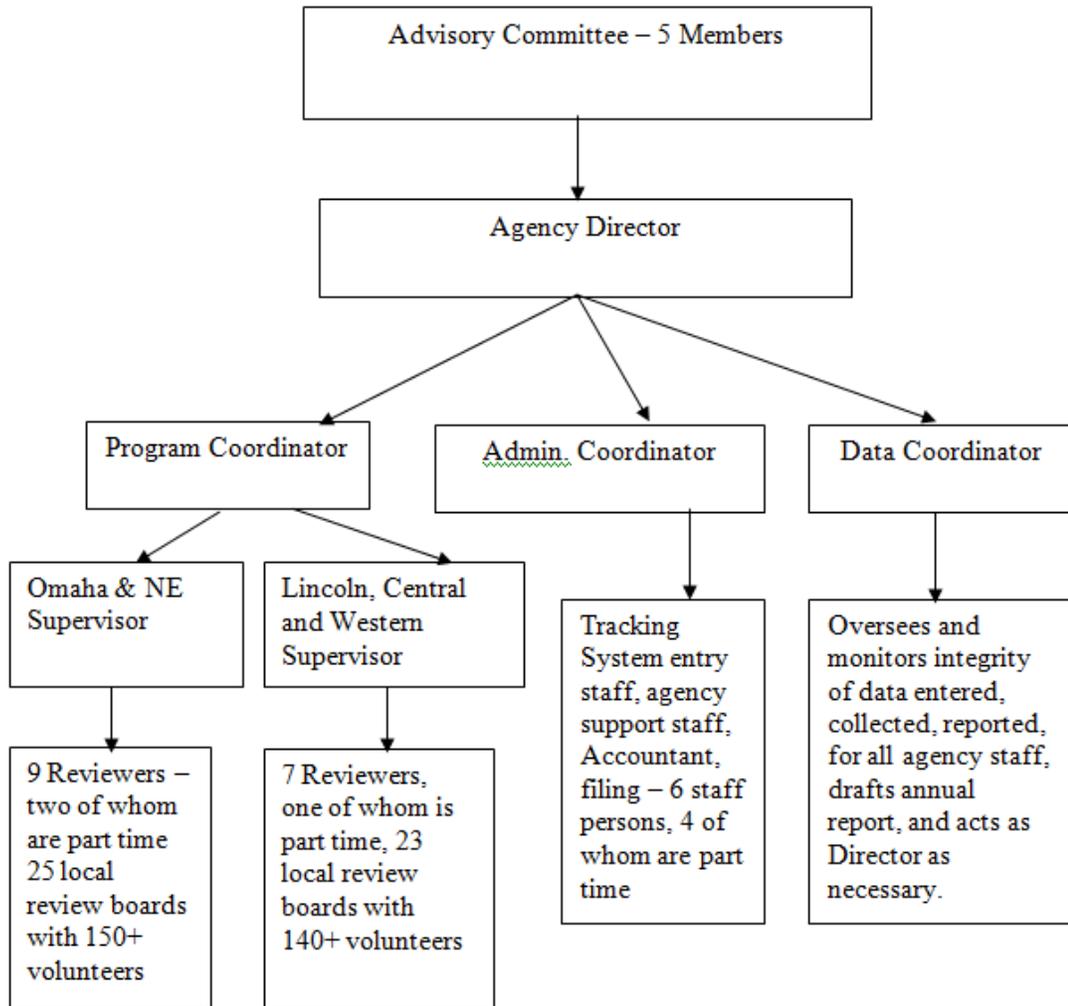
The following are reasons a local board member can be removed from a board. They include but are not limited to:

- Divulging confidential information.
- Failure to attend mandatory training sessions.
- Missing two consecutive board meetings or four board meetings in one year without justifiable cause, as determined by the Review Specialist.
- Any action or behavior that is inconsistent with the purposes and objectives of the Foster Care Review Office.

#### XIV The Foster Care Review Office Staff:

The FCRO Advisory Committee oversees the Director of the Foster Care Review Office who in turn is responsible for the Program Coordinator, Administrative Coordinator, Data Coordinator, Review Specialist Supervisors, Review Specialists, and Office Staff.

##### Agency Configuration



**Space for Notes:**

# CHAPTER 3

## THE REVIEW PROCESS

### I. An Overview of the Review Process:

The review process begins with case assignments. Using information from the tracking system, 5 to 6 children's cases (families) are assigned to each board each month. This may 10+ children.

A Review Specialist supports each board. The Review Specialist's duties include:

1. Preparing information on each child or youth being reviewed. This involves obtaining information from the child's file at the responsible agency, contacting the foster parents, the court, the child's guardian ad litem or other legal party, and sending questionnaires or invitations to the review to all legal parties to the case;
2. Facilitating and acting as a resource at the board meeting;
3. Preparing the board's letters and recommendations following the board meeting; and
4. Advocating for the child or youth reviewed as directed by the board.

The Foster Care Review Office (FCRO) reviews children and youth from the Department of Health and Human Services, and may review children and youth from private agencies.

The FCRO is the only entity that looks at the child welfare system in its entirety. The FCRO has registered concerns about County Attorneys, guardians ad litem, parent attorneys, prosecutions, service availability, and plans for the children or youth. The FCRO has thus identified a number of places where systemic breakdowns are likely to occur. This ability to look at children's cases from all perspectives demonstrates why it is critical for an independent, external source to have the ability to examine cases and make recommendations.

### II. The Tracking System:

The Foster Care Review Office maintains a computerized tracking system in its main office in Lincoln. Since 1983, over 80,000 children have been reported to the tracking system.

Nebraska's tracking system is the only computer system in the country that tracks all children placed in out-of-home care. The Nebraska Foster Care Review Office receives reports from the Juvenile and county courts, the Department of Health and Human Services, and private agencies throughout the state. Nebraska remains the

only state in the country that provides a comprehensive picture of the status of all children in out-of-home care.

Up to 82 pieces of information are kept on children once they enter out-of-home care. The Review Specialist gathers an additional 100+ pieces of data during the review process. Information on the Review Board's tracking system includes why and when the child or youth entered care, court dates and results, sibling information, adoption data, and barriers to the permanency plan. Information on the children is continually updated as changes occur.

According to the Foster Care Review Act, all courts, child-caring agencies, and child-placing agencies are to report to the Foster Care Review Office whenever a child or youth enters foster care. Later, additional information on the child must be reported, including the reason the child entered care, dates of court hearings, and the child's permanency plan. The Review Board is also to be notified when the child leaves the foster care system.

When the Foster Care Review Office reviews a child or youth's case, information from the review is entered into the tracking system. Additional information reported to the tracking system includes the number of placements, the percent of life the child has spent in out-of-home care, court dates, the name of caseworkers, types of services being offered to the child and family, and adoption information.

Data from the tracking system is summarized in the Foster Care Review Office's Annual Report. The Annual Report also includes information on the Review Board, data from the board reviews, and systemic problems as identified by the boards, and recommendations.

### **Benefits of the Tracking System:**

Before Nebraska had a tracking system, it was unknown how many children were in out-of-home care. Now it is known not only how many children there are, but also:

- Why they entered care;
- What their permanency plans are;
- How many placements they have had;
- What services they are receiving;
- Court data, including length of time to adjudication and disposition;
- Adoption information;
- Abuse information, including if the perpetrator was prosecuted, if the abuse occurred in a foster placement, and if services are being received.

The Foster Care Review Office has added a feature to its system that allows the Board to inspect the welfare of other children placed in a facility if there are allegations of abuse suffered by a child or youth in a group home or institution.

Data from the Foster Care Review Office's Tracking System has been used by:

- Boys Town, the Department of Health and Human Services, Child Savings Institute, Child Guidance, Native American Corporation, and other agencies in obtaining grants;
- Courts, to make sure all children and youth placed in care by that court are receiving timely reviews;
- New judges, to learn how many children and youth are in their counties of jurisdiction;
- Grant writers and community leaders calculating economic stress to the community from foster care, racial makeup, placement options, age, and other statistics;
- Senators, for data on children and youth in their districts;
- Congress, for data on Nebraska's children for Congressional Hearings;
- Voices for Children, "Kids Count" and foundations for information in compiling local and national statistics;
- Newspapers and television stations, for general data on children in out-of-home care;
- County attorneys, to find out which children and youth have been in out-of-home care over 15 months;
- Child placing agencies, including DHHS, to find locations of independent providers and services offered;
- Correctional facilities, for background information on the issues being dealt with by youth placed in their facilities;
- CASA's, in determining case loads and number of CASA volunteers needed.

Through the solid information derived from board reviews and from the tracking system, the Review Board has been able to advocate effectively for children. This includes:

- Working to pass state legislation requiring mandatory juvenile justice education for county attorneys;
- Creating a special unit in the Attorney General's office to investigate and prosecute criminal child abuse cases;
- Implementing a bill which requires the county attorneys to file a petition to terminate parental rights on behalf of a child if the child has been in out-of-home care for at least 15 of the most recent 22 months;

- Facilitating education opportunities for guardians ad litem, judges, county attorneys, law enforcement, the public and the Nebraska Legislature;
- Organizing and orchestrating rural caucuses across the state to focus policy makers on the plight of abused and neglected children and the response of the system to their needs.

Children and youth who have entered out-of-home care are reported to the Foster Care Review Office by Health and Human Services, the Courts and Private Agencies. This information is recorded on the Foster Care Review Office Tracking System.

Each month a group of children who are in out of home care are assigned to the local board for case review. In most cases, the records for all of these children are maintained at the same agency or department office.

### **III. How Cases Are Assigned for Review:**

Cases will to be assigned for review based on the following criteria:

1. Cases where the Office receives a Special Request, where it is approved by a supervisor, the Data Coordinator, or the Director, or where staff has internally flagged the case for review.
2. Children in foster care who are IV-E eligible.
  - a. Children who are birth to age 5, IV-E eligible and there is an upcoming court hearing.
  - b. Children who are ages 6 to 18, IV-E eligible and there is an upcoming court hearing.
  - c. Children who are IV-E eligible and who entered care at least 6 months previously and who have not been reviewed by the board.
  - d. Children who are IV-E eligible and who were reviewed at least 6 months previously.
3. Children in foster care who are not IV-E eligible.
  - a. Children who are birth to age 5, are not IV-E eligible and there is an upcoming court hearing.
  - b. Children who are ages 6 to 18, are not IV-E eligible and there is an upcoming court hearing.
  - c. Children who are not IV-E eligible and who entered care at least 6 months previously and who have not been reviewed by the board.
  - d. Children who are not IV-E eligible and who were reviewed at least 6 months previously.
4. Children who case is “non-court” and whose case is not IV-E eligible.

Children who are in foster care and have been reviewed by the Office previously. This includes those children who no longer have court involvement (i.e. delinquents who are in a “foster care” setting).

#### **IV. Information and Data is Collected**

The Review Specialist visits the local Department of Health and Human Services office (or Lead Agency) three weeks before the scheduled board meeting. While at the agency, the Review Specialist completes an extensive data form for each child or youth who is to be reviewed, reviews the files and copies pertinent information, and discusses the progress of each case with the case worker or case manager of the agency or department.

The Review Specialist also checks N-FOCUS (DHHS’s Information Tracking System), for updated case information, addresses and placement information.

In addition to the review of documents, Review Specialists are required to contact the child’s placement, parent/s, and case manager prior to the local board meeting. Others may also be contacted, including the Guardian ad litem, school personnel, therapist, etc. This allows the Review Specialist the opportunity to hear information first hand and to clarify information found in the case file. *This information is written up for the local board’s review.*

#### **V. Notifications and Invitations are Sent**

By statute, all parents whose parental rights remain intact must be invited to attend the Foster Care Review Office’s review of their child’s case. In addition, Foster Care Review Office’s policy states that all children’s placements, Department of Health and Human Services case managers (CFS) and the Family Permanency Specialists (FPS) in the Eastern Service Area (at the Lead Agency) must be invited to attend the board’s review.

Approximately two weeks prior to the board meeting, notice of the meeting is sent to the parents, child’s placement and HHS case manager. Other parties (such as the child’s guardian ad litem, parents’ attorney, school personnel, therapist, etc.) may also be invited to attend the board’s review.

If a party is unable to attend the board’s review, a questionnaire is provided so that information can still be shared with the board.

#### **VI. Board Packets are Completed and Sent to Local Board Members**

The Review Specialist will prepare a board packet for the board members summarizing the information gathered from the file review and conversations with parties. A copy of the child’s Case Plan will also be provided along with the written case summary.

Board packets are to be mailed/distributed to volunteer board members 5 working days prior to the meeting so that board members will have ample time to prepare for the meeting.

### **Contents of Board Packets**

The contents of board packets will vary according to the availability of information, such as whether or not a child has previously been in the system, whether or not it is an early review, etc. In general, the board packet will contain the following:

1. Agenda: An Agenda will be sent along with the board packet. This agenda will include:
  - The date, time, and location of the board meeting;
  - A listing of the cases to be reviews.
  - The board member who is assigned to be the lead questioner for that case;
  - The name of the case manager attending (optional); and
  - The amount of time allotted for each case.
2. Case Summaries: A Case Summary is prepared by the Review Specialist based on the information obtained from a file review of the Department of Health and Human Services or the lead agency with planning responsibility for the child's case file. Each Case Summary will contain:
  - The reason the child entered care—a short explanation to why the child first entered care.
  - Visitation information (including sibling contact),
  - Any special needs of the child and family (medical, physical, education, psychological, etc.).
  - The child's permanency plan and the source of that plan.
  - Court information,
  - Summary of the services that have been or are being provided to the child and family, or those services which have been proposed or those services which have been offered, but refused, and
  - Relevant "other" information (i.e., paternity, ICWA, etc.).
3. Case Plan: The DHHS Case Plan/Court Report will be included in the Board Packet if available. Other documents may be used upon occasion.
4. Other Information: Additional information will be included in the board packet as needed. This additional information could be a psychological evaluation on the child or family, a significant therapy report, a significant school report, etc.
5. Findings Sheet/Barrier List: Each packet should contain at least one recommendation worksheet and a barriers list. Board members use these to prepare for the meeting and make preliminary findings in preparation for the meeting. Board members may make notes on specific questions, comments, or

concerns that arise during the preview of the case on these documents. The case notes may also be used for taking notes during the board meeting.

At the conclusion of the board meeting, all information will be collected to assure it is shredded.

## **VII. Board Members Preparation Prior to the Meeting**

Board members are expected to read written case material prior to the board meeting and come prepared to discuss the details of the case. Notes may be made on the board packet materials.

It is each board member's responsibility to:

**Read** the information carefully and take notes on issues that should be further addressed.

While this information is in the board member's possession, the board member must be acutely sensitive to the rules of **confidentiality**. Generally, the Review Board requires that local board members keep their packets in a closed drawer, preferably under lock and key. Information should **never** be discussed outside of the confines of the review, even with fellow board members.

**Bring** this information to the review. If a board member is unable to attend a board meeting, the board member must get the board packet to the board chairperson or the Review Specialist prior to the board meeting. If this is not possible, the board packet should be delivered or mailed to the Review Specialist as soon as possible. The Review Specialist keeps track of all board packets and is responsible for ensuring that all materials are returned to them for secure disposal.

## **VIII. The Board Meeting**

A case review is a structured discussion about what has occurred in a child's life. During the discussion, the group examines the agency's plan for that child.

By law, Neb. Rev. Stat. § 43-1301 to §43-1318 and Federal law P.L. 96-272, specifically 42 U.S.C. §671, states that permanent plans for a child in out of home care must be developed within 60 days. Persons employed by the agency responsible for the child are responsible for creating this plan. It is the board's job to review that permanency plan and to make recommendations regarding that plan with the child's best interest in mind.

The Legislature has mandated the Foster Care Review Office to make findings in different areas on children's plans who are in out of home care. Those are:

- Were reasonable efforts, if required, used to prevent the child's removal from the home?
- Is there a complete written plan for permanency for the child?

- Are services in place to accomplish the plan?
- Is the current placement safe and appropriate?
- Whether medical and educational documentation has been maintained, updated and provided to the foster parents?
- What efforts have been made to carry out the permanency plan?
- Is the family making progress towards the permanency objective?
- Is there a continued need for out of home placement?
- Is visitation occurring between the child and his or her family members, especially with parents and siblings?
- Does the board agree with the plan?
- Do the grounds for termination of parental rights under §43-292 appear to exist?
- If the return of a child or youth to his or her parents is not likely, recommend referral for adoption and termination of parental rights, guardianship, placement with the relative, or, as a last resort, another planned, permanent living arrangement, Neb. Rev. §43-1308.

Each case review lasts approximately twenty to thirty minutes. During that time, everyone present has a chance to express his or her views on the child's needs and the steps which should be taken to meet those needs. The Board then makes findings on each of these points. If the Board has additional concerns, that is also noted by the Review Specialist.

The goals of the case reviews are to:

- Identify the top main concerns and recommendations in each case.
- Review the case and make findings on the points listed above;
- Assess whether a child who has been in out-of-home care for more than 60 days has a plan as mandated by Federal Law P.L. 96-272, the Adoption and Safe Family Act, and the State Foster Care Review Act;
- Encourage appropriate services be delivered in a timely manner;
- Advocate for what is appropriate for the child or youth during these reviews;
- Encourage a continuum of citizen involvement in the cases of children who have been removed from their families;
- Advocate for better, more timely, and appropriate actions by the child welfare system; and
- Identify system breakdowns so the systems involved can address those issues.

## **IX. Final Recommendations:**

During the board's discussion of the case, the Review Specialist documents the board's findings and additional concerns in a final report which is known as a recommendation. The recommendation is processed in either the Lincoln or Omaha office and then forwarded to the court that placed the child in care, the agency responsible for the child, the child's CASA, the child's guardian ad litem/attorney, the county attorney, and the parents' attorneys (and parent's guardian ad litem if applicable).

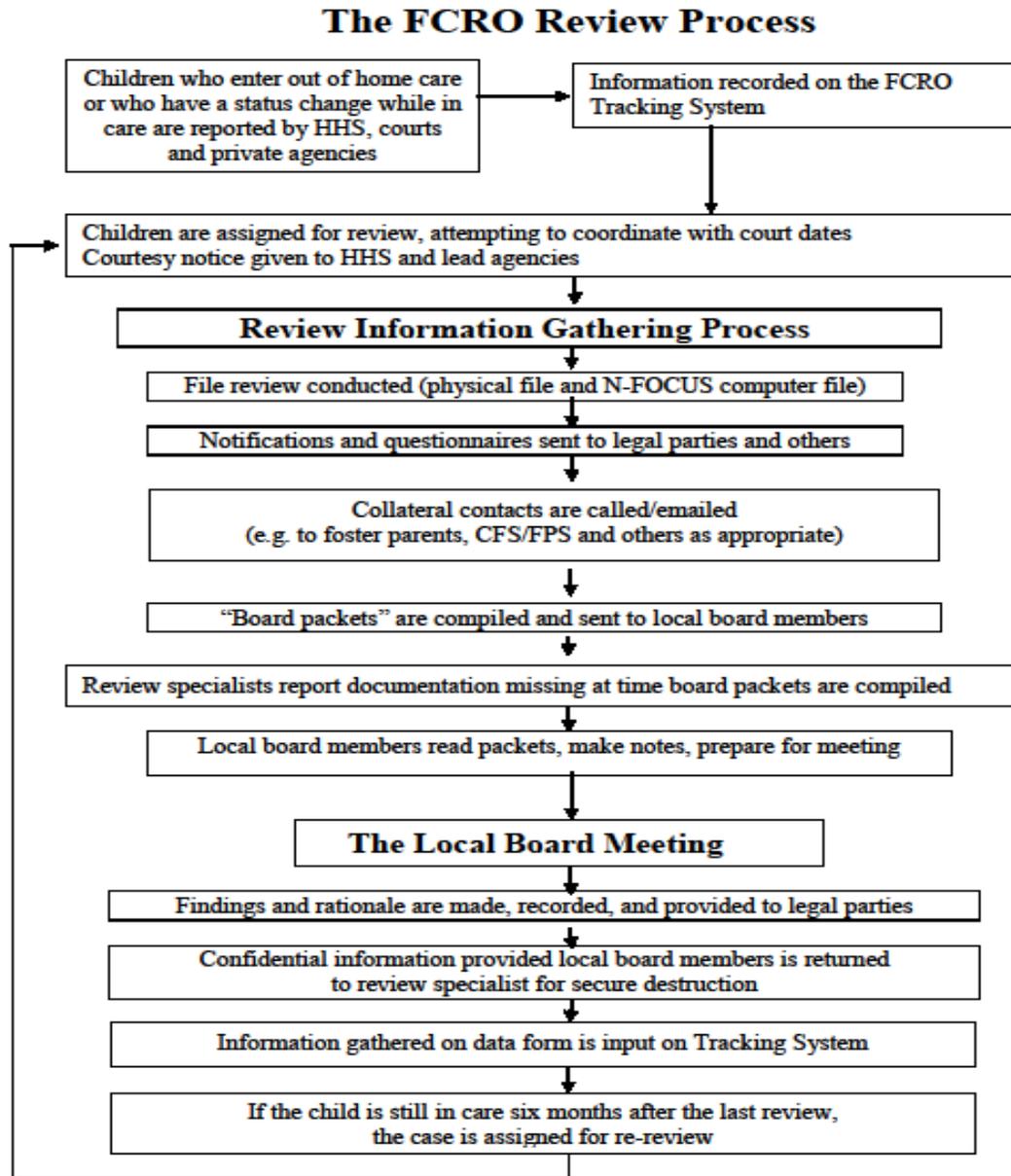
After the recommendations are processed by either the Lincoln or Omaha office they are sent to all legal parties to the case, including:

- The court that placed the child or youth in care;
- The agency responsible for the child or youth;
- The child or youth's guardian ad litem (attorney);
- The county attorney; and
- The parent's attorney.

When applicable, recommendations may also be sent to the Tribal Court, parent's guardian ad litem, the child's parole officer, the CASA, a correctional facility, or the probation officer.

All legal parties receive a copy of the board's recommendations. If any of the parties have a concern regarding the recommendation, they can contact the Review Specialist. The legal parties can object to the recommendation becoming part of the court record at the next scheduled court review. By providing copies of the recommendation to all legal parties, due process rights are protected.

# The Foster Care Review Office Review Process Flow Chart



*Chart revised May 16, 2012, to include agency name effective July 1, 2012*

**Space for Notes:**

# CHAPTER 4

## THE LOCALBOARD MEETING

### I. Board Meeting Schedule

Each local board is scheduled to meet once a month. The board's meetings are scheduled on the same day and time each month, i.e., the second Monday at 6:00 p.m. or fourth Tuesday at 9:00 a.m. The board meeting lasts approximately three to three and a half hours.

### II. Positions held by the Board Members

#### **Chairperson:**

The duties of the chairperson are to:

Assure that a quorum is present at the board meeting and to serve as a liaison between other Board members and the Review Specialist, Read the "**Chairperson's Opening Statement**" aloud to all review participants.

Provide input to the FCRO management at least once a year to assist the FCRO in determining systematic problems and make recommendations to all aspects of the child welfare system for the annual report which is printed each year. The agencies legislative agenda is determined at this time as well.

**Note:** This position is voted on once per year and can be re-elected.

#### **Greeter:**

The greeter should find out who is waiting to attend the review. Try to have all participants come into the review together however, allow any party wishing to speak with the board privately the opportunity to do so.

The greeter shall:

- Welcome review participants as they arrive,
- Ask all participants what case they are there for, and
- Find out if any of the participants wish to speak to the board privately.
- Hand out the Exit Questionnaire and envelope to each participant at the end of their time with the Board.

#### **Timekeeper:**

The timekeeper shall ensure that each review begins on time and the board stays on schedule.

**Secretary:**

The secretary shall draft any additional letters (cards) that the Local Board wishes to send to commend someone in the case that doing good. It could be a youth, a foster parent, a GAL, a CFS or FPS, etc.

**Lead Questioner:**

Board members will regularly be assigned to serve as lead questioner for a particular case or cases for each board meeting. The lead questioner leads the discussion and begins the interviewing process with the participants by asking the first question. The presence of a lead questioner does not preclude participation by other board members. The lead questioner provides structure and consistency to the review process. Also, by assigning someone to start the discussion, it avoids awkward silence at the beginning of the review. The Lead Questioner form will be included in the materials sent to the board members prior to the board meeting and may be used as a tool. It is not mandatory that the form be used by the Lead Questioner.

The duties of the lead questioner are as follows:

- Begin the discussion of the assigned case at the beginning of the review and seek input from fellow board members.
- Initiate the questions to participants and lead the discussion for that case.
- May also lead in providing findings.

Annually, all local Board officer positions should be voted on. Do this in November each year so the new materials for the New Year reflect this change. Notify the FCRO main office and your Supervisor knows when this is done and so that the new Chairperson is noted on the January Local Board Member contact list.

**III. Cases Reviewed at the Board Meeting**

The Board will review 5-8 cases during each meeting. This will involve between 6 and 20 children, depending on the number of siblings in each family group.

**IV. Participant Reviews**

In all cases, the DHHS case manager (or FPS at the Lead Agency) and the child's placement will be invited to attend the local board meeting. If parental rights remain intact (there has not been a relinquishment or a termination), the child's parents must also be invited to attend the board meeting.

Persons asked to attend the review in person are also provided a questionnaire in case they are unable to attend the review, but wish to express their views to the local board, e.g., Guardians ad litem, attorneys, teachers, therapists, family support workers, the child or youth (if the child is deemed mature enough to participate in the review), etc. are also invited to attend the board's review to share pertinent information to the case.

At reviews, local board members ask the persons attending questions that would help the local board make their findings as accurate as possible.

### **Do's and Don'ts for Participant Reviews**

#### **Do:**

- Treat all participants as though they were guests in your home (i.e., be sensitive to seating arrangements, practice general courtesy and respect, etc.).
- Believe that every child deserves a stable "good enough" home and that every child in out-of-home care deserves a permanency plan.
- Carefully examine this plan with focus on reasonable efforts, services, time frames, etc.
- Listen to all interested parties and allow one person to speak at a time.
- Feel free to ask thoughtful, relevant questions.
- Share your opinions and perceptions with your fellow board members during case discussions.
- Be sensitive to religious, cultural, or social differences that may challenge your value system.
- Recognize achievements and make commendations as warranted.
- Be attentive to body language and other nonverbal communication.
- Be continually aware of the sensitive nature of your reviews and of the materials in your possession.
- Say something positive to every participant.
- Thank every participant for attending the review.

#### **Don't:**

- Address foster parents by name. Refer to them as foster mother and foster father as some placements are confidential.
- Counsel interested parties, give advice or use the review as a therapy session.
- Interrupt an interested party or your fellow board member.
- Judge participants or express your own opinions or values to the interested parties.
- Disclose confidential information.
- Quote from specific reports, such as a case plan or a psychiatric evaluation.
- Harass, badger, or lecture a participant on any subject matter.
- Fail to return any portion of your board packet.

- Dominate a board meeting or fail to participate.
- Get caught up in the emotion of a situation. Never say, "It's all going to be OK." That is for the judge to decide.

## V. **Bringing the Meeting to Order**

The local board chairperson or designated board member will call the meeting to order. The Review Specialist will distribute a board folder to each board member. The local board folders contain a Reviewing the Permanency Plan (Findings) document, a Barriers List, Medications List, examples of questions, pertinent statutes and policies, as well as other information to assist in the review process.

## VI. **Case Discussion**

**Prior to the Arrival of Participants:** A quick discussion should occur regarding the case to insure that all local board members are aware of the cases main issues and any updates that have occurred since the mailing of the board packets. The Review Specialist may also distribute questionnaires from invited parties who were unable to attend.

Because of confidentiality issues, the Review Specialist and all local board members must put away, turn over, or cover all case materials before participants are invited into the meeting room. Questions should be written on an extra piece of paper or the back of the board packet. All written notes need to be turned in to the Review Specialist at the end of the meeting.

**Arrival of Participants:** at the scheduled time, the Review Specialist or Greeter will escort participants into the meeting room. The Review Specialist/Greeter will then introduce the participants to the local board. The board members may introduce themselves, but use only first names.

**Introduction by Chairperson:** After initial introductions have been made, the local board's chairperson shall read the "Chairperson's Statement" aloud. Only on occasion may this be waived, e.g., a CFS, FPS, or GAL who frequently attends board meetings. **Always read it out loud to other participants, especially to the parents.**

**Lead Questioner Initiates Discussion:** At this time, the board member who has been assigned as lead questioner shall begin questioning participants, using his or her case notes as a general guideline. Other board members may also question the interested parties at that time.

**Recording the Proceedings:** Throughout the review process, the Review Specialist will be taking notes and recording all the proceedings.

**Staying on Schedule:** There is a limited time scheduled for each review. The local board members will at all times attempt to remain on schedule. The timekeeper will assist in ensuring that the schedule is adhered to as closely as possible, as best as possible, without appearing to be rude to the participants.

**Conclusion of Participants:** Once the local board has finished asking their questions to the participants, each participant will be thanked. Also, each person should be given an exit questionnaire, and asked to leave their completed questionnaire in an envelope (to be pushed under the door), or they may choose to mail it in to the address noted on the questionnaire.

**Case Discussion and Findings:** After the participants have left the meeting room, The lead questioner will take the lead in the discussion of the case. All board members should be encouraged to express any additional comments or concerns as well. The local board will then identify its main concerns, note barriers, and make their board findings. The local board is required to make findings on each case. At this time, the local board will also discuss whether any additional correspondence should be drafted.

The written notes, recommendations, barriers and findings on the **Board Findings and Signature Worksheet** should reflect the Board's work on the case during the meeting and must be signed by each board member at the conclusion of the case.

**Determine Additional Advocacy Steps:** Local boards often wonder what steps can be taken when they have a concern about a particular case or a systems issue. The following are some suggested avenues to express the concern and advocate for change. (See Chapter 5)

**Conclusion of the Meeting:** The above procedure will be followed for every case on the agenda. After the last case is reviewed and discussed, the local board will be able to decompress and go over any remaining questions they may have, make general comments, ask questions, etc. Should the board wish to write a letter to a party not affiliated with the review, this letter will be drafted at this time by the secretary. This will be processed later by the Review Specialist, on the local board's behalf.

**Preparation of the Board's Findings:** Following the board meeting, the Review Specialist will compile and prepare the board's findings. Using the **Board Findings and Signature Worksheet** (filled out at the meeting and signed by all board members) and notes taken from the meeting, the Review Specialist will prepare the summary of the board's findings and the board's recommendations. The Review Specialist will also prepare letters to the legal parties as directed by the board members.

**Dissemination of the Board's Findings:** Once the Review Specialist has completed the findings and correspondence, they are sent to the Review Specialist supervisor. They are then sent to the Foster Care Review Office's office where copies are made and sent to the appropriate parties.

**Copies of the board's findings will be sent to all legal parties to the case:**

- The juvenile court having jurisdiction over the child,
- The child's guardian ad litem,
- The child's CASA,
- The agency having custody of the child (If the child has a case manager CFS or a FPS and a CFOM, copies will be sent to all),
- The County Attorney of the appropriate county,
- The parents' attorneys, and
- If appropriate, the juvenile parole officer.

**VII. Helpful Techniques when Interviewing Participants**

**Specific Questions:** Because there is only a limited amount of time to question participants, board members should come prepared with specific questions. Board members should not rehash information that they already know, but use the participant review as an opportunity to supplement and/or clarify the information provided in the board packet.

**Open-ended Questions.** Open-ended questions are helpful for gathering general information; however, they should only be asked when information cannot be gathered through a specific question.

**Indirect Questions Statements.** Direct questions, like closed questions, may be helpful in eliciting brief, direct responses. Indirect questions or statements, however, may be more helpful in getting others to talk. By all means, avoid "why" questions which tend to be threatening.

Some examples of indirect questions include:

*Tell me about . . .    I notice that . . .    Describe . . .    I sense that . . .    Go on . . .  
I'm interested that . . .    Give me an example . . .    I'm hearing you say . . .  
Say more . . .    If I understand correctly . . .*

**Seek Clarification.** If in doubt, ask questions and seek clarification about the information being provided.

**Use an Empathic Response.** Reflect the content and feeling of a participant's statement without being confronting or interpretive. For example: *It sounds like . . .*

**Use Encouragers.** Using verbal and nonverbal communication, board members encourage participants to share information by showing that they are very involved in the review process. This means using eye contact, saying go on, etc. A board member should not, however agree (verbal or nonverbal) with what the participants are saying.

**Verbal Skills.** Use clear language during the review process. Explain the meaning of terms and offer examples. Be attentive to tone of voice and use your voice to convey interest and support. Seek feedback and restate the question in different words if necessary.

## **Examples of Questions that can be asked of these parties:**

### **Parents:**

- What is your child's plan?
- Do you agree with the case plan?
- Have you been asked to participate in any services or goals?
- What services are you receiving now or have you received? (such as counseling or parenting classes)
- Have you been given enough time to do what was asked? If not why?
- Have you been visiting with your child? Where? When? How often?
- What problems do you see in having your child returned home?
- Are you in favor of having your child returned home?

### **Foster Parents:**

- Did you receive adequate health and education information on the child prior to him/her being placed in your home?
- What services is the child or children in your care receiving?
- Are there any other services you feel the child needs?
- Do you receive respite care?
- Are there any other services you need?
- (If the child is school age) How is the child doing in school?
- How does the child react before and after visits?
- When was the last time the HHS case manager had contact with the child?
- When was the last time the child's Guardian ad Litem/CASA had contact with the child?

### **Child:**

Note: Children will be invited to the review on the advice of the caseworker and/or guardian ad litem. Consideration will be given to the child's age, intellectual status, emotional stability, etc.

Board members will need to be particularly sensitive when interviewing children to prevent the review from seeming or becoming threatening or traumatizing. It is especially important to be aware of the potential tension that may exist between the child's desire to express his concerns and his allegiance toward others present at the review.

Examples of some types of questions that might be appropriate with child participants are as follows:

- Have you had visits with your parents since you have been in foster care?
- What are your feelings regarding the contacts or visits you have had with your parents since your placement?
- Do you feel safe in your foster home?

- If school age—How is school going? What is your favorite class?
- What problems are you experiencing?
- Is there anything you would like the board to know about you?

**Caseworker:**

- What was the problem that brought the child into care? (You may not want to ask this question if other parties are in the room)
- What specific services have been provided by the agency?
- Are the services still needed and are they appropriate?
- What effects have the provided services had on the involved parties?
- Describe parent participation in the services.
- In your opinion, what barriers exist or existed regarding the delivery of services?
- What time frames exist regarding future goals relative to the permanent placement of the child and/or the termination of your agency's services?
- Is there anything else you would like the board to know?

**VIII Reviewing the Permanency Plan / Local Board’s Findings**

A clarification of each finding in reference to the plan can be found in Appendix A. It is essential that we, as an agency, review the plan in a consistent and uniform manner across the state.

Each of the findings local boards make are based on federal requirements, state mandates, and/or children’s best interests. Neb. Rev. Stat. 43-1308(b) requires that we provide rationale for each finding in the report to the court and legal parties. A clarification of each finding in reference to the plan follows.

It is essential that we, as an agency, review the plan in a consistent and uniform manner across the state and communicate the issues we identify and our recommendations in the most efficient manner possible. As the Court has said, your work is valuable:

“Importantly, §43-285(7) provides that the only prerequisite for the admission in evidence of the Board’s written findings and recommendations is that they have been provided to all other parties of record. The Foster Care Review Act and the Board would be empty vessels indeed if the Board’s recommendations were not considered by the court. Thus, we do not take the Board’s emphatic stand against the DSS plan to be a meaningless gesture.” *In re Interests of John T., Court of Appeals, (1995)*.

**IX. Barriers to the Permanency Plan**

Barriers should focus on what currently exists that prevents permanency from occurring. The Board’s Main findings and Recommendations (top concerns) should support the barriers chosen. Please limit the number of barriers you identify. The

barriers should be listed in the order of their impact on the case, with the most significant barrier listed first.

## **X. Pertinent Questions to Answer When Reviewing the Permanency Plan**

The cases you will review for the Foster Care Review Office can be complicated. We have provided you with a list of questions you should be familiar with as you review each child's case. Once you read through these questions a few times you will begin to remember what it is you as a Board member should be looking for.

As an example: When a seven year old child is placed in a mental institution for a significant amount of time, the Board should question the appropriateness of that placement and should additionally recommend the development of therapeutic foster care so the child could be placed in a less restrictive setting and still receive the care the child needs.

### **When the plan is REUNIFICATION**

- What is the time frame for the return of the child?
- How long has "Reunification" been the permanency objective?
- What are the efforts (or services) to reunite the family?
- Is there a written agreement by all parties, outlining their current responsibilities?
- What is the parent supposed to be doing to have the child returned home?
- Are there reports from these services? E.g., Current therapy reports, a report from parenting class that documents attendance, if a family support worker is assigned, family support worker notes documenting contacts and what issues were addressed, written proof in the file of attendance at AA?
- When was the last time the parent visited the child?
- What are the current visitation (also called Parenting Time) arrangements? Are they supervised or unsupervised, and is this what the Court has ordered?
- What type of interaction occurs on visitation?
- Does the child act out after visitation with his/her biological family?
- Have the circumstances that caused placement in foster care been alleviated?
- What are the feelings of the child about returning to his/her biological family?
- Where is the child currently placed?
- Is it an appropriate placement?
- Are the child's needs (physical, educational & mental) being met by this placement?
- Will the current placement help facilitate the permanency plan for the child?

### **When the Plan is ADOPTION**

- Is the child free for adoption? (All parental rights have been addressed)
- If not, are there grounds to terminate parental rights?
- Has the county attorney filed the Termination Petition? If not, why? You could ask that a letter to the County Attorney be written requesting a petition be filed.
- Has the court hearing date of the termination been set?
- Are the parents relinquishing their parental rights?
- If they have relinquished, has the relinquishment been officially accepted by DHHS or the court? (until this is done, the parents could take back the relinquishment, and the child is not legally free for adoption. Also DHHS will not accept relinquishment of only one parent, the rights of the other must be terminated first, or must also be relinquished).
- Have the rights of both parents been addressed? If not, does publication need to occur on a parent whose whereabouts are unknown?
- Has the caseworker prepared the Termination of Parental Rights study for the agency?
- Has relinquishment of parental rights been pursued properly?
- Is the child in an adoptive placement?
- If the child needs to be moved, what is being done to pursue an adoptive placement?
- Has the child been waiting for an adoptive placement? How long?
- If the child is Native American, has the Indian Child Welfare Act been followed regarding placements?
- Has the adoption summary been done?
- Has an adoptive medical history been completed? Is a subsidy being pursued? Has the subsidy paperwork been started?
- Is the worker qualified to complete an adoption or does the case need to be transferred to an adoption specialist?
- What is the target date for adoption, and is it occurring in a timely manner?
- Have the adoptive parents filed a petition to adopt through the county attorney's office?

### **When the Plan is INDEPENDENT LIVING**

- Why was the child placed in foster care?
- What efforts are being made to carry out the plan if independent living?
- What type of independent living training is the youth receiving and are there reports from this?

- What is the target date for independent living?
- Is the child learning sufficient independent living skills? If not, what areas does the child need help in?
- Who is responsible for ensuring the child receives the needed skills?
- Will the current placement help facilitate the permanency plan for the child?
- Has the Former Ward program been considered or offered to the youth?
- What type of skills does the youth have for the job market?
- Does a vocational assessment need to be completed?

**When the Plan is GUARDIANSHIP, SELF-SUFFICIENCY or LONG TERM FOSTER CARE**

- What is the reason for the child entering foster care?
- How long has the child been in foster care? How old is the child?
- What is the extent of the biological parent's involvement with the child?
- Is long-term foster care the least detrimental alternative for the child?
- Should the child be freed for adoption?
- Is guardianship possible? (Can the foster parents be legally responsible for the day-to-day needs of the child? This includes education, physical custody, and general welfare of the child's guardianship, and does not involve imposition of financial obligation on the foster parent?)
- Is the current placement willing to keep the child on a long-term basis?
- Has a long-term foster care agreement been signed?
- Has the paperwork for the guardianship been started, and will it be subsidized?
- Is this the most permanent plan for the child, or would adoption be a feasible goal?

**XI. Information to look for on the child at all reviews**

- If the child is in therapy, how current is the most recent therapy report?
- Has the child had a physical exam in the past year, and if the child just entered care, was an exam done in the first two weeks? Are the child's immunizations up-to-date?
- What are the child's educational needs? Is there a current IEP in the file?
- Does the child have any other special needs, and is there documentation they are being met?
- Are the foster parents submitting a monthly progress summary?

- Has the caseworker make contact with the child during the past 30 days?
- Is the child's placement licensed, or is it an approved home? Is there a home study and Central Registry Check in the file on the placement?
- Has a relative placement been considered?
- Has the Indian Child Welfare Act been followed?

## **XII. Results of a Review:**

There are a number of things that happen when children receive citizen reviews:

1. When the Review Board began reviewing children in a new area, it was not unusual to find that children had not been receiving court reviews, they did not have permanency plans, and those freed for adoption either were not placed in adoptive homes or no effort was made to finalize their adoptions. As a result of Review Board reviews, court reviews are held, plans are developed and progress is made on adoptions.
2. As a result of Review Board reviews, cases are monitored on a case-by-case basis. Impractical plans are changed. Arrangements are made for children and families to receive needed services. Attention is given to visitation arrangements. Reviewed cases make faster progress moving thorough the system than cases that have not been reviewed.
3. Dr. Ann Coyne, Associate Professor of Social Work at the University of Nebraska at Omaha, did three evaluations of the Foster Care Review Board [Office] in 1985, 1986 and 1988. She compared reviewed children to children who were similar in all respects except they had not been reviewed by the Foster Care Review Office. In each evaluation, reviewed children were more likely to have adoption as their plan, to be in adoptive placements, and to have their adoptions finalized. This saves the State time and money, while, most importantly, children find permanent homes.

Dr. Coyne calculated the cost savings the FCRO was responsible for regarding children leaving out-of-home care. For example, in 1984, Dr. Coyne figured the savings the Review Board created for the state as \$236,880. This savings was figured for children who, on average, left the system at age 12. If this group of children had stayed in care until the age of majority, or for an additional 6 years, the cost to the state would have been much higher.

Instead, the savings to the state grew each year the child or youth did not spend in out of home care. Below, the savings are calculated for each year of the study, and then for the remaining 6 years the child or youth could potentially have spent in out-of-home care.

In 1984 - \$236,880	for the remaining 6 years - \$1,421,280
In 1986 - \$277,200	for the remaining 6 years - \$1,663,200
In 1988 - \$249,480	for the remaining 6 years - \$1,496,880

4. Because the Legislature mandated the Review Board to comment on the safety and appropriateness of children's placements, placements are monitored. The FCRO is also mandated to review child placement facilities. The FCRO visits group homes and detention facilities statewide. Program deficits and problems are addressed. In addition, the FCRO has in the past published a Directory of Group Homes, listing the population served and programs offered.
5. As the result of concerns recognized by the boards in their reviews of children in out-of-home care, the Foster Care Review Office has sponsored workshops on such topics as bonding and attachment, child sexual abuse, ritualistic abuse, fetal alcohol syndrome, and gangs. These workshops have been attended by county and district court judges, county attorneys, guardians ad litem, state legislators, foster parents, service providers, medical personnel, educators, therapists, local board members, and interested members of the community.

## **XII. Ongoing Reviews of Children's Cases:**

Each child in out of home care is to be reviewed by the Foster Care Review Office once every six months. This is done to ensure that the child's best interest is being met by the agency responsible for the child and that progress is being made on the case.

If a child or youth returns home, is adopted, has a guardianship established, or ages out of the system at age 19, the child is no longer eligible for review unless he/she returns to foster care within six months.

**Space for Notes:**

## CHAPTER 5

### ADVOCACY FOR THE CHILDREN REVIEWED

**I. There are a number of different ways that a local board can further advocate for the children they review, especially when:**

1. The local board strongly disagrees with the child's 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, or
5. Services are not in place for the child.

**II. If the local board is concerned about a specific case concerns, local board members can:**

- Request that the Review Specialist attend the court's next review hearing, and be present at the hearing. Often times, just the presence of staff or local board members in the courtroom causes the judge to pay closer attention to the local board's final recommendations. Nametags indicating that you are a Foster Care Review Office volunteer local board member can be obtained from your Review Specialist.
- Request that the Review Specialist arrange for a Case Status Meeting with DHHS, foster parents, therapists, attorneys, etc. to discuss the local board's concerns in detail. Please let the Review Specialist know if you would like to attend the meeting.
- Request that the Review Specialist contact the County Attorney to present the case at the LB1184 Treatment/Investigative Team Meetings.
- If the concern involves an immediate safety issue, a letter should be written to the DHHS Director.
- Letters written to GALs or County Attorneys are also effective.
- Request that the Review Specialist pursue Legal Standing, whereby when necessary the FCRO will hire an attorney whom will intervene in the case. The Attorney representing the Foster Care Review Office can motion the Court to hold a hearing to address the local board's concerns. This option should be used as a last resort, unless there is an immediate risk to the child.

**III. If the local board is concerned about a systems issue that they see occurring on a continual basis, e.g., child support not being ordered, court review hearings not occurring on a regular basis, paternity not being established, etc., local board members can:**

- Meet with the local County Judges, separate Juvenile Court Judges to discuss general (not case specific) concerns.
- Meet with the County Attorney to discuss concerns.
- Contact your local State Senator.

#### **IV. Touring Facilities:**

Local boards may visit and observe foster care facilities and group homes in order to ascertain whether the individual, physical, psychological and sociological needs of each foster child are being met. [Neb. Rev. §43-1303(4)]

A local board or FCRO staff may ask that a tour of a facility be scheduled to become more familiar with the programs that are offered in their community. Local board members or FCRO staff may also wish to schedule a tour of a certain facility if they become concerned for the well being of the children there through their reviews.

#### **V. Legal Standing:**

Passage of LB 1222 in 1990, affirmed in 2012, gave the Foster Care Review Board [Office] authority to "participate through legal counsel at the hearing with the right to call and cross-examine witnesses and present arguments to the court".

Legal standing is the process whereby the FCRO has the legal authority to hire an attorney to appear for the FCRO on behalf of a child(ren) when a board feels that the best interest of the child(ren) has not been served. Each board should be apprised of the FCRO's legal basis regarding legal standing cases and identify cases that need special attention.

With passage of LB 1222, legal standing was granted to the FCRO to request a review hearing of a dispositional order, and then to participate in any such hearing. This allows us the right to intervene at the dispositional level only. The dispositional level is the step in the juvenile justice system after adjudication (a flow chart of the juvenile justice system is included in the appendix). This does not allow us the legal right to file for termination of parental rights (TPR).

Legal standing should be considered if a local board reviews a case and discovers one or more of the following situations:

- Reasonable efforts were not made to prevent a child or youth from entering care
- There is no permanency plan
- The permanency plan is inappropriate
- The placement is inappropriate
- Regular court hearings are not being held
- Appropriate services are not being offered
- The best interest of the child or youth is not being met
- The child or youth is in imminent danger
- Visitation is occurring inappropriately

## **VI. Treatment Team Meetings**

The Review Specialist can participate in prescheduled treatment team meetings. These meetings usually include all professionals who are involved in the child's care and treatment, including the DHHS caseworker, Lead Agency Family Permanency Specialist (FPS - in the Eastern Service Area), the parents, foster parents, therapist, etc.

## **VII. Case Status Meetings and/or Case Staffings**

**Case Status Meetings:** There will be times when it will be necessary to discuss the local board's concerns about a case with more of the parties involved in the case. This meeting is called a Case Status Meeting. The FCRO does not have to hire an attorney to have a case status meeting. All the legal parties are invited to attend the meeting. This would include the County Attorney, the Guardian ad litem, the probation officer and/or CASA if applicable, the parent's attorney/s, the Department, the Lead Agency (if applicable) or other child placing agency.

**Case Staffings:** The Review Specialist or their Supervisor may identify a case that needs additional attention and/or has issues that need to be addressed with DHHS and/or the Lead Agency in order to move the case forward towards permanency. A meeting will be set with the CFS or FPS case manager and their Supervisor to address issues and develop next steps, timeframes, and the person responsible.

The purpose of both the Case Status Meeting and Case Staffing is to bring the local board's concerns to the parties and hopefully arrive at a joint resolution of those concerns. Frequently, the FCRO may have information that other parties do not have, or others may have information we do not have. It is essential that at both meetings all parties share case information and are operating on the same information. Other times there may be rationale behind one of the party's decision that we may not be aware of. It is essential to discuss this also.

## **VIII. Referral to the Attorney General**

A special unit in the Attorney General's Office called the 'Child Protection Division' was created by the legislature to prosecute felony child abuse cases. This unit was created to aid county attorneys across the state that may not have the expertise or the time to prosecute these difficult cases. The FCRO may refer cases to the unit by using 'A Complaint Form--Crimes Against Children'.

This form should be used when the FCRO believes prosecution of a case should occur or a supplemental petition to address newly discovered or recent abuse should be filed and the local county attorney refuses to file. Even if a case could not be prosecuted, the allegation would be registered and law enforcement would be notified of the alleged crime or potential crime.

Before referring a case to the AG's office, the Review Specialist should call and discuss it with the appropriate County Attorney to find out why charges were not filed.

Another avenue that the FCRO local board may wish to pursue is to have the Review Specialist write a letter to the appropriate law enforcement agency that should complete the investigation and send a copy to the County Attorney. Keep in mind that if a matter has not been fully investigated, the County Attorney will not have the necessary information to file charges.

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## CHAPTER 6

### DEFINITIONS OF THE MEMBERS OF THE CHILD WELFARE SYSTEM

#### **I. The Child Welfare System:**

The child welfare system can be very confusing. It is important to know something about the legal terms, the definitions of the legal parties in the system, and the process of children moving through the system. As a FCRO local board member, you will need to have an understanding of this system to review the cases of children that are impacted by it.

#### **II. Definition of the Juvenile Court:**

Juvenile court cases share many characteristics with cases in a regular trial court. It is these differences which require attention. First, and most importantly, the goal of juvenile court actions is significantly different than those of actions in county or district courts. The goal of the juvenile court's abuse, neglect, and dependency actions is protection of the child or youth, when such protection is warranted. To that end, language describing the court action itself is different.

Trials occur to the extent that there is due process of law, though there are no juries. The two types of proceedings are called adjudication and dispositional hearings. There are no guilty or not guilty findings. There are no sentences imposed on parents found to have abused, neglected, or endangered their child or youth. Rather, there are rehabilitation plans with which the parents must comply or face civil contempt or other consequences, the most significant being the complete loss of their parental rights to the child or youth.

The juvenile court makes findings to varying degrees. In a case of law violation there is a burden of proof and the court must be convinced beyond a reasonable doubt before proceeding. In an abuse/neglect case the court must be convinced by a preponderance of evidence. And in a termination case the court must find the evidence to be clear and convincing.

Duties of the court are to:

- Determine adjudication status of each case (for example, abuse/neglect or status offender);
- Determine initial dependency status and set a date for the judicial review of the case;
- Determine whether there is an exception to the reasonable efforts requirement under §43-283; and
- If reasonable efforts are not required, conduct a permanency hearing within 30 days of that determination;

- Adopt the agency's case plan and/or hear objections and evidence if such evidence is presented - and to rule on that evidence;
- Conduct a six month review of the child or youth's case plan;
- Conduct a hearing within 30 days after a child has been in foster care for 15 of the most recent 22 months in order to determine whether an exception to the statute which requires the County Attorney to file a petition to terminate parental rights is appropriate;
- Conduct a permanency hearing within 12 months of a child's entrance into foster care;
- Receive the FCRO local board's case findings and recommendations within 30 days of the local board's last meeting;
- Utilize the FCRO local board's findings and recommendations as an aid in the judicial review of each case;
- Make decisions on each case relating to the child or youth returning home; and
- Hear and observe the evidence and make a ruling if a petition is filed to terminate parental rights. The court must find by clear and convincing evidence (1) that one or more of these eleven grounds exist, and (2) if the termination would be in the best interest of the child. In cases where the children are Native American the preponderance of evidence must be beyond a reasonable doubt.

The courts' responsibilities are to act as an external check on the agency's efforts on behalf of the best interests of the children. Virtually every state in the country has a provision for the courts to review the cases of children who are wards of the state.

Neb. Rev. Stat. §43-1303 states: When a child is in foster care, the court having jurisdiction over such child for the purposes of foster care placement shall review the dispositional order for such child at least once every six months. The court may reaffirm the order or direct other disposition of the child. Any review hearing by a court having jurisdiction over such child for purposes of foster care placement shall be conducted on the record as provided in sections 43-283 and 43-284, and any recommendations of the office or designated local board concerning such child shall be included in the record. The court shall review a case on the record more often than every six months and at any time following the original placement of the child if the office or local board requests a hearing in writing specifying the reasons for the review. Members of the office or local board or its designated representative may attend and be heard at any hearing conducted under this section and may participate through counsel at the hearing with the right to call and cross-examine witnesses and present arguments to the court

Neb. Rev. Stat. §43-1314 states: (1) Except as otherwise provided in the Nebraska Indian Child Welfare Act, notice of the court review or hearing and the right of participation in all court reviews and hearings pertaining to a child in a foster care placement shall be provided by the court having jurisdiction over such child for the

purposes of foster care placement. The Department of Health and Human Services or contract agency shall have the contact information for all child placements available for all courts to comply with the notification requirements found in this section. The department or contract agency shall each have one telephone number by which any court seeking to provide notice may obtain up-to-date contact information of all persons listed in subdivisions (2)(a) through (h) of this section. All contact information shall be up-to-date within seventy-two hours of any placement change.

(2) Notice shall be provided to all of the following parties that are applicable to the case: (a) The person charged with the care of such child; (b) the child's parents or guardian unless the parental rights of the parents have been terminated by court action as provided in section 43-292 or 43-297; (c) the foster child if age fourteen or over; (d) the foster parent or parents of the foster child; (e) the guardian ad litem of the foster child; (f) the office and designated local board; (g) the preadoptive parent; and (h) the relative providing care for the child. Notice of all court reviews and hearings shall be mailed or personally delivered to the counsel or party, if the party is not represented by counsel, five full days prior to the review or hearing. The use of ordinary mail shall constitute sufficient compliance. Notice to the foster parent, preadoptive parent, or relative providing care shall not be construed to require that such foster parent, preadoptive parent, or relative is a necessary party to the review or hearing.

(3) The court shall inquire into the well-being of the foster child by asking questions, if present at the hearing, of any willing foster parent, preadoptive parent, or relative providing care for the child.

Neb. Rev. Stat. §43-1315 states: In reviewing the foster care status and permanency plan of a child and in determining its order for disposition, the court shall continue placement outside the home upon a written determination that return of the child to his or her home would be contrary to the welfare of such child and that reasonable efforts to preserve and reunify the family, if required under section 43-283.01, have been made. In making this determination, the court shall consider the goals of the foster care placement and the safety and appropriateness of the foster care plan or permanency plan established pursuant to section 43-1312.

In Nebraska, juvenile courts are found within the county court system. Because of the higher population base and concomitant caseload, separate juvenile courts exist in Douglas, Lancaster and Sarpy counties.

### **III. Law Enforcement:**

In the law enforcement system there are several opportunities for officers to become involved in abuse, neglect, and dependency cases. Law enforcement officers have the primary responsibility for the initial investigation of such cases after a report is received. They may also be involved in the removal of children from their homes.

Law enforcement officers may also participate in local multi-disciplinary teams which review the case management of a particular child or family. These law enforcement personnel may come from local police departments, or sheriff or state patrol's offices. Within metropolitan areas there may also be some overlap of these

departments and offices. Child abuse investigations and treatment teams, which include law enforcement personnel, are to have been formed throughout the state.

#### **IV. County Attorney:**

In Nebraska, County Attorneys are elected officials. Depending on the caseload and each county's budget, a county attorney can work either full-time for the county or part-time with their own practice and part-time for the county.

The County Attorney files the petition detailing the reasons the state is intervening to protect a child or youth. The detail of information in the petition depends on how well the investigation is conducted by law enforcement, how knowledgeable the County Attorney is regarding Juvenile Law and whether the County Attorney will plea bargain some of the issues out of the petition in exchange for admission by the parents to the other charges against them or for relinquishment of their parental rights. It is very important that the petition detail the most serious issues of the case.

Local board members have expressed serious concerns with certain plea bargain arrangements. These concerns are based on the removal of serious abuse allegations from petitions which makes the court unaware of such charges. The rehabilitation plan that the court and the Department of Health and Human Services subsequently set forth must limit itself to correcting conditions addressed in the petition which becomes the basis for the court to take jurisdiction over the juvenile. Therefore, the parents may not receive services to address unwritten (i.e. plea bargained) concerns which may place children in serious danger through unsupervised visits or inappropriate reunification.

For example: A child comes into care because of abuse and neglect on the part of the parents. A few months later the child discloses that her parents sexually abused her. Unless a supplemental petition addressing the sexual abuse is filed and proven in court, it will not be an issue in the case. Neither the parents nor the child will be ordered by the court to address this issue through counseling. The child can consequently be endangered by being inappropriately reunified with the parents, who may have successfully addressed the issues outlined in the petition but not the additional issue of sexual abuse.

Also the County Attorney is required to file a petition to terminate parental rights once a child has been in foster care fifteen out of the most recent 22 months, unless an exception applies.

#### **V. Guardians ad litem:**

Guardians ad litem are appointed by the court for the child and for the child's parents when those parents are found to be mentally retarded, mentally disabled, or when the parents themselves are children. "Guardian ad litem" specifically refers to that person who is charged with representing the best interests of the child.

Under the law, Guardians ad litem must file a report with the court every six months and visit the child or children they represent no less than every six months.

## **VI. Defense Counsel:**

Provisions for defense counsel fall under Section §43-279.01(1)(b). Counsel for the defendant parents may be either a lawyer of their own choosing and retained at their own expense or a lawyer who has been appointed for the defendant parents by the court if the defendant parents are unable to afford a lawyer and are found by the court to be indigent.

The defense attorney must be committed to ensuring that an appropriate basis for the court's jurisdiction has been set forth in the petition. While the primary focus of the juvenile court process is on rehabilitation and amelioration of the problems that led to court involvement in the family's life, the attorney must protect his or her client from involvement in the court process unless it is legally justified.

## **VII. Probation Officers:**

Probation officers can be involved in abuse, neglect, and dependency actions in juvenile court. Their primary responsibilities are the investigation of the child's and family's circumstances, providing written reports to the court, and making recommendations to the court about the child and his or her family.

The probation officer gathers information from the child or youth, the child or youth's parents or guardians, school reports, and psychological or psychiatric information.

## **VIII. CASA volunteers:**

Unique to juvenile court actions are volunteer Court Appointed Special Advocates for the children or youth who are the subjects of the abuse, neglect or dependency action, or for a child or youth's family. These unpaid advocates are often referred to as "CASAs".

Because each CASA's caseload is kept quite low, the CASA is often able to acquaint him or herself with the facts and circumstances of the child or youth or family to a higher degree than other professionals involved in the case. Additionally, because the CASA is a layperson, he or she may have access to parties that the lawyers are prohibited from contacting. For example, the CASA may become well acquainted with both the child or youth and the parents, while the defense counsel is not allowed independent access to the child or youth who is a represented party and the Guardian ad litem is not allowed independent access to the represented defendant parties. Of course, either lawyer may instruct his or her client not to cooperate with the CASA's investigation, but such an instruction could reflect badly on the client when the judge places faith in the CASA's evenhandedness and thoroughness in investigating facts and making recommendations.

## **IX. Nebraska Department of Health and Human Services:**

**Intake workers** are responsible for the initial investigation of complaints or reports about situations involving the abuse, neglect or dependency of a minor.

**Case managers** (CFS – Child and Family Service Specialists) Care managers who manage the ongoing services provided to children and families and who oversee the direction and the progress of the DHHS cases.

**Note:** CFS Case managers are also synonymous with FPS - Family Permanency Specialists that are located at the lead agency in the Eastern Service Area of the state due to the privatization of child welfare pilot occurring in that area.

The services provided by case managers include:

- Provide and facilitate home-based, family-centered services to support family reunification;
- Provide case management;
- Provide family assessment, assessment of need for out-of-home placement and exploration of alternatives to placement;
- Develop a case plan within 60 days of the child or youth coming into care and develop service agreements for the child or youth and parents with input from all involved parties, to be consistent with the needs of the child or youth and any judicial mandates;
- Find a placement appropriate to meet the needs of individual children;
- Provide supervision and services for children in placement;
- Review and update the case plan periodically, with an assessment of the continued need for placement;
- Inform the court in regard to above-named services;
- Initiate action toward termination of parental rights, when this action is determined to be in the best interests of the child or youth;
- Attend the FCRO local board meetings, if possible, to explain the aspects of the case plan;
- Participate in the review as an information giver and as someone responsible for implementing the case plan; and
- Facilitate the court order.

When the board reviews a child or youth and the case manager attends the review, the case manager is not considered a decision-maker in this meeting. The case manager's role is to present the child or youth's case plan and to join the other participants in a discussion of how appropriate that plan is. The local board makes the findings and recommendations in a case.

Case managers in conjunction with their supervisors are responsible for writing a case summary. This should be located in the child or youth's file. Copies are made by the Review Specialist and placed in the board packet for their review.

**Permanency Unit** workers (formerly known as Adoption Units) are transferred cases as the permanency plan changes to adoption. These workers are trained in the legal process of adoption, relinquishment and termination of parental rights, subsidized and open adoptions, and the paperwork involved with these proceedings. **Not every area of the state has a permanency unit.**

**Case Manager Supervisors** are those persons charged with supervising the case managers and intake workers.

**Child and Family Outcomes Monitors (CFOM)** are those individuals at DHHS (the Department of Health and Human Services) that are responsible for oversight on cases that are managed by the Lead Agency in the Eastern Service Area.

**Staff Attorneys**, located in DHHS offices throughout the state, make occasional court appearances, usually in cases involving a difficult legal issue, such as termination of parental rights or a factual dispute regarding DHHS handling of a particular case. Staff Attorneys do not routinely appear in court on behalf of DHHS workers to present DHHS case plans. They are also responsible for training DHHS workers and are available to these individuals when answers are needed to legal questions which affect the direction or management of a case.

### **Foster Parents:**

The legal role of the foster parent is not always clearly defined. According to law and custom, natural parents have all the rights and responsibilities for their children.

Foster Parents provide physical care for the child or youth and often times provide emotional care as well. Many children who are placed in care have experienced severe emotional trauma. Foster parents provide care, stability and security.

When a child or youth enters out-of-home care, the parents lose some of their rights and responsibilities. The court can then delegate some rights and responsibilities for the child or youth to the child-placing agency. This agency can in turn delegate some or all of these rights and responsibilities to the foster parent.

According to Sanford Katz, a nationally known lawyer, the legal rights of foster parents are relatively limited under both case law and statute. He says, "foster parents probably have more responsibilities than rights."

An emerging area of law is considering what, if any, legal rights a foster parent has. In Nebraska, except for the 1982 Foster Care Review Act, statutes and case law do not define the rights of foster parents. However, under LB 1041 (§43-1314) notice of court reviews are to be provided to the foster parents, pre-adoptive parents, or relatives providing care for the child. It remains unclear who is responsible for providing this notice.

**Space for Notes**

# CHAPTER 7

## HOW CHILDREN MOVE THROUGH THE CHILD WELFARE SYSTEM

### I. How Children Enter into Out-of-Home Care:

There are two ways a child or youth can enter into out-of-home care. One type of placement is voluntary, which has no court involvement, the other is court-ordered which then means that the court does have oversight on the case. Within court-ordered cases are abuse/neglect/dependency cases, which are due to the actions of the parents or to provide financial means for providing the child certain types of care, and delinquency cases, in which the actions of the youth brought the youth under the care of the court.

**You may want to keep in mind the following reasons children enter foster care as you review your cases:**

- Most children enter foster care due to a failure of the parent or parents to provide for a child's basic physical, medical, educational, and/or emotional needs. This is referred to by those in the child welfare system as "neglect" and covers a variety of serious conditions.
- The next most common reason for children to enter care is parental substance abuse.
- Other common reasons for children to need to be removed from the home for their own safety include: substandard or unsafe housing, physical abuse, domestic violence, parental mental health issues, sexual abuse, abandonment, parental illness or disability.
- Children and youth may also be placed in foster care to address certain behaviors, some of which are a predictable response to prior abuse or neglect, children's mental health needs, children's substance abuse, and children with serious disabilities or illnesses with which the parents are unable to cope.
- The Nebraska child welfare system works for about half of the children, the other half are moved between foster placements too often, don't have complete or appropriate plans, spend too long in care, or experience premature, failed reunifications.

### II. The Court Process

**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 Department of Health and Human Services (DHHS-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 DHHS) investigates the allegations or issues identified 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 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.

**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 DHHS. 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. 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 must adopt the DHHS 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 DHHS rehabilitation plan for the parents (case plan) and orders services based on this plan. There is a statutory presumption that the DHHS 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 month 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 FCRO has legal standing to file as a party to any pleading or motion to be heard by the court at these hearings. The FCRO attempts to schedule its reviews in advance of this court hearing so that the Court can act on the issues the FCRO has identified. .

**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.

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.

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.

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.

The Nebraska Supreme Court has upheld termination of parental rights by a juvenile or county court under the following circumstances:

- Where the "consistently poor sanitary conditions and deficient personal hygiene could and did work to the physical injury of the child" [204 Neb. 509 (1979)];
- Because of mental illness of the mother, the children suffered from poor hygiene and were not properly fed or clothed [208 Neb. 375 (1981)];

- Sexual molestation of a young child by the father for three and one-half years. The mother's parental rights were also terminated because she refused to give the child necessary parental care and protection [208 Neb. 579 (1981)];
- Termination of parental rights of both parents where the mother showed inability to protect her children from the father's drinking habits and physical abuse, "irreparably affecting children's health, morals, and well-being" [298 Neb. 256 (1980)];
- Throughout the court proceedings of 22 months, children were continually neglected and the court and county provided an abundance of guidance, supervision, encouragement, and discipline to no avail [204 Neb. 286 (1979)];
- Mother abandoned the children within the meaning of the statute by visiting only three times in seven years with two of eight children [199 Neb. 286 (1977)];
- Mother was violent toward the child and uncooperative with attempts to solve her problems. The seven-year-old daughter had been in foster care for four years and was doing well [196 Neb. 795 (1976)];
- The mother had abandoned the children and failed to provide proper parental care for four years [204 Neb. 204 (1979)].

The Nebraska Supreme Court refused to terminate parental rights in the following case:

- Where the mother was bothersome or aggressive as long as there was no harm to the children because of the mother's unfitness. It was insufficient grounds to terminate parental rights because the adoptive parents had more education or income [207 Neb. 234 (1980)].

**Relinquishments** – relinquishments are actions of the parents to give DHHS the rights to the child. DHHS will only accept relinquishments if both parents sign, or the other parent's parental rights have been terminated, or the other parent is deceased. Oftentimes parents are aware 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 would willingly relinquish parental rights if they were assured of maintaining ongoing contact with the children or receiving information. This is sometimes done to facilitate an open adoption.

**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** – 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 16 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. For infants under 30 days old, it may be the result of a “safe haven” placement.

**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**, and that voluntary agreements are intended to last no longer than 6 months. After 6 months, if the issues that brought this family to the attention of DHHS have not been corrected, a petition should be filed so that the children are made state wards.

The Foster Care Review Office may review the cases of children in voluntary out-of-home placements. A new law put into effect 2012 has now also given 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, child placing agencies, child caring institutions, inpatient residential treatment centers, and hospitals.

**Space for Notes:**

# CHAPTER 8

## PERMANENCY PLANNING PHILOSOPHY

### I. Permanency Planning Framework

Perhaps the most dramatic change in the field of child welfare is the formal recognition—in law and in policy—of what many parents and child advocates already knew that **children need roots in order grow**; and specifically, that foster children need families they can count on, not just today but always.

To the social work practitioner—and certainly to the case reviewer—the notion of permanency planning brings up a host of related and difficult questions.

- What does "permanent" mean?
- How can anyone ensure permanence?
- Is a permanent home in the best interest of every foster child?

To try to define "permanence," researchers with the Oregon Permanency Planning Dissemination Project broke the concept down into four major components. These are:

1. Intent: A permanent placement is overtly expected to last until the child's maturity. A child may spend many years in a placement and not feel that it is home unless all parties agree that it will not be changed.
2. Commitment and continuity in relationships: A permanent family is a family forever. Permanency assumes a quality which ensures that the relationships formed during placement will last beyond the placement—will, in fact, be ties which see a child through his/her adolescence and into adulthood, parenthood and the aging process.
3. A sense of belonging, rooted in cultural norms and definitive legal status: In American culture biological or adoptive parents are expected to be a child's primary caretakers and protectors. This special relationship is protected by law. Without legal sanction, caretaking relationships are ultimately fragile.
4. A respected social status: Both biological and adopted children are seen by the community as "real" members of a family. Other types of relationships may stigmatize children as "different" or strange."

In the videotaped lecture, The American Family: Who Cares?, Dr. Urie Bronfenbrenner captures the essence of permanence in a less formal but equally eloquent manner. All children, he stated, require the same thing:

*. . .the enduring, irrational involvement of one or more adults. Someone who is crazy about the kid. . .a love affair that lasts a lifetime.*

What both definitions share is an attempt to capture a quality of relationship that is the spirit of the permanency planning movement. It is the search for this quality that guides both the delivery of the child welfare services and the case review effort in Nebraska today.

Yet, if defining permanency is hard, putting it into practice is even more difficult. Two unanswered (and perhaps unanswerable) questions remain:

- How can permanence be ensured?
- Is permanency the right plan for everyone?

## **II. The Challenge**

The final piece of the permanency puzzle is the question: Is it for everyone? Does every child need a permanent home? The answer is yes. But it's a "yes" that challenges everyone who cares about children to think creatively.

For many children the answer comes relatively easy. Many will find a home with their own families, with adoptive families, with caring foster parents, or custodians. But for some, none of the simple solutions work.

But for some children, long-term, continuous relationships are too difficult, too threatening to maintain. For these children, the challenge may be to develop a permanency network—a combination of people and elements who together can become the child's community and provide stability in a chaotic world.

The key to the success of permanency planning is the commitment of caring individuals to consider each child as an important human being with a unique history and needs.

*Yes, what else but home?  
It all depends on what you mean by home. . .  
Home is the place where, when you go there,  
They have to take you in.  
I should have called it  
Something you somehow haven't to deserve.*

Robert Frost  
"The Death of the Hired Man"

## **III. Definition of Permanency Plan**

A permanency plan (plan) is intended to assure permanence in a child's living arrangements and continuity of relationships.

**The plan must:**

- Identify a permanency home (or other setting) as specifically as possible.
- Specify an appropriate legal relationship between the child and his or her care giver.
- Set a clear time limit for achievement.
- Include a discharge plan which meets all other requirements of a permanency plan.

**Nebraska statute states the plan shall contain at least the following:**

- The purpose for which the child has been placed in foster care.
- The estimated length of time necessary to achieve the purposes of foster care placement.
- A description of the services which are to be provided in order to accomplish the purposes of the foster care placement.
- The person or persons who are directly responsible for the implementation of such plan.
- A complete record of the previous placements of the foster child.
- Documentation regarding the appropriateness of the placement.
- Address if out-of-home care is necessary.

These elements characterize the main aspects of all the different types of permanency plans. The permanent placement plan indicates (to the extent possible) exactly where the child will live when the permanency plan is achieved. The legal status specifies who will have the rights to make decisions regarding various aspects of the child's life. With rare exceptions the plan should not vest these rights in a government agency.

**IV. Timeline**

The timeline is the agency's best estimate of when the plan will be achieved. Ideally, it will include time estimates (target date) of when the plan will be achieved. Ideally, it also will include time estimates for critical intermediate actions which the agency must take to reach its goal. The requirement of a clear discharge plan creates pressure for the agencies to work with children regarding suitable living arrangements and continuity of relationships prior to closing the case. Discharge plans are determined not only by the case, but by the action of the court, the child, and a number of other factors that are involved in child welfare cases. A discharge plan can be for adoption or incarceration.

- How long do the biological parents have to rehabilitate?

- Does each service identified have a timeframe for completion?
- What percentage of the life span of the child is this rehabilitation plan?
- Is the rehabilitation plan reasonable or feasible?

Local board members should assert themselves to clarify each of these four elements during each individual child review. Failure to do so will make it more difficult to reach an answer and to monitor progress at subsequent reviews.

It is important that each case plan goal or service ordered also have a timeframe for completion. For example if one of the goals in the permanency plan states that a parent is to address chemical dependency issues, how the parent will go about addressing that issue and the timeframes set for the achievement of that goal should be clearly laid out in the child's permanency plan.

Each child's permanency plan should be developed in light of his or her unique circumstances. For the purposes of training and evaluation, however, it is useful to classify plans.

The selection of one option in no way denies the agency's flexibility to work towards a different option as circumstances change, nor does it reflect blindness to the complexity of many case situations. Rather, the fact that there is a single-option permanency plan at any given time facilitates communication between agency and clients and focuses attention on the concrete tasks which must be done.

The agency is responsible for continuing a smooth permanency planning process when workers change or when cases are transferred between units and also for changing the plan if and when circumstances warrant. A change in the plan is a major decision but one which the participants in the process can see as the outgrowth of non-achievement of the old plan. Thus, the permanency plan, as defined here, becomes the centerpiece of a logical process. The goal is for the child to be a stable member of a stable family.

## V. **Permanency Planning Process**

The permanency planning process shall be used to reduce "foster care drift" and to place children in permanent care as soon as possible. The process is as follows:

- The process begins when a decision is made that a child must be placed away from his or her birth parents or guardians.
- A permanency plan (plan) must be formulated within 6 months of placement (or sooner) and clearly stated in the record.
- The plan must include the service goals and objectives, the barriers, the steps to be taken to achieve the goals, and the time frame for goal achievement.
- The plan shall be detailed in a written service agreement, which has been discussed with the parents, unless profound incapacitation or absence.

- The plan shall be accomplished as soon as possible, but no later than 15 months after child has entered foster care.

## **VI. Implications for Local Board Members**

The review process is founded upon the belief, that for the vast majority of cases, it will be better for the agency to adopt a clear plan with firm time limits, communicate its plan to all interested parties, and push hard to accomplish a high priority plan before too many months have passed. Local board members should be comfortable in pressing for clarity and firmness, recognizing them as distinct from oversimplification and inflexibility.

The Foster Care Review Office has adopted the following classification system:

- Return home to parents or legal guardians,
- Placement with relatives with appropriate legal status,
- Adoption,
- Guardianship to the foster parents,
- Independent living,
- Self-Sufficiency (most often with supports), and
- Long-term foster care,

The first three types of plans listed are considered to be in order of priority and to be more desirable than the other plans listed. When all three of the high priority options have been ruled out, necessitating continuing foster care status for the child, the local boards should be selecting appropriately the next viable options.

Inclusion of long-term foster care does not represent endorsement of this type of plan but reflects a necessary element of realism.

## **VII. Concurrent Permanency Planning**

The adoption of the Nebraska Adoption and Safe Families Act now allows the Department of Health and Human Services to develop a concurrent plan, whereby a contingent permanency plan is stated. In cases where Concurrent Planning is taking place, there will be a primary plan and a secondary plan in place. The primary plan is most important and will be the plan that the Department is actively working towards.

For example, the DHHS Case Plan may have reunification as its primary goal, but with a concurrent plan of guardianship. If the primary plan is not accomplished, parties will have had notice of what direction the DHHS intends to go with the case. Concurrent planning has allowed the case manager to start planning now for an alternate permanent solution for the child, shortening the time the child will spend in foster care.

### **VIII. Permanency Planning—A Dynamic Process**

As the idea of permanency planning has swept across the nation, lack of attention to defining the concept and the process has created some confusion. The phrase "permanent planning" may have suggested to some that review boards are expecting agencies to commit themselves to a plan on a once-and-for-all basis. **It cannot be overemphasized that permanency planning is a dynamic process in which the agency strives to adopt the specific plan which would create the most physical, psychological, and legal stability for the child and which might feasibly be achieved.**

The Foster Care Review Office's policy is that each case needs to be assessed based on the extent of the abuse the child has suffered. **Case plans need to be family specific, with primary concern given to child safety, rather than Nebraska's current practice of making reunification a blanket policy no matter what abuse has been suffered by the children.**

**Space for Notes**

## CHAPTER 9

### STUMBLING BLOCKS TO PERMANENT PLACEMENT AND PROPOSED SOLUTIONS

By Barbara Chappel

Beyond the Best Interests of the Child by Goldstein, et. al., stresses that the child needs to have:

1. A permanent family because of the emotional scarring of multiple placements.
2. The psychological parents as the child's permanent family if that parents is fit.
3. A continuity of relationships throughout childhood.
4. Expedient and expeditious planning for a permanent home according to "a child's sense of time."
5. Expedient and expeditious permanent placement in order to preserve the child's greatest asset, his "childlikeness."

The following situations illustrate several typical stumbling blocks to permanent placement and some proposed solutions.

#### **Situation #1**

Susie, age three years, has been living with her foster family for one and one-half years and has now been freed for adoption. The foster parents wish to adopt her and would be suitable; the agency, however, plans to place Susie with another family. Reasons the agency gives for this may include: the agency wishes to discourage foster parents from using foster care as a shortcut to adoption; the biological parents live in the same area as the foster parents; or the foster parents should not have become emotionally involved.

Proposed Solution: Once a child has developed a psychological parent who is a fit parent, that relationship should prevail above all other relationships. The psychological parents might be a relative or a foster parent. Severe emotional damage can be inflicted upon children by disrupting their relationship with the psychological parent. Also, such disruption might prevent the child from forming meaningful emotional ties with another family.

#### **Situation #2**

After two years in foster care, Billy returns home. His parents will not allow him to visit his previous foster parents who have been a meaningful part of his life. Every time Billy asks about his foster parents, his parents become angry, feel threatened, and discourage his continued interest.

Proposed Solution: We tend to be suspicious about those whom we do not know and have not personally met. We should help foster parents and biological parents to have a meaningful relationship in joint parenting. This would help the biological parents to give permission for the child to continue the relationship with former foster parents. Caseworkers should work with the biological parents to help them understand the child's need for a gradual tapering of the foster-parent relationship and for a continuity of some relationship with those foster parents. (Similar casework should take place with adoptive parents of children who have had meaningful relationships with former foster parents and others.)

### **Situation #3**

Mary, age five years, has been in foster care for two and one-half years. Mary's parents need at least one more year for rehabilitation.

Proposed Solution: *A child's sense of time must be allowed to dictate how long the parent can be given to rehabilitate.* Two and one-half years is half of Mary's life which would seem to Mary as long as 15 years would seem to a 30-year-old. While keeping a child waiting for a permanent placement, we must keep in mind the anxiety and emotional problems that are being set up on the child because of the child's sense of time and the child's inability to wait very long for permanence.

According to Dr. Alexander Zaphiris of the Graduate School of Social Work at the University of Denver, who does extensive training for social service agencies across the country, *no child should be left in foster care for more than nine months.* We must ask ourselves and come to grips with the question, "What good is reuniting the family if the child is emotionally destroyed in the process?"

According to the Child Welfare League of America, *if a parent has not rehabilitated in 18 months, it is unlikely that the parent ever will rehabilitate.* As recommended by many child welfare professionals, contracts for rehabilitation—including enforced time limits—should be implemented.

According to Martha L. Jones, author of "Aggressive Adoption: A Program's Effect on a Child Welfare Agency," (Child Welfare, June, 1977) specific plan goals should be made with families at the time of the child's placement. These plans should outline in detail what is to be done by the agency and what must be accomplished by the family in order to allow return of the children to their home. Ms. Jones also states that a time limit of six months should be written into the goal plan with a statement that after that time the agency will pursue an adoptive plan. All progress, or lack of it, toward achieving the stated goal plan should be documented by letter for possible later court use. An agency which used such contracts experienced sharp increases in both the number of children returning to their biological families and the number adopted.

## **Situation #4**

Linda, age four years, was placed in foster care because she was left with a neighbor and her mother did not return. The record shows that Linda's mother deserted the child twice in the past—once for two months and once for four months. Linda is now in foster care with a military family who has told the agency that will be transferred to a different state in 12 months.

Proposed Solution: The severity of abuse or neglect and the parents' prognosis for rehabilitation should be assessed as soon as the child enters foster care. If a child's chances of returning home permanently are slim, he or she should be placed with a foster family who would be willing to adopt if parental rehabilitation does not occur within a specific period of time. Such homes should be aggressively recruited in order to prevent multiple placements of those children for whom permanent return home appears unlikely. When such children are placed with foster parents who are not willing to adopt them, subsequent adoptive placement with another family may be difficult for the child if the child has come to regard the foster parents as his or her parents.

### **Implications for Board Members**

These stumbling blocks to permanency have been pointed out because it is of critical importance that you recognize "stumbling blocks" to permanency in the plans you examine and the cases you review.

In your position, you will be able to speak out for the "best interest" of the child and recognize the importance of clear planning and awareness of time lines by the agency.

In many cases, the work towards rehabilitation of the biological family is of critical importance for the plan. As local citizen review board members, you may find yourselves pressing the agency to work more extensively with the family.

### **Minimum Requirements for Returning a Child Home**

As you address the issue of barriers, you must have an idea of the minimum sufficient level of functioning required of parents. Infants and younger children need much more care than a pre-teen or adolescent. A child removed for physical neglect at age four will require less constant attention when he or she is fourteen. The increased ability of the child to meet his or her own needs must be taken into consideration when evaluating the return of a child.

### **Minimum Standards for Return Home—Parent**

A child should be returned to parents if the following basic criteria are met:

- The original reasons for placement have been overcome or adequately diminished.
- There will be no physical abuse of the child.
- There will be no sexual abuse of the child.

- The parents are capable of providing (or public assistance is providing) food, clothing, and shelter.
- The parents ensure that the child will attend school.
- The parents can provide supervision adequate to meet the child's safety needs.

It can be required that the parent provide stability in parent/child relationships and in the child's living arrangements. It cannot be required that the mother or father get married (or divorced) before returning the child. To do so would violate the civil rights of parents.

### **Minimum Standards for Return Home—Child**

In order to return an older, more self-sufficient child to parents who are functioning minimally, it is necessary to look at what the child can do for himself or herself:

- Assess with the child, foster parents, and school counselor the child's ability to function.
- Get a medical and psychological evaluation if appropriate.
- Evaluate the child's ability to meet personal hygiene needs.
- Determine the efficiency of the child in getting up in the morning and preparing for school.
- Judge the child's skills in using community and relative supports upon returning home.

Sometimes permanency plans, that the local boards will review, have little to do with the original reason for the foster placement or to other evidence of risk to the child. Agreements that seem directed towards the general rehabilitation of the parent can be beneficial to the child but time lines should be included with the plan to insure the child's permanency as a priority.

Parents' failure to act in accordance with the terms of service agreements (plans for the return of the child) may be their unspoken way of expressing that they do not have the child's best interest as a priority at this time. Or it may simply be true that they are not able to make the necessary changes for the best interest of the child. In any case, broken agreements must be taken very seriously.

### **Implications for Local Board Members in Returning the Child Home**

Public opinion on the proper policy towards returning neglected and abused children to their parents tends to follow the headlines. At most times a policy favoring return home is perceived as "pro family." But following reports of child deaths, a punish-the-parent approach more nearly describes the public mood.

As local board appointees, your job is to steer a steady course while storms of public opinion wax and wane.

A proper policy must be adopted with a clear understanding that there are risks on both sides for children. Policies leading to too few returns home will damage children by unnecessarily cutting them off from their roots. Policies leading to too many returns home will subject children to many forms of permanent harm.

We must also recognize that child welfare professionals will never be able to have perfect knowledge as they make plans for children. Local board members must learn when to press social workers to investigate more thoroughly and when to accept an irreducible level of uncertainty.

The prior information was a first step towards helping you as a local board member to evaluate plans in a methodical fashion. This information is not meant as a substitute for your own values and beliefs, which must be applied within the board framework of review board policy and law.

Sometimes we all feel that saying "return home is the highest priority plan" has no meaning whatsoever. It simply means that this type of plan must be ruled out before others can be accepted. But when should we rule it out?

### **Exploring Parents' Choices**

Case Managers should be helping both parents of a foster child to reach a decision about whether they really want their child on a day-to-day basis. The options should be explored with each parent as objectively as possible. The circumstances of foster care always create emotional turmoil. Both social workers and local board members must avoid superficial interpretations of parents' statements. With this caution, however, we can establish our first criterion for ruling out return to parents.

*Return can be ruled out when parents do not want the child or when their proposed time frame for return would be detrimental to the child.*

### **Protecting the Child**

The criterion here is straightforward:

*Return can be ruled out when there is clear and convincing evidence that the risk of harm to the child cannot be reduced sufficiently within a reasonable amount of time.*

You, as a local board member, must be aware of why the child entered care. There are cases where the reason for entry into care does not suggest the parent(s) is a danger to the child. For example, some children are in foster care while their parents are hospitalized. The reunification plan for this child would be much different than a child sexual abuse case.

Previous unsuccessful return home is a clear danger signal. There should be convincing evidence that the previous problems are solved before risking return again in such cases.

Harm may mean different things to different people. In context of unwanted government interference in family affairs, harm ought to mean permanent harm—the physical or psychological impact of returning the child would likely have a life-long detrimental effect. Harm ought also to mean serious harm. Failure to correct orthodontic problems is not serious enough. Failure to provide separate bedroom is not serious enough. Living on public assistance is not serious enough. Local boards should, in each case, weigh the potential for harm to the child against the real risks of not returning him or her. The potential harm is a combination of the seriousness and permanence of the harm, on the one hand, and the likelihood of harm, on the other.

Local board members should examine contracts to see that they bear a reasonable relationship to plans for return home. Do the tasks assigned to the parent relate to sufficient reduction of the risk to the child? If not, the local board members should point out the deficiencies in the contracts and clearly state why the existing plan is unacceptable.

### **The Importance of Recommendations**

What is the role of the local board? Local board members are not under the same constraints as agency staff. Certain real world considerations must be taken into account by social workers such as budgets, resource scarcity, time constraints, location appropriateness for placements, etc. Local board members can overlook some of these considerations in order to speak out clearly for "the best interest of the children."

Attitudes of agency counsel and judges must affect agency decisions but need not affect the local board's recommendations. You are advising and making your recommendations to judges and lawyers as well as to social workers in the best interest of the child. The best interest of the child is to insure permanency in the life of the child. To accomplish this, the local board's first concern should be to the family unit. If that is not possible, the recommendation should move towards a permanency plan for the child that would identify a permanent home other than the original family unit.

The Foster Care Review Office expects you to speak your minds when making recommendations for the children you review. You are the advocates for the children and your recommendations should clearly state what is in the best interest of the child.

Local board members are bound by the Foster Care Review Office policy which is focusing on the best interest of the child and not by other agency policy. You may quote child placement policies when you agree with it and recommend against policy when you do not. The child's best interest and the policy developed by the Foster Care Review Office must be the only basis for your recommendations.

For example, when parents do not want the child but the agency is planning a return home, this may be an example of when you, as a local board member, would strongly disagree with such a policy. Such scenarios may become more frequent as the effects of cutbacks sharpen.

As a local board member, you must put the child first. You have the responsibility for listing the scarcity of resources as a barrier. An example may be when a child is in need of services for which the agency says there are not enough funds. If it is the "best interest of the child," it is your responsibility to recommend the services needed and identify why these services are necessary.

### **Considering Placement Plans**

There are valid and important monitoring functions that the local board can serve. Placement decisions involve many factors, and, in each case, the various factors play a different role depending upon the individual circumstances.

The local board's purpose, in general, is to assure that all appropriate factors have been given due consideration and that agencies have used a conscious, rational process in weighing all sides of the situation.

In monitoring placement planning, the philosophical foundation is set by the law establishing the review system. The Legislature when putting citizen review in place, stressed that the reviews are carried out to determine what efforts have been made to carry out the plan for rehabilitation and if rehabilitation isn't possible, what permanent placement is being planned.

**Space for Notes:**

## CHAPTER 10

### PERMANENCY PLANNING: SEPARATION AND LOSS

By Barbara Sparks

It's sad that a chapter in a manual on permanency planning for children is on the pain of separation and the damage done to children as a result of family breakdown. It is also essential that we begin here. Studies on child development are in agreement that it is in a child's best interest to be raised in a permanent, stable home. According to Goldstein, Freud, and Solnit, once there is a family breakdown and separation of the child and parent, we are "beyond the best interests of the child." Damage has been done, it is serious and permanent, and the best that child welfare workers can do is to choose the least detrimental alternative which shall reestablish permanence and stability in that child's life.

#### Development of Attachments

Attachment must continue unbroken for a long period of time and must involve both physical caretaking as well as physical and verbal interactions. From this secure base, a healthy child will explore the world and over a period of years will develop into a separate individual who can care for herself/himself, think clearly, and form close relationships. Problems that occur when separation occurs due to external causes can be permanent and serious.

The process of a child's development in terms of attachment to a parent is a long and involved one, and it is crucial that this occurs at the child's pace. There are many things that can go wrong, and the damage to a child as a result of a specific trauma is hard to predict. However, certain general guidelines can be used to understand the potential problems arising for separations occurring at particular stages in a child's life.

#### Separation During Infancy

The first time when a problem might occur would be in the initial period when attachment is formed. Some parents do not respond to a child's cries of discomfort, at least not in a predictable way. They may physically care for a child but not interact by cuddling and talking, or may give child care responsibilities to a number of other care givers.

Under these circumstances, a child will be slower in identifying someone who is special to him/her. If a child is not cared for consistently, she/he has trouble learning the sequence of pain, action and relief from pain. This early thinking pattern, which in healthy situations gives the infant some sense of controlling her/her life, is crucial to later ability to learn. (Jacqui Schiff et. al., Cathekis Reader, Transactional Analysis Treatment of Psychosis, Harper and Row, 1975)

The need for cuddling and verbal interactions with infants has been well documented (John Bowlby, Attachment and Loss, Vol. II, Separation, Basic Books, Inc., 1973).

Physically adequate care with other physical and verbal interaction missing leads to withdrawal of the child or failure to interact with his/her environment. Some infants have been known to die, even with an adequate diet, as a result of this withdrawal. **Finally, if a lot of different people care for an infant, that child will be noticeably slower in forming an attachment to one person. However, once an attachment is made, it is much more intense and clinging than in healthier children. These children tend to be less willing to go out to explore the world as a result of their early anxiety about separation.**

Early problems in the development of a parent-child attachment can be evident throughout the child's development. Some of the schizophrenia disorders and many other mental illnesses are believed to have their roots in these early traumas. If parenting from this point on is caring and consistent, the early problems may be largely overcome. However, if inconsistent, rejecting or abusive parenting continues, severe emotional disorders are likely to develop.

Regardless of the early situation, all but a very few children form an attachment to one or more caretaking adults. (Those who do not form attachments are generally diagnosed as autistic and do not relate to people except as objects.) Once the attachment is formed, any prolonged and/or sudden separation can be severely traumatic to the child's ability to relate to others, and to his/her own self-image.

Studies of children who have been separated from their parents have shown that there are certain typical responses to separation. For example, in a child's first year they perceive parents as not separate but as someone who appears when they cry, or crawl to, or when they open their eyes. Furthermore, in a child's frame of reference those people are essential for survival. If parents are suddenly taken from a child—as in an accident—a child could only understand this in the context of his or her limited knowledge of the world.

Specifically, young children, even up through early school age years, believe that they are responsible for parents' leaving. To a very young child, the loss of parents can be terrifying. In an infant who has developed an attachment the world, and hence survival, depends upon the feeling of need by crying or crawling and thus making the caretaker appear and then being cared for. When this pattern suddenly stops working and someone else appears and provides care in a different way, the infant's whole concept of the universe is shaken and he or she must reshape that concept.

### **Separation During Early Childhood**

As a child becomes older, they begin exploring the world. However, a child does this only by maintaining regular contact with their parents. Suppose a child goes exploring one day and his or her parents go away. A young child does not understand going and coming. People exist or don't exist (Selma H. Frailberg, The Magic Years, Charles Scribner's Sons, 1959). When a parent "disappears" to a child that may mean many things. One common meaning to a child is that it is not safe to explore the world (learn things) or parents will disappear. Related to this is a fear that "if I go out in the world I

will disappear." **A child who experiences a sudden or prolonged separation may be very fearful of exploring and thus learning about the world.**

The healthy child also does things to please and be like the loved parent. A child's identity is with the parent or parents. When there is a separation, a child is threatened in two crucial areas. First, the child who has begun to trust that the parents will provide nurturing and stability is suddenly in a position where this "trust" in the world is seriously challenged (Erik H. Erikson, Childhood and Society, Second Edition, W. W. Norton, and Co., Inc., 1963).

A child experiencing a prolonged separation in these early years may well conclude that the world, and the people in it, are not to be trusted. Secondly, the child's self-concept is based on how he or she is treated, and in identifying with those who care for them. Separations are often interpreted by the child as meaning that he or she is not worthy of being cared for or that there is something wrong with them that drove the parent away. As a result of this strain on the trusting relationship and the emerging self-concept, children who have been separated often show setbacks in accomplishments. For example, a child recently toilet trained will usually lose sphincter control when a parent is no longer around to please. Most difficult to assess, however, are setbacks to the child's emotional development.

**Children who have been separated from parents show their distress through crying, anger, and withdrawal. Future attachments, even with the same parent, are frequently more shallow and less trusting with considerable displays of anger. It appears that these children decide that it is not safe to get close to anyone and future relationships will take longer to develop or will develop at a superficial level only. With each subsequent separation the chance of the child deciding that it is not safe to trust others is increased dramatically.**

Separation anxiety is, in many ways, similar to grief experienced as a result of the death of a loved one. This is especially true for children since children have difficulty comprehending the difference between death and a long separation. Given the child's time frame, a few months is the same as if the missing had died. There are five major stages in the grieving process as identified by Kubler-Ross<sup>1</sup>:

1. denial and isolation,
2. anger,
3. bargaining,
4. depression, and
5. acceptance.

Grieving is a painful and lonely process. Unfortunately, we have been guilty of preventing resolution of the grief through our attempts to take away or cover up that pain. The following is a description of each stage of grief and possible behaviors which may be observed in both parents and children:

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<sup>1</sup> Elizabeth Kubler-Ross, On Death and Dying, MacMillan Publishing Co., New York, 1969

## **Stage One: Denial and Isolation**

Immediately following the separation, there is usually a period of shock during which time the person may go through the motions of a daily schedule, but will do so woodenly or as if in a daze. This period of shock is related to the first stage of the grieving process, which is denial and isolation. Child and adult alike may appear to act inappropriately to the separation. For example, the child may appear happy and content and talk as though the parent is still around despite clear statements about the separation. Likewise, the parent or foster parent who has lost a child may frequently deny the loss by setting an extra place at the table or by failing to cry and show sadness at the loss.

Denial is an important defense mechanism, protecting people from pain at the time when they are least able to handle it. Workers and foster parents frequently support denial as the only way to deal with grief by encouraging its use. Thus, it may seem easier not to confront a child or parent with the hard facts of the loss, rather than to bring on the grief that follows. However, if the person does not move through to a state of acceptance, each subsequent loss will be more difficult for that person to handle.

## **Stage Two: Anger**

The second stage of grief is anger. In children the anger may be directed towards any number of sources. They frequently lash out with physical and/or verbal assaults against other children, care taking adults, or themselves. As discussed earlier, the child assumes that he or she is responsible for the loss of the parent, so may turn their anger inward. However, the child also feels anger towards the missing parent and may take that out on the new parent figure or other people around them. The violence of this anger can be very frightening to a child who may equate his/her anger with the cause of the parent's disappearance. Since the anger is seldom focused on the grief process, it can be hard to identify.

One child, in her anger, very carefully broke fifteen window panes in a shed; others hit and bit other children, and many find fault with the foster parents or provoke them in some way so as to receive discipline. Stealing, lying, and bed-wetting may all be acts related to the angry phase of grief.

In biological parents and foster parents there is also an angry stage when each may criticize and complain about the parent, the agency, or even the child. When you recognize the source of the anger and help focus it as part of the grieving process, then people can usually move on to other stages. Nevertheless, there is seldom an orderly progression from stage one through stage five, and children and parents alike may move back into anger after having appeared to have given it up.

## **Stage Three: Bargaining**

In stage three, bargaining, the child believes they are the cause of the loss and may begin to bargain for return of the lost parent. This is seldom done verbally, but children can usually be observed to try very hard to adapt to the rules and regulations of a new home and to "be good" in an attempt to win approval. The bargain is usually inside the child's

mind and does not come true. Thus, bargaining is usually seen as a period of time during which the child alternately behaves well and is a joy to the foster family, followed by periods of temper tantrums or sneaky and angry behavior. These swings in behavior can be very trying for foster families, and children are often moved while in this stage; thus, creating a second layer of grieving while the first situation has not yet been resolved.

Parents at the bargaining stage may demonstrate similar behavior. Previously neglecting parents may make agreements to do all sorts of "good" things to get their child home. Unfortunately, these promises are usually grandiose and unrealistic and thus doomed to failure and more anger. It is crucial for you to be aware of this stage when parents will do "anything" to get their child home and to keep contacts or bargains to realistic, achievable goals.

#### **Stage Four: Depression**

The stages of anger and bargaining gradually give way to the stage of depression. In this stage, the child or adult will appear listless and apathetic with behavior geared towards withdrawal from the world. Child and adult alike will exhibit difficulty in initiating any activity and will appear to have very little energy.

Children during this stage of depression, will often seem sad and resigned. They make few demands or responses to their environment. Efforts to keep them busy or get them interested in an activity are generally of little use and they will make only token efforts to get involved. The nature of the depression, at this stage, is closer to despair than to sadness and there is considerable pain and hopelessness to the victim.

It is during this stage that children will show considerable regression in previous accomplishments. Achievements in toilet training, table manners and schoolwork will frequently be lost and the child will seem to have no desire to improve.

Adults suffering from a loss also go through this stage of despair or depression. For the parents who have lost their child to foster care, this period may be characterized by regression in progress toward return of the child. Where previously they agreed to do "anything" to get the child back, now the feeling is clear that "nothing" they do would be enough. They have little energy, do not function much during the day, and may show signs of regression in previously achieved tasks such as housekeeping and personal grooming.

#### **Stage Five: Acceptance**

The move to the final stage of acceptance may take months or years. Whatever the time period, this stage of acceptance is marked by an increase in energy and the re-establishment of contact with people and the outside world. In adults and children who are verbal, acceptance can be noted by an ability to talk about both the good and bad memories of the lost person.

Although there may still be a sadness about the person who has been lost, the significant difference in this stage is the ability to plan for the future. Children will begin to make

attachments to those people around them, to pick up in achievements previously lagging such as toilet training or schoolwork, and to have fun again. Adults will demonstrate this same shift in energy from self-centered grief to an ability to relate to others and plan for the future in spite of the loss.

When a person has reached this level of acceptance we generally say that the grief has been successfully resolved. However, there may be periods of regression, especially during time of stress. An anniversary of the loss, another separation, or fear of another loss can precipitate more grieving. Also during each developmental stage, children may need to deal with their previous loss again.

People do not make clean transitions from one stage of grief to the next, and an understanding of the five stages can merely make one sensitive to what to look for, and how to recognize the symptoms. The process described is for long-term separation or a sudden, permanent separation. For older children and adults, however, there can be some differences.

First, adults and children who are verbal can be prepared for a separation by talking about the plans ahead of time. In these situations the grieving process will start prior to the actual separation in what is known as anticipatory grief. The stages remain similar but occur while the loved person is still around to help in comforting about the impending loss. Differences also occur during shorter separations for adults and older children who can anticipate the future and delay gratification. For example, a ten year old who knows he will see his mother in two days may miss her but not in the same desperate way as if she were gone forever.

Through all the stages of grief or separation anxiety there are certain typical behaviors that we can observe. With some separations there are disturbances in eating and sleeping patterns. There is also particular vulnerability to infections and many children in foster care develop upper respiratory ailments shortly after placement. The fact of a separation results in a special sensitivity to and anxiety about the potential loss of safety and protection available in the world. This anxiety is evidenced in various forms of distancing from other people either through obvious behaviors which drive people away (kicking, name calling, or biting) or through more subtle techniques (superficial smiling, over adaptation to expectations or keeping busy).

## **Separation and Placement**

Separation experiences in childhood can be disrupting to a child's normal growth. Separation of a child from his family is, therefore, warranted only when the subsequent placement can better meet the child's needs. If children are to benefit from placement, their anxieties must be recognized, understood, and dealt with. Agency staff and local board members should be geared towards minimizing the potential disturbances, and techniques should be used which are appropriate to the ages and situations of the children and adults involved. The following material has been compiled to help the emergency intake worker, emergency foster family worker, emergency foster family parents, and local board members understand the traumatic effects of separation and to provide suggested techniques for minimizing these effects.

## **Psychological Tasks a Child is Faced with During Separation and Placement**

- The child must master those feelings which are caused by being separated from his or her parents.
- In addition, the child has to master those feelings created by being placed with new parents.
- The child must also deal with subsequent separations from these new parents.
- Finally, the child has to deal with the problems of overcoming the threat of being close to new parents.

## **Meaning of Separation and Placement to the Child**

When a child is separated from biological parents, the child usually experience feelings of abandonment.

The child often feels as though they are totally responsible for being abandoned by their parents.

By a child blaming himself or herself for the parent abandonment usually helps the child deny the anger at their parents.

The child usually believes separation from their parents is due to some problem the child is having within the particular stage of development they are going through. For instance, a two year old child might believe being abandoned by his or her parents because they were not learning to be toilet trained as quickly as parents wished.

The separated child, as a result, tends to fear punishment for his or her misdeeds. The younger child may expect to be totally abandoned by his/her parents and then to die, while the older child may fear being physically attacked and mutilated.

## **Anxiety Symptoms**

Because children repress these feelings and fears to varying degrees, a number of anxiety symptoms may become evident. The emergency foster care worker and parents should be familiar with such anxiety symptoms as restlessness and hyperactivity, tenseness, vomiting, sleep disturbances, crying, eating and bowel upsets, thumb-sucking, bed-rocking, head-banging, and masturbation. Varying degrees of resentment, withdrawal, depression, and despair may also be evident.

## **How the Child Attempts to Overcome the Feelings Caused by Separation and Placement**

Children often try to cope with new situations in the same way they handled similar problems in the past.

When some children anticipate being treated painfully, they try to overcome their fear by being the one to do the hurting.

Some children will actively cause the thing they fear the most in an effort to overcome their fear about what they expect their new parents to do to them.

Some children will reproduce situations in which anger toward their parents first occurred so as to punish themselves and relieve their guilt feelings.

Children will often manipulate the feelings of their new parents in order to make them angry. This will effectively create distance between the child and his/her new parents and prevent emotional closeness.

Only when a child lets him or herself become aware of his or her anxieties is she/he able to test them against his/her present situation. She/he then can be reassured that she/he will not be rejected or punished by his or her new parents.

### **Traumatic After-effects of Separation**

The age of the child at separation and the amount of anxieties she/he represses influence the degree to which she/he will be permanently affected from separation and placement. The child under age six seems to be most vulnerable to scarring. There are seven types of personality scars which could result from repression of anxieties over separation and placement.

- The child might continue to expect all future relationships to result in abandonment and rejection.
- The child might expect all future separation experiences to occur in a similar way to what happened when she/he was separated from his/her own parents.
- Future situations where separation might occur could arouse anxiety and cause the child to use his/her old patterns of mastering anxiety.
- The child might fear being emotionally close to others.
- The child might also have an unconscious need to be rejected.
- The child may have a future tendency to reproduce himself or herself in their own children and do to them what has been done to him/her.
- Repression of separation anxieties will prevent the child from functioning at his/her full physical, intellectual, and emotional capacities.

### **Conclusion**

Children form attachments to parenting figures as a result of the early interplay of adult and child during the daily routine of caretaking and play. These attachments are essential to the child's development of identity, the ability to learn and explore, and the development of future emotional attachments. Separation of a child from his/her "psychological parent" leads to a feeling of loss and grief. The child's sense of time, which is based on needs—no clocks—makes this period of separation crucial and frequently damaging to the attachment process.

*Any separation can lead to a lessening in the child's ability to form future attachments, and several separations can permanently restrict a child's ability to develop close personal relationships.*

The symptoms of the reactions to separations are unique to each person, but follow the five stages of grief which are:

1. denial and isolation,
2. anger,
3. bargaining,
4. depression, and
5. acceptance.

Sleeping and eating disturbances are frequent symptoms of separation anxiety as well as a wide range of behaviors related to denial and anger.

Finally, work with families separated by placement should focus on honest, open communication with all parties about the reasons for placement and plans and time frames for reunification. Maintenance of the parent-child attachment through frequent visits is strongly encouraged with follow-up casework services to biological and foster families as well as to children about the effects of separation and grief on all parties.

### **Implications for Local board Members**

As advocates for children, it is very important that you are aware of the trauma the child suffers when she/he is moved. As Local board members, your responsibility is "the best interest of the child." Having this information will help you to **stress** and **support** your recommendations. This section also emphasizes appropriate placements which are very important if the agency is to avoid any future moves of the child, thus **avoiding** the further trauma of separation and loss.

The many of the findings are the same for both early reviews and regular reviews. The major difference is that instead of focusing the boards attention on the permanency plan for the child, the board focuses on whether reasonable efforts have been made to prevent the removal of the child and since the child has been removed, if reasonable efforts have been made to reunite the child with his or her parents, to provide the child with a permanent placement or an appropriate plan for permanency.

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# **Appendix A**

## **Reviewing the Permanency Plan**

### **“Local Board Findings”**

**Nebraska State Foster Care Review Office**  
**Reviewing the Permanency Plan**  
**For Cases Involving a 3a petition or a Voluntary Foster Care Placement**

**“Findings”**

The Foster Care Review Office conducts reviews in order to assure that children in out-of-home care have their needs met while in OOH care and reach a timely, appropriate permanency. The FCRO also works to provide system oversight. Statistics gathered from reviews, such as the findings described in this document assist in providing that oversight.

Each of the findings local boards make is based on federal requirements, state mandates, and/or child’s best interests. **Neb. Rev. Stat. 43-1308(b) requires that rationale be provided for each finding in the report to the court and legal parties.** A clarification of each finding in reference to the SDM<sup>2</sup> Case Plan follows. Findings should be made for each individual child being reviewed, therefore throughout this document we refer to “child” rather than “children”.

It is essential that plans are reviewed across the agency in a consistent and uniform manner and issues and recommendations communicated in the most efficient manner possible. Recommendations must be submitted within the timeframe established by individual courts. Court requirements differ, most allowing submissions no later than a minimum of 5 days prior to the hearing.

The work of the staff and local boards is valuable. Here is just one quote:

“Importantly, §43-285(6) provides that the only prerequisite for the admission in evidence of the [FCRO’s] Board’s written findings and recommendations is that they have been provided to all other parties of record. The Foster Care Review Act and the Board [agency] would be empty vessels indeed if the Board’s [agency’s] recommendations were not considered by the court. Thus, we do not take the Board’s [agency’s] emphatic stand against the DSS [now DHHS] plan to be a meaningless gesture.”

*In Re Interests of John T., Court of Appeals, (1995).*

**Your work makes a difference for every child you review**  
**now and into the future!**

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<sup>2</sup> Structured Decision Making<sup>©</sup> is a specific tool being utilized by the Department of Health and Human Services.



## **Defining “Documentation”**

Throughout the findings there are references to “documentation.” The following should help define what is, and is not, included in that term.

Documentation may be in electronic or written form. There are three major classifications of documentation.

1. Legal Documents.
  - a. Legal documents used as a basis for the rationale for a finding may include Birth Certificates, Court Orders, notarized statements, etc.
2. Reports that are signed and dated.
  - a. Some examples include evaluations, assessments, case plans/court reports, emails from legal parties, and completed questionnaires.
3. Narratives, notes, and minutes.
  - a. Some examples could include caseworker narratives, family group conference minutes, notes, etc.

**All types of documentation can be used, but they may be given different weight.**

Review specialists cite the sources for the documentation within the body of the FCRO’s recommendation reports. For example (caseworker narrative dated 10/1/2013). Review specialists should specify who it was that provided narrative, rather than use the generic N-FOCUS narrative dated 10/1/2013. Narratives can be from case workers, lead agency workers, family support workers, etc., and different weight may be given each. For example, a family support worker may be reporting on what they directly observed during a visitation.

There may be times within a recommendation that conflicting documentation will need to be cited and clarification requested.

### **Safety considerations:**

Review specialists should immediately consult with their supervisor any time there is a finding regarding a child being unsafe – whether that is due to issues in the placement, issues with visitation, efforts not being made to protect the child, service issues, etc.

## **The findings are divided as follows:**

### **Preventing removals**

- 11 Reasonable efforts to prevent removal

### **Child's current placement**

- 21 Safety and appropriateness of placement

### **Services to achieve permanency**

- 31 Services offered to Mother
- 32 Compliance with services - mother
- 34 Services offered to Father
- 35 Compliance with services - father
- 37 Services for Child

### **DHHS Plan**

- 41 DHHS plan completeness
- 42 Whether DHHS evaluated safety in its plan

### **Court ordered primary permanency plan**

- 51 Appropriateness of the primary objective
- 52 DHHS making reasonable efforts to primary plan
- 53 Progress to primary objective
- 54 Completeness of the plan ordered by the court

### **Court ordered concurrent plan**

- 61 Appropriateness of the concurrent objective
- 62 DHHS making reasonable efforts to concurrent plan
- 63 Progress to concurrent objective

### **Visitation**

- 71 Visitation with Mother
- 72 Visitation with Father
- 73 Sibling visits

### **Continued need for out-of-home care**

- 81 Continued need for out-of-home care

### **Required findings on TPR and alternative permanency**

- 91 Alternative permanency if return home is not possible
- 92 Do grounds for TPR appear to exist

## Preventing Removals Section

### Finding “11” - Reasonable Efforts to Prevent Child's Removal from the Home

#### General considerations:

- **AS WITH EVERY FINDING, BRIEF RATIONALE MUST BE PROVIDED.**
- There are two findings regarding reasonable efforts which are federally mandated: Reasonable efforts to prevent the child’s removal (Finding “11”) and reasonable efforts to achieve permanency (Finding “52”).
- This finding deals only with the reasonable efforts requirement to “prevent the child’s removal”.
- It is based on the **most recent time** the child entered out-of-home care.
- This involves a review of previous intakes, whether substantiated or not.
- There are financial implications for DHHS if the judge finds DHHS did not make reasonable efforts to prevent removal in his or her orders, so before we make this finding (recommendation) there must be supporting evidence and the rationale needs to be very clear.
- We are to be independent reviewers of each child’s case so we do not have to agree with the Judge’s findings. However, we certainly need to take into consideration the judge’s findings and explain why if we disagree.
- Considerations:
  - *If there have been multiple intakes and no services were provided, was that reasonable?*
  - *If there were multiple intakes, were appropriate services provided?*
  - *Was the response proportionate to the severity level of the allegations?*
  - *Were joint-custodial or non-custodial parents considered as a placement?*
  - If a child has been in care before and services were offered previously yet the child re-entered care, those previous services could, in some circumstances, be considered as reasonable efforts to prevent removal.
  - Prior services would not necessarily need to be for the same issue.
- Source documents could include SDM assessments, narratives on N-FOCUS, materials in the paper files, and reviews of previous intakes.
- This finding should be made whether the case involves court or not.

#### **11-1 DHHS made reasonable efforts to prevent the child's removal from the home or could not have prevented the removal due to exigent circumstances.**

- If there is documentation of services offered to the family prior to the child's current removal, the board needs to decide if the services were enough to constitute reasonable efforts.

- In some cases there have been years and years of services to the family prior to the removal (more than reasonable).
- In other cases there has been nothing offered for a dirty house and the child removed (no reasonable efforts).
- If the child is under court-ordered joint custody, there should be information available about consideration of the other parent as a placement.
- Cases where DHHS could not have prevented the removal could include:
  - Exigent circumstances, in other words circumstances requiring immediate action, circumstances that are urgent, or pressing circumstances. For example:
    - An assessment of situation following the removal of the child and a determination that the removal was necessary for the child's safety.
  - Cases where DHHS was not aware of the family situation prior to the circumstances requiring a removal for the child's safety.
- If there had been multiple intakes to CPS regarding the family over the course of time before action was taken to protect the child, the board should consider if reasonable efforts were really made to prevent removal, and should not automatically put every "emergency" situation under this finding, i.e., law enforcement removal of child. It is still important to look at the reasons for law enforcement removal and look at reasonable efforts to prevent removal.

**11-2 DHHS did not make reasonable efforts to prevent the child's removal from the home.**

- This is used if there is documentation or verbal update from the caseworker that services were not offered to the family prior to removal, but could have been.
  - Verbal updates need to be noted if they form part of the basis for a finding, and they may be weighted differently from other documentation if appropriate.
- There are financial implications for DHHS if the judge makes this finding in his or her orders, so there must be supporting evidence and the rationale needs to be very clear.

**11-3 The Court found that DHHS was not required to make reasonable efforts to prevent removal due to aggravated circumstances.**

- Aggravated circumstances include, but are not limited to: abandonment; torture; chronic abuse; sexual abuse; murder or manslaughter of another child; aiding or abetting in the murder or voluntary manslaughter of another child; or, committing a felony assault that resulted in serious bodily injury to another child of the parent. **This must be documented through a Court order.**
- If the board is requesting that the court file a termination under aggravating circumstances, then use the "11-1" finding until the Court has

ruled on whether it has sufficient grounds to find aggravated circumstances.

**11-4 There is insufficient documentation to determine what efforts DHHS made to prevent the child's removal from the home.**

- There is no documentation or verbal information that any services were offered to prevent a removal that WAS NOT for an emergency situation. **The Review Specialist should attempt to locate this documentation prior to the Board meeting. Otherwise it would become one of the Board's recommendations.** The board should ask for specific documentation.

## **Safety & Appropriateness of Current Placement Section**

<b>Finding “21” - Appropriateness and safety of current placement</b>
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**General considerations:**

- Safety and appropriateness are assessed separately, however, are put together in this finding to mirror the language in Neb. Rev. Stat. 43-1308(b).
- Documentation to be considered includes home studies, placement reports, reports of GALs and caseworkers who have visited the homes, etc.
- The Legislature specifically mandated that you, as local board members, address safety and appropriateness in reviews to help ensure the child receives adequate care.
- As with every finding, rationale must be provided.

**Considerations regarding Safety of Placement:**

- **Do not assume** a placement is safe in the absence of an updated home study and appropriate written documentation regarding the child's progress in the placement.
- Licensed and/or agency homes are **required to provide written reports to DHHS on a monthly basis**. Judgment should be used if one or two such reports are missing.
- Relatives and kinship homes also should be reporting.
- This can be a place to comment on in-placement visits that are, or are not, occurring.
- Home studies for licensed foster homes need to be current within two years. If there is a temporary extension the recommendation should state that the extension was granted without an update.
- All foster placements, including relative placements, are required to have a home study completed on them. If documentation of the home study is not available for review, it needs to be requested by the review specialist.
  - A child can be placed in a relative or “kinship” placement (with someone known by the child prior to placement) as long as CPS/background checks have been completed and a walk-through of the home has occurred.

However, a formal home study then needs to be completed within 30 days of placement of the child in the home.

- Kinship placements (formerly called child-specific) were reinstated with legislation passed in 2013.
- The board needs to consider:
  - *Is there a current home study?*
  - *Are the foster parents licensed?*
  - *How many biological, adopted, and foster children are in the home? What are their ages and needs?*
  - *Is the home physically safe?*
  - *If with a relative or kin, does that person have the willingness and ability to provide a safe, stable, and nurturing environment for the child?*
- For a child living in a group home, there may not be written documentation regarding safety practices available. **Therefore, Review Specialist should look up in N-FOCUS to inquire as to whether there are intakes regarding the child, intakes regarding the home, sanitary, or supervision issues that could impact safety.** Placement considerations can include:
  - *How many staff are on duty?*
  - *Do they have awake overnight staff?*
  - *Do they use restraints? If so, what type training regarding the use of restraints has their staff received?*
- Regardless of the type of placement, when determining whether a placement is safe, the board should consider:
  - *What is the mix of children in the placement?*
  - *What are the individual needs of the children in the placement?*
  - *Is there a need for safety plan for that particular child?*
    - For example, a youth with perpetration issues should have a safety plan that includes additional monitoring of that youth to ensure the placement can be considered safe for other children.

#### **Considerations regarding Appropriateness of Placement:**

- If there is an absence of information regarding the placement, it is essential that the board **does not assume** it is appropriate.
- Information used in making this finding can include a homestudy, reports of care and well-being in the home, etc. Judgment should be used when weighing the types of information available.
- A placement can be safe, but not appropriate to meet an individual child's needs for a variety of reasons.
- After commenting on the appropriateness of the current placement, comments can be made regarding custody issues and relative searches.

- The question "*Is this placement the least restrictive placement for this child?*" needs to be considered.
  - For example, if a child were placed in a group home on the sole basis that there was not an appropriate foster home available, the finding on inappropriate placement would be utilized. It would be appropriate to state that the board does not find this placement is the least restrictive placement for the child.
- Another question that needs the board's attention is "*Is this particular home appropriate for THIS particular child?*"
  - An example of this would be a case where the foster home is licensed, it is well known, the homestudy states the home is best suited for children under five, however the current case being reviewed shows a 17 year old placed there.
  - Or consider the case of a 16-year-old sexual perpetrator placed in a licensed foster home with younger children.
  - The placement may not be the appropriate one for that particular child, but utilized because it is the only home where a bed is available in that area, or at that time.
- If the review is on a child in a kinship home that has been approved, but the homestudy is pending, then the board will need to determine if it has enough other information on which to make the finding.

**21-1 The child's current placement appears appropriate and safe.**

- If there is an absence of information regarding the placement, it is essential that the board **does not assume** it is appropriate.

**21-2 The child's current placement appears unsafe and therefore inappropriate.**

- The board notes that a specific safety issue exists and is recommending the **immediate** removal of the child from the home unless a specific plan can be developed to keep the child safe. Specific rationale must be provided when making this finding.
- If the finding is made that the placement is unsafe, the Review Specialist should contact their supervisor and/or an FCRO Administrator immediately.

**21-3 The appropriateness and/or safety of the child's current placement could not be determined due to [a lack of documentation, homestudy, safety plan, or a change in placement that occurred since the file review, etc.].**

- Specify what was lacking.
- Homes that accept youth with developmental disabilities (Enhanced Family Homes/Host Families) rarely are licensed and there may not be home studies. If a homestudy is not located, this needs to be requested.
- The following language has been helpful to some boards.
  - "There was a lack of information/ documentation regarding the foster home in the case record. This is not a negative reflection on

the care provided by the foster parents at this time, rather an indication of a lack of information.”

- “The board recommends that a home study of the foster placement and clarification if the foster home is licensed or approved be provided in the case record. Additionally, it is recommended that documentation about the child's progress in the placement be placed in the case record.”

**21-4 The current placement appears safe, but is inappropriate due to [foster parents wanting only younger children, being more restrictive than necessary, the plan is adoption and the foster parents are not willing to adopt, etc.].**

- Rationale should be provided for making that specific finding.
- Examples:
  - Placement of a child in a residential treatment center may be safe but inappropriate if the child should be in a less restrictive environment.
  - If a child were placed in a group home on the sole basis that there is a lack of foster homes available, that placement would be inappropriate.
  - Long-term shelter or DCYC placements are also not appropriate for a child, especially if they are not receiving appropriate services while in that placement.
  - The plan is adoption or guardianship, but the child is not in a home willing to adopt or assume guardianship.
- Clarify if the reason for the lack of alternative placement is due to the lack of availability or the lack of Magellan approval for level of care.

**21-5 The appropriateness and/or safety of the child’s current placement is unknown because the child is a runaway. [efforts to locate]**

- If the board makes this finding, the efforts or lack of efforts being made to locate the child should be summarized. It is DHHS policy that caseworkers/FPS are to immediately contact law enforcement when notified that a child is on run, and that they follow up with law enforcement on a monthly basis. These contacts are to be documented in the case narrative.
- Runaway status should also be in the top concerns.

## Important Timeline

The following is a partial timeline of activities in a child’s case and how we measure activities required at certain points.

### **Activity**

If the case is pre-disposition or voluntary, DHHS is required to develop a plan within 60 days.

For cases at or after disposition, DHHS is required to submit a plan to the court prior to a disposition hearing, a dispositional review hearing, or a permanency hearing.

The plan must contain certain things under federal and state law.

The court creates its order at a dispositional hearing, dispositional review hearing, or permanency hearing. They can modify the plan that DHHS submitted in whole or in part. Regardless of what DHHS submits to the court, the court order needs to be complete.

After the court hearing and until the next such hearing DHHS must comply with the court order. This is part of their requirement to make reasonable efforts towards permanency.

The Court ordered plan goal needs to be appropriate.

Between court hearings, DHHS needs to provide ordered services.

Between court hearings, DHHS needs to comply with any ordered visitation and ensure sibling contacts (if appropriate) are maintained.

### **Measured in Finding(s)**

Finding 41 measures whether the plan DHHS developed by DHHS contains the minimal elements required by state and federal law.

We make findings on the whether we agree with the plan under finding 51.

For cases after disposition, we comment on the completeness of what the court ordered under finding 54.

Finding 54 measures whether the court-ordered plan was complete [not whether we agreed with that plan].

Finding 52 measures DHHS reasonable efforts to permanency.

Finding 42 measures whether DHHS is ensuring the child’s safety.

Finding 51 measures the primary permanency objective, and Finding 61 measures the concurrent permanency plan goal.

Findings 31, 32, 34, 35, and 37 are on services.

Findings 71, 72, 73, are on visitation.

Before the next court hearing, DHHS needs to prepare an updated or modified plan that they will then submit at the next court hearing.

Since the court hearing for this plan has yet to take place, this will not be measured until our next review. The proposed plan can be commented on as appropriate in the recs.

## Services to Achieve Permanency Section

<p style="text-align: center;"><b>Finding “31” &amp; “34”</b> <b>Services court ordered for the Mother and the Father</b></p>
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### General considerations:

- The purpose of the service findings are to indicate if needed and ordered services are being effectively offered.
- Services could be offered but refused or not utilized by the mother or father. With this finding we are not measuring compliance, rather the availability of needed court-ordered services. Compliance findings are separate to provide better statistics.
- Rather than repeating the explanation for each, code 31 is for mother, code 34 is for father.
- There is a difference between a legal father and a biological father. For example, the legal father could be an adoptive father, or paternity may not have been legally established yet.
  - If there is not a legal father, this finding would be made regarding services for a purported father.
  - Efforts to establish legal paternity need to be a focus and for abuse, neglect, or abandonment cases a top concern.
- If the alleged parent or a non-custodial parent is not included in the case plan, this finding can be used as a means to request that the alleged or non-custodial parent also be addressed.
- If there are multiple fathers involved, indicate father of \_\_\_, for each.
- Some board considerations:
  - *If a particular service has been court-ordered, is it occurring?*
  - *Are there services that are not court-ordered, but needed?*
  - *Are the services being offered in a way that takes into account language or cognition barriers, if any?*
  - *Are the services available in a realistic proximity to the parent or child?*
  - *Are there professional recommendations for certain services that are not being followed?*
  - *Are the services for the child being offered in a way that is age appropriate?*

**31/34-1**      **All court-ordered services regarding the mother/father are being offered.**

- If all services Court ordered or needed in order to achieve permanency are being offered, the board would choose this finding.

- 31/34-2      **Some court-ordered services regarding the mother/father are being offered.**
- The board would make this finding if only some of the needed services are being offered. The board should specifically note what is lacking and recommendations should be made for the facilitation of those services
- 31/34-3      **Court-ordered services regarding the mother/father are not being offered.**
- 31/34-4      **Court-ordered services regarding the mother/father do not apply due to [parental rights are not intact, parent deceased, parent unidentified, etc.].**
- Examples include:
    - parent location is unknown,
    - paternity is not established,
    - parental rights are not intact,
    - parent not identified,
    - parent is deceased,
    - there is a court order stating that reasonable efforts towards permanency are no longer required,
    - the child’s adjudication status such as the child is in a 3b or 1 case and has not been ordered to services, and/or
    - the permanency objective no longer requires parental participation.
- 31/34-5      **There is a lack of [documentation/information] on which to base a finding regarding the offering of court-ordered services for the mother/father.**
- Specify what is missing. For example, due to “a lack of documentation regarding whether therapy has been offered.”
- 31/34-6      **Court ordered services to the mother do not apply due to [the case is a voluntary non-court case, disposition has not occurred, etc.]**
- Specify if any services are in place or are needed.

**Finding “32” & “35” Parental compliance with court-ordered services**

**General considerations:**

- The question here is whether the parent is making use of the services offered to address permanency.
- Rather than repeating the explanation for each, code 32 is for mother, code 35 is for father.
- If there are multiple fathers involved, indicate father of \_\_\_\_, for each.

- Compliance is not the same as completion. For example, a parent could be compliant with mental health treatment that may be ongoing in nature or be compliant with substance abuse treatment expected to last several more months.
- **Please note that we do not have compliance findings for the child.** This was a purposeful decision – **it is far too easy for the system to blame the child for their behaviors rather than address the factors that led to behavioral issues.** For example, if the system has moved a child 30 times, we need to consider if the system itself created many of the child’s behaviors.
- Parents who are in prison/jail should be included in the child’s plan. The plan can order such services as are available in the prison/jail and also order services for the parent upon their release from the institution. They need to be held accountable. It can also delay permanency if only after their release parents are ordered to services and given time to rehabilitate their parenting.

**32/35-1 The mother/father is compliant with all court-ordered services.**

- If the parent is substantially complying with all services Court ordered in order to achieve permanency the board would choose this finding.

**32/35-2 The mother/father is compliant with some court-ordered services but not with [service a, b, c, etc.]**

- If the parent is not substantially complying with every court-ordered service, use this finding. Be sure to indicate which service(s) are not being utilized by the parent.

**32/35-3 The mother/father is not compliant with court-ordered services.**

- If the parent is refusing every service court-ordered service, use this finding.

**32/35-4 The mother’s/father’s compliance with court-ordered services is not applicable due to [parental rights are not intact, court order not requiring reasonable efforts to reunify, parent has not been identified, parent deceased, a change of permanency objective, etc.].**

**32/35-5 There is a lack of [documentation/information] on which to base a finding regarding compliance with court-ordered services.**

- Indicate what was missing. For example, there is a lack of therapy notes, there is a lack of documentation regarding substance abuse treatment, etc.

**32/35-6 There are no court-ordered services due to [disposition has not occurred]. [You may comment on voluntary services, if any, here]**

<b>Finding “37”</b>	<b>Services court ordered for the Child</b>
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**General considerations:**

- We do not have compliance findings for the child. This was a purposeful decision – it is far too easy for the system to blame the child for their behaviors rather than address the factors that led to behavioral issues. For example, if the system has moved a child 30 times, has the system itself created many of the child’s behaviors.
- Use separate findings for each child if necessary. Be sure to indicate which finding corresponds to which child.
- Some board considerations:
  - *If a particular service has been court-ordered, is it occurring?*
  - *Are there services that are not court-ordered, but needed?*
  - *Are the services being offered in a way that takes into account language or cognition barriers, if any?*
  - *Are the services available in a realistic proximity to the child?*
  - *Are there professional recommendations for certain services that are not being followed?*
  - *Are the services for the child being offered in a way that is age appropriate?*

**37-1 All court-ordered services regarding the child are being offered.**

- If all services court ordered are being offered, the board would choose this finding.

**37-2 Some court-ordered services regarding the child are being offered.**

- The board would make this finding if only some of the services are being offered. The board should specifically note what is lacking and recommendations should be made for the facilitation of those services

**37-3 Court-ordered services regarding the child are not being offered.**

**37-4 Court-ordered services regarding the do not apply due to [the child being on runaway and their location being unknown].**

**37-5 There is a lack of [documentation/information] on which to base a finding regarding the offering of court-ordered services for the child.**

- Specify what is missing. For example, “a lack of documentation regarding whether therapy has been offered.”

**37-6 Court-ordered services do not apply as this is a voluntary non-court case.**

- Specify if any voluntary services are in place or are needed.

## DHHS Plan Section

### Finding “41” –Case plan that DHHS submitted to the Court

#### General considerations:

- DHHS must submit a plan to the court in court-involved cases at the disposition, dispositional reviews, and permanency hearings. If the case is pre-disposition or voluntary, DHHS is required to develop a plan within 60 days of removal. There are requirements for minimal elements to be present, which is what we are measuring here. Minimal elements include a permanency objective, and a description of timeframes, services, and who is responsible for which task.
- Although DHHS normally uses a particular format for their plan, there is no requirement that they do so.
- This finding measures the completeness of what DHHS has prepared. It does not measure whether the court adopted that plan or whether we agree with the plan. Those elements are measured elsewhere.
- In the narrative for this finding it should note which plan is being measured, by date.
- Neb. Rev. Stat. §43-285 requires the Nebraska Department of Health and Human Services to prepare and file with the court a proposed plan for the care, placement, services and permanency which are to be provided to the juvenile and his or her family. DHHS is required to complete a Safety Assessment. This is utilized as the case plan for the first 60 days. A case plan must then be written.
- For youth who are 16 and older, their plans must contain specific goals and objective for gaining independent living skills training. A statement in the plan that says, “independent living skills included” is insufficient to meet this requirement.

#### **41-1 DHHS prepared a complete plan with services, timeframes, and tasks. [give date of plan]**

- If a case plan has a permanency objective, updated target dates, timeframes, tasks and services listed in it, and independent living section for age 16 and older, it is a complete plan.
- Remember to commend the case manager where appropriate.

#### **41-2 DHHS prepared an incomplete plan as it lacked [services, timeframes, tasks]. [give date of plan]**

- If a case plan was missing one or more of the required elements (permanency objective, target date, timeframes, tasks or services), it is an incomplete plan.
- Document what was missing from the plan.

#### **41-3 There is a written DHHS plan but it is more than 6 months old so it needs to be updated.**

**41-4 DHHS did not prepare a plan.**

**Finding “42” – Has DHHS Evaluated the Safety of the Child and has DHHS Taken the Necessary Measures in its Plan to Protect the Child?**

**General considerations:**

- This finding is made based on the **PLAN** submitted by DHHS to the courts. That plan may not match what the court subsequently ordered.
- All placement issues go under the “21” Finding.
- In assessing the safety “in the DHHS plan,” evaluate the services outlined in the DHHS plan to determine if they are all in place, and if in place, would the child be safe.
- The board should assess the current, as well as the future, safety of the child by asking the following questions:
  - *Is there domestic violence in the home?*
  - *What is the support system in the home, is the family isolated from support, is there someone the child can go to in an emergency?*
  - *What is the age and ability of the child to remove himself/herself from the situation? Are there diminished physical, developmental, or cognitive factors that need to be considered?*
  - *Is there an escape plan?*
  - *Is there cyclical mental illness present?*
  - *Are drug and alcohol issues present?*
  - *Does the parent have the ability to demonstrate empathy toward the child; can they put themselves in the child’s place?*
  - *Are the children supervised before/after school?*
  - *Who else is in the home?*
  - *What is the past behavior of the parents?*
  - *Does the safety plan align with information on the SDM assessments?*
  - *Are there adequate safeguards during visitation?*
- The board should base this finding on the documented efforts that have been made to ensure the safety of the child.
- **Do not assume that the safety of the child has been evaluated without documentation to support the evaluation.**

**42-1 DHHS evaluated the safety of the child and took necessary measures in the plan to protect the child.**

- Do not assume that the safety of the child has been evaluated without documentation to support the evaluation.

**42-2 DHHS has not evaluated the safety of the child and taken the necessary measures in the plan to protect the child. The following needs to occur [domestic violence needs to be addressed, a support system needs to be put in place, there needs to be an escape plan, there needs to be before and after school supervision specified, there needs to be adequate safeguards during visitation, etc.].**

- Specify what more is needed.

**42-3 It cannot be determined if DHHS evaluated safety and took necessary measures in the plan due to [a lack of documentation, lack of a plan, lack of efforts to find a runaway, etc.].**

- Some examples of when to use this include:
  - if the documentation is missing or not made available for review,
  - if the child has been on runaway status since the last case plan to the court and that plan does not outline means being utilized to determine the child's location.
- When using this finding, state what conditions exist that makes it difficult for the board to make this finding.
- If it cannot be ascertained that the safety of the child has been evaluated, this needs to be in the top concerns.

## Court Ordered Primary Objective Section

### Finding 51 – Appropriateness of Court Ordered Primary Objective

#### General considerations:

- **DHHS must submit a plan to the court in court-involved cases.** The court can accept, reject, or modify the plan. **This finding is about the plan ordered by the Court.**
- Plans ordered by the court supersede plans introduced by DHHS but not ordered by the court.
- Nebr. Supreme Court in Re Interest JDM 230 NE 273, (1988) may be used. This is a case where the mother and father were both found guilty and sentenced to the Penitentiary for abuse of a 5 week old baby. Subsequent to this, the mother became pregnant again. The Court terminated rights on both children, even though there was no abuse to the second child. The Court found that “Even though the father has had no unsupervised contact with the child, it is not necessary that the Court await the time the child shows permanent scars of the father’s anger and impulsivity before acting to terminate the relationship.”
- Findings will be based on the most recent **court ordered** plan available/provided at the time of review.
- The findings must correlate with the plan listed on the front page of the recommendations.

#### **51-1 The court ordered primary permanency objective is appropriate.**

- This finding does not always mean that the board thinks that the child should return home immediately. The following language could be used in that situation:
  - “The board agrees with the permanency objective of reunification, but finds that to return the child home at this time would not be in the child's best interests due to...”
  - “While the board finds the parents should be given an opportunity to rehabilitate, returning the child home at this point would place the child at risk.”

#### **51-2 The court ordered primary permanency objective is not appropriate due to [being outdated, recent changes in circumstances, the parents having now relinquished, a court order terminating parent rights being finalized, etc.]**

- Specific reasons based on written documentation must be given. Then an alternate permanency objective for the family/child should be recommended.

#### **51-3 There cannot be a finding on the appropriateness of the court ordered primary permanency objective because the case has not been adjudicated.**

- 51-4 It cannot be determined whether the court ordered primary permanency objective is appropriate due to [recent changes in circumstances, waiting for an evaluation or assessment, etc.]**
- Ask that whatever is unclear be clarified. For example, need more documentation about a specific topic, or it cannot be determined because the parents need more time to work on the conditions that led to removal.
- 51-5 The court does not contain a permanency objective.**
- 51-6 There cannot be a finding on the appropriateness of the court ordered primary permanency objective because this is a voluntary non-court case.**

<b>Finding “52” - Reasonable Efforts to Achieve Primary Permanency Goal</b>
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**General considerations:**

- **This finding addresses services ordered by the court and provided by DHHS in order to facilitate the primary permanency objective** - whether it is reunification, guardianship, adoption or independent living.
  - DHHS needs to make efforts toward whatever permanency goal the court has adopted. In other words, state whether or not DHHS is doing its job to ensure that services are provided and barriers to receiving these services are removed. This is true whether or not DHHS contracts with a lead agency for services. (Concurrent planning is discussed with findings 61, 62, and 63)
  - The board needs to determine that services are being offered in a timely manner in order to facilitate the permanency objective and correct the reason that the child being reviewed entered out of home care.
  - Parent/child compliance is not what is being measured here. That is measured under 43 Finding.
  - Case situation:
    - If the child entered out-of-home care due to failure to thrive, yet no services are being offered to the parent to address the failure to thrive, such as nutrition classes, are reasonable efforts being made to correct the situation?
    - If the permanency objective is Adoption and steps are not being taken to locate an adoptive placement, then reasonable efforts are not being made.
    - Sometimes the same "canned response" case plan is used for every case, regardless of the reason the child entered out-of-home care.
- 52-1 DHHS is making reasonable efforts towards the court ordered primary permanency objective.**
- This would be used if appropriate court-ordered services are being offered to the parents and the child, and those services are accessible and affordable.
- 52-2 DHHS is no longer working towards the court ordered primary permanency objective due to [the unexpected death of a parent, a recent change in**

circumstance, parent being deported, etc.] but is working toward the concurrent goal.

- An example of when this might be used is if in the period since the court order was made the parents relinquished rights and DHHS is now working toward the concurrent goal of adoption or guardianship.

**52-3 DHHS is not making reasonable efforts towards the court ordered primary permanency plan.**

- If there is information that services are not being provided to return the child home, yet the plan is reunification, this finding would be used. **Give the rationale.**
  - For example, there may be a case in which it needs to be cited that a professional has recommended that mother/father complete treatment X in order to address issue Y, which was one of the reasons that the child entered care; however, there is no documentation that the service has been sought.
  - Or services ordered by the court are not being provided to the parent and/or the child.

**52-4 It cannot be determined what efforts DHHS is making toward the court ordered primary permanency objective due to [a lack of documentation, recent case management changes, etc.].**

- Indicate what is unclear and ask for clarification.

**52-5 There cannot be a finding on DHHS efforts towards the court ordered primary permanency objective because this is a voluntary non-court case.**

**52-6 There cannot be a finding on DHHS efforts towards of the court ordered primary permanency objective because [the court order does not contain a primary permanency objective, disposition has not occurred, etc.]**

<p style="text-align: center;"><b>Finding “53” - Progress Toward the Court Ordered Primary Permanency Objective.</b></p>
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**General considerations:**

- This finding gives the board the opportunity to comment on the recent progress of the case during the previous six months, based on documentation.
- Consider the big picture. If there is progress on a majority of issues/services, then there is progress being made. Progress is forward momentum, not completion of everything needed for permanency to occur right now.
- Progress is more than just attending services and "jumping through the hoops".
- If there are two parents with different levels of progress, local boards will need to consider whether overall there is progress towards permanency.
- Examples of wording that may be considered:
  - “While there is documentation that the parents are attending (therapy, parenting classes, etc.) reports indicate that the parents continue to deny

abuse, minimize abuse, are not engaging in the program or services, etc. Therefore, the board finds no progress is being made towards reunification.”

- “Although the mother has attended visitation within the last 2 weeks, she has not attended any visitation in the 5 months prior.”
- Progress or lack thereof can also be reflective of other system barriers such as not transferring the case to the adoption worker, not filing for termination, no court reviews, not getting subsidy paperwork done etc.
- The aim here is to identify barriers to permanency and get them addressed.

**53-1 Progress is being made towards the court ordered primary permanency objective.**

- If the board finds that the family is making any progress towards the permanency objective, this finding would be used.
- It may be appropriate to state after the finding that parents are making progress but more time is needed to complete services.
- Also, if the plan is adoption or guardianship, consider what is being done to facilitate that goal.

**53-2 Some progress is being made towards the court ordered primary permanency objective.**

- Make sure that the recommendation includes what needs to occur to make more progress towards permanency.

**53-3 No progress is being made towards the court ordered primary permanency objective.**

- If the plan is reunification, there must be documentation of parental non-compliance **in the majority of services** and/or lack of progress towards the permanency objective.
- This would be an appropriate place to reiterate what needs to occur, such as “the mother has been ordered to attend AA, yet has not provided documentation that this is occurring. Further, the mother has missed several appointments for UA testing.”
- Or, a referral for an adoptive home study has not been made and the adoption paperwork has not been completed.
- If there is no progress, this needs to be reflected in top concerns, and the Review Specialist and their Supervisor will need to discuss how to effectively advocate for this child.

**53-4 It cannot be determined if progress is being made toward the court ordered primary permanency due to [lack of documentation, recent case management changes, etc.].**

- State what is needed for the board to be able to make a more definitive finding.
- This needs to be reflected in top recommendations (concerns) and the Review Specialist and their Supervisor need to discuss how to effectively advocate for this child.

- If it is due to the lack of documentation, be specific as to what documentation is required in order to make a finding.

**53-5 There cannot be a finding on progress towards the court ordered primary permanency objective because this is a voluntary non-court case.**

**53-6 There cannot be a finding on progress towards the court ordered primary permanency objective because [the court order does not contain a primary permanency objective, disposition has not occurred, etc.]**

## Finding “54” – Completeness of the Court Ordered Plan

### General considerations:

- DHHS is to assist the courts by creating a proposed plan for the child. However, this does not relieve the court of its duty to assure that the plan it court orders is complete.
- Per Neb. Rev. Stat. 43-1312, the plan for the child shall contain at least the following:
  - The purpose for which the child has been placed in foster care.
  - The estimated length of time necessary to achieve permanency.
  - A description of the services which are to be provided.
  - The person(s) directly responsible for the implementation of the plan.
  - A complete record of previous placements of the foster child.
  - The name of the school the child will attend.
- Per federal requirements, the case plan needs to address the services to be provided to the parents, child, and foster parents that will improve conditions in the parental home, facilitate the return of the child (if in the child’s best interests) and address the needs of the child while in foster care.
- If the youth is age 16 or older, there must be a description of the services and programs to help him or her transition to independent living.
- A plan needs to list the services, timeframes, and tasks so that all parties are clear as to expectations and to provide measures by which progress can be determined.

**54-1      The most recent court order contains a plan is complete with services, timeframes, and tasks specified.**

**54-2      The most recent court order contains a plan that is incomplete as it lacks [timeframes, tasks, services, independent living plan for a child age 16 or older, etc.].**

**54-3      There is no court order that contains a plan.**

**54-4      There cannot be a finding on whether the court order contains a complete plan due to [this case being a voluntary case, disposition has not occurred, etc.]**

## Court Ordered Concurrent Objective Section

### Finding 61 – Appropriateness of the Court-Ordered Concurrent Permanency Objective

#### General considerations:

- **DHHS must submit a plan to the court. This plan may, or may not, include a concurrent permanency objective. The court can accept, reject, or modify the plan.**
- **This finding is about the concurrent plan ordered by the Court.**
- The board can acknowledge that DHHS policy is to first pursue reunification and then comment on the appropriateness of that policy in relation to the particular case being reviewed.
- Findings will be based on the most recent court ordered concurrent plan available/provided at the time of review.
- The findings must correlate with the concurrent plan listed on the front page of the recommendations.
- In some areas judges never order concurrent plans. That does not mean that the board cannot make a finding that a concurrent plan would be appropriate.

#### **61-1 The court ordered concurrent permanency objective is appropriate.**

- This finding does not always mean that permanency should occur immediately.

#### **61-2 The court ordered concurrent permanency objective is not appropriate due to [no longer being required, being outdated, recent changes in circumstances, the parents having now relinquished, a court order terminating parent rights being finalized, etc.]**

- Specific reasons based on written documentation must be given. Then an alternate permanency objective for the family/child should be recommended.

#### **61-3 The court did not order a concurrent plan, however, the board recommends a concurrent plan of [insert] be ordered.**

- Specify what the board recommends as a concurrent plan and why.

#### **61-4 The court did not order a concurrent plan, and the board agrees that a concurrent plan is not necessary.**

#### **61-5 There is insufficient documentation to determine if the court ordered concurrent permanency objective is appropriate.**

- Ask that whatever is unclear be clarified. This needs to be a top concern.

#### **61-6 There cannot be a finding on the appropriateness of the court ordered concurrent permanency objective because this is a voluntary non-court case.**

**61-7 There cannot be a finding on the appropriateness of the court ordered concurrent permanency objective because disposition has not occurred.**

<p style="text-align: center;"><b>Finding “62” - Reasonable Efforts towards the Court Ordered Concurrent Objective</b></p>
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**General considerations:**

- This finding addresses services provided by **DHHS** in order to facilitate the court ordered concurrent permanency objective. In other words, state whether or not DHHS is doing its job to ensure that services are provided and barriers to receiving these services are removed. This is true whether or not DHHS contracts with a lead agency for services.
- The board needs to determine that services are being offered in a timely manner.
- Parent/child compliance is not what is being measured here.

**62-1 DHHS is making reasonable efforts towards the court ordered concurrent permanency objective.**

- This would be used if appropriate services are being offered to the parents and the child, and those services are accessible and affordable.

**62-2 DHHS is no longer working towards the court ordered concurrent permanency objective due to [the unexpected death of a parent, a recent change in circumstance, parent being deported, etc.].**

**62-3 DHHS is not making reasonable efforts towards the concurrent permanency plan.**

- If there is information that services are not being provided towards the concurrent goal this finding would be used. Give the rationale.
- This needs to appear in the recommendation as a barrier.

**62-4 No findings can be made on reasonable efforts towards the concurrent permanency objective as there is no court ordered concurrent plan.**

**62-5 There cannot be a finding on DHHS efforts towards the court ordered concurrent permanency objective because this is a voluntary non-court case.**

**62-6 There cannot be a finding on DHHS efforts towards the court ordered concurrent permanency objective because this disposition has not occurred.**

**62-7 It cannot be determined what efforts DHHS is making toward the court ordered concurrent permanency objective due to [a lack of documentation, recent case management changes, etc.].**

- Indicate what is unclear and ask for clarification.

## **Finding “63” - Progress Towards the Court ordered Concurrent Permanency Objective.**

### **General considerations:**

- This finding gives the board the opportunity to comment on the recent progress towards the court ordered concurrent plan during the previous six months, based on documentation.
- Progress can also be reflective of other system barriers such as not transferring the case to the adoption worker, not filing for termination, no court reviews, not getting subsidy paperwork done etc.
- The aim here is to identify barriers to permanency and get them addressed.

### **Information regarding individual findings:**

#### **63-1 Progress is being made towards the court ordered concurrent permanency objective.**

- If the board finds that progress is being made towards the concurrent objective, this finding would be used.

#### **63-2 Some progress is being made towards the court ordered concurrent permanency objective.**

#### **63-3 No progress is being made towards the court ordered concurrent permanency objective.**

- This would be an appropriate place to reiterate what needs to occur, such as family finding, completion of a service, or paperwork completion.
- If there is no progress, this needs to be reflected in top concerns, and the Review Specialist and their Supervisor will need to discuss how to effectively advocate for this child.

#### **63-4 There is a lack of documentation regarding whether progress is being made toward the court-ordered concurrent permanency objective.**

- State what is needed for the board to be able to make a more definitive finding.
- This needs to be reflected in top recommendations (concerns) and the Review Specialist and their Supervisor need to discuss how to effectively advocate for this child.

#### **63-5 No finding can be made regarding progress toward the concurrent permanency objective because there is no court ordered concurrent plan.**

#### **63-6 There cannot be a finding on progress towards the court ordered concurrent permanency objective because this is a voluntary non-court case.**

- 63-7 There cannot be a finding on progress towards the court ordered concurrent permanency objective because disposition has not occurred.

## Visitation/Parenting Time Section

### Findings 71 & 72- Parental Visitation/Parenting Time

#### General considerations:

- Finding 71 is for the mother and finding 72 is for the father.
- If there is no legal father, the finding for the father can be made on the purported father. Efforts to establish paternity need to be commented on.
- DHHS has a standard form for a written visitation plan (Parenting Time). Some DHHS offices utilize this form and some do not.
- It is important to document the frequency and length of visitation in the findings section to ascertain if it is adequate contact. Keep in mind the child's age, length of time in care, supervision status, and what the permanency plan is.
- If there is information regarding barriers to visitation (lack of visitation specialists, transportation issues) be sure to indicate and place in the top concerns for the case.
- A separate finding will be made for each parent involved in the case.
- Incarceration does not necessarily severe the rights to visitation with a child if the parental rights are intact.
- Never assume without documentation that a child is having supervised visits.

#### **71/72- 1 Visitation with (mother/father) is occurring as ordered**

- Determine if the Court has adopted the DHHS visitation plan, or ordered one of its own. DHHS does not have the authority to determine or place restrictions on parental visitation. Parental visitation rights are a matter for judicial determination per C.A. 235 Neb 893,457 NW 2d 822 (1990).
- This finding would be used if a visitation plan has been ordered and visitation is occurring as ordered by the Court.
- Some Courts order "reasonable supervised visitation" and leave it up to DHHS to determine the frequency and duration of contact. If the board does not find that the current visitation plan is in the child's best interest (too much or not enough contact, or safety issues), this should be described here and specific rationale given.
- This would include if the mother or father regularly attends visits or calls in advance to reschedule or if the parent only occasionally misses visits.

#### **71/72- 2 Visitation with (mother/father) is not occurring as ordered.**

- If visitation is not occurring as was ordered by the Court, this finding should be used.

- Be sure to clarify if the lack of visitation is due to parental non-compliance, referrals not completed by DHHS, or cancellation by the visitation worker.
- The board should note what is not occurring and who is the responsible party.
- This would include if the mother or father misses or cancels a substantial number of visits or results at the last minute.

**71/72- 3 There is no visitation with (mother/father) due to a no contact order.**

- In some cases of extreme abuse/neglect or sexual abuse, the Court may order no contact between the child and parent. At that point this finding would be used. The board should indicate if they support the no contact order and give its rationale.

**71/72- 4 There is a lack of [documentation/information] on which to base a finding regarding visitation with (mother/father).**

- If there is no documentation/information to indicate the frequency, duration, or outcomes of visitation between the parent and the child use this finding. The board should request that a formal visitation plan be developed and court ordered. The board may suggest an appropriate visitation plan. A written visitation plan should specify the frequency, length, and supervision of the visits.

**71/72- 5 Visitation with (mother/father) is not applicable due to [rights no longer intact, parent deceased, etc.].**

- Give the reason(s) that this is not applicable, such as parent is deceased, parental rights are no longer intact, paternity has not been established, etc.
- If the plan is not reunification, there may be times when visitation is still applicable. For example, there may still be visitation while waiting completion of a guardianship, or for youth with a plan of independent living. In those cases do not use this option.

**71/72- 6 The court has not addressed visitation with (mother/father).**

- Use this code if the case meets all of the following criteria:
  - The child is adjudicated 3a.
  - The court has not ordered visitation.
  - The court has not issued a no-contact order.
  - Parent rights are intact.
  - Maternity/paternity has been established.
- If the case meets the above criteria, give a recommendation of what, if any, visitation would be appropriate. Also, note if it does not appear to be in the child's best interest to have any type of visitation with the

parent. For example of the parent incarcerated for life and the child has never had a relationship with the parent.

**71/72 -7 Visitation is occurring by voluntary agreement.**

- Use this for voluntary cases.

**71/72 -8 Visitation is not occurring and the case is voluntary.**

- Use this for voluntary cases.

## Finding “73” - Sibling Visitation

### **General considerations:**

- Keep in mind that siblings could include half-siblings, stepsiblings, and others with whom the child has a significant or similar relationship (such as cousins raised together).
- This finding can be used for siblings in separate foster placements, or for siblings remaining in the home.
- If the plan is reunification, and siblings remain at home, it is important to keep the bond intact and document how the children interact.
- Do not assume that sibling visitation is occurring during parental visitation.
- It may be necessary in some cases to recommend sibling visitation be separate from parental visitation.
- Remember that the Court cannot order sibling contact if a sibling has achieved permanency through adoption/guardianship, or if the sibling is over the age of majority. However, efforts to keep sibling bonds intact with adult siblings can and should be made unless not in the child’s best interests.
- If a child’s behaviors are dangerous or disruptive to visitation, visits can occur in a therapeutic environment. Visits should not be discontinued without a court order.
- Some of the changes to these findings from previous versions were made to better facilitate statistical analysis.

**73-1** The child has no siblings, so efforts to facilitate sibling contact are not applicable.

**73-2** The child had no pre-existing relationship with a sibling so efforts to facilitate contact are not applicable. [because father reportedly has two children in Iowa but the child has never met them, child has older siblings who were placed for private adoption before this child was born].

- Some other examples could be:
  - Child has never met his/her half-siblings.
  - Child had no relationship with mother’s older children who live with mother’s aunt and uncle.

**73-3** Sibling contact is not occurring due to a court order prohibiting contact.

- Indicate if the board agrees or disagrees with this decision, and provide rationale.

**73-4** Siblings are placed together, which facilitates relationships.

**73-5** Regular contact is being facilitated with the siblings.

**73-6** Regular contact with siblings that is needed to maintain relationships is not being facilitated due to [visits not being arranged, phone contact not being arranged, issues with visitation supervision, etc.].

- Use this when efforts to allow contact are not being facilitated for other than the reasons above.
- This could be a place to comment if the child has adult siblings with whom contact needs to be facilitated.

**73-7 There is insufficient documentation to determine the status of sibling contacts.**

- Request that it be clarified.

**73-8 Attempts were made to facilitate visitation, however [siblings are not state wards and the parent refused contact, siblings are adults and chose not to have contact, siblings are adults and location is unknown, siblings have been adopted and adoptive parents refuse contact, etc.]**

**73-9 Contact is being maintained with some, but not all siblings. [explain]**

## Continued Need for Out-of-Home Care Section

### Finding “81” - Need for Out-of-Home Placement

**81-1 The board finds that there is a continued need for out of home placement.**

- This is for any case where there are barriers to permanency other than adoption or guardianship (see finding 91-3).
- This could include plans of reunification, independent living, etc.

**81-2 The board finds that there is no longer a need for out of home placement and the child should be returned to parent(s).**

This finding should be used if the board finds that the child no longer needs to be in foster care and could be safely returned home immediately. This needs to be a top concern.

**81-3 The board finds that there is no longer a need for out of home placement and the child’s adoption, guardianship, or other permanency should be finalized.**

- This finding should be used if the board finds that the child no longer needs to be in foster care.
- Barriers to the adoption, guardianship, etc. should be in the top concerns section.

## TPR and Alternative Permanency Section

### Finding “91” - Recommending an Alternate Permanency Plan

#### **General considerations:**

The Nebraska Foster Care Review Act (§43-1308) requires the board to recommend a specific alternate permanency plan, if the board finds that it is unlikely that the child will return home.

- Unless there is evidence that can be cited that return is not possible, in most cases it should be considered that a return to the parents is possible. For example,
  - If the parental rights are no longer intact, obviously the return of the child is not likely.
  - If a TPR hearing has been set, then the return to the parents may not be likely.
  - If the parents have made no progress in spite of multiple services over the course of a year or more, return may not be likely.
  - If the parent is working towards sobriety and it is early in the case, at this point in time return to the parents may be possible.

**91-1 Return of the child to the parents is likely or possible.**

- This finding should be made when documentation indicates that reunification is likely and appropriate.
- Some boards have found it helpful to use the following wording to expand this finding “should the parents continue to make significant progress toward their court ordered goals.”

**91-2 Return of the child to the parents is NOT likely and the board recommends referral for termination of parental rights and/or completion of adoption.**

- Use if the board finds that progress is not being made toward reunification and the child’s best interest would be met through alternative permanency.
- Use the wording “completion of” in cases where parental rights have already been severed (voluntarily or involuntarily).

**91-3 Return of the child to the parents is NOT likely and the board recommends referral for guardianship.**

- When considering guardianship it will be important to consider the age of the child, and the possibility of loss of eligibility for items such as the former ward program, social security dependent payments, and/or Medicaid eligibility.
- It is not necessary to terminate parental rights in order to achieve a guardianship.

**91-4 Return of the child to the parents is NOT likely and the board recommends placement with a relative in other than an adoption or guardianship.**

- This option is in the statute. This finding is used if recommending a long-term placement with a relative that does not involve an adoption or guardianship.

**91-5 Return of the child to the parents is NOT likely and the board recommends a planned, permanent living arrangement other than adoption, guardianship, or placement with a relative. [Describe. i.e. independent living or self-sufficiency]**

- his includes not only independent living, but can include self-sufficiency with supports for those youth who are lower functioning and who may not be appropriate for either guardianship or adoption.

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<b>Finding “92” - Grounds for Termination of Parental Rights</b>
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**General considerations:**

- **The Nebraska Foster Care Review Act (§43-1308) requires that board make a finding regarding whether grounds for termination of parental rights under section 43-292 appear to exist.** Boards should be specific to both biological parents when choosing findings relating to Termination of Parental Rights. *Reminder: There must be a legal basis for this finding.*

- Parental rights should not be involuntarily severed without good cause and due process. If the board recommends that TPR be pursued, it needs to clearly articulate on what basis this serious action should occur. Sometimes even though the case is not making progress toward reunification there is insufficient evidence for the County Attorney to successfully argue the case through the anticipated appeal of the court's decision. This can be frustrating for both local boards and FCRO staff.
- **Keep in mind that not only must one of the elements listed in 43-292 exist, but also termination of parental rights must be in the child's best interest.**

- The following are the grounds for termination as listed in statute, along with an explanation of how this applies to the findings:

**43-292[1] abandonment prior to filing petition**

The parents have intentionally abandoned the juvenile for six months or more immediately prior to the filing of the petition. To determine this, there must either be no contact for six months, or no **SUBSTANTIAL** contact. One visit, or even a few visits/phone calls are not enough to be considered substantial contact. Also, in the case of purported fathers, he must have had reason to know or believe the child existed and that he could be the parent.

**43-292[2] substantially and ...repeatedly neglected and refused to give the juvenile or a sibling...parental care and protection**

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.

**43-292[3] parents are financially able but willfully neglected to provide...**

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 was ordered by the court.

**43-292[4] parents unfit...debauchery...liquor..drugs..lewd and lascivious behavior...**

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

**43-292[5] parents unable...mental illness or mental deficiency...**

The parents are unable to discharge parental responsibilities because of mental illness or mental deficiency and there are reasonable grounds to find that such condition will continue for a prolonged indeterminate period.

**43-292[6] (3)(a) of §43-247...reasonable efforts...under section 43-283.01, ... have failed to correct...**

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.

The County Attorney must be able to prove that DHHS has provided reasonable efforts to reunify in the case in order to utilize this provision.

**43-292[7] ... in an out-of-home placement for fifteen or more months of the most recent twenty-two months**

The juvenile has been in an out-of-home placement for fifteen or more months of the most recent twenty-two months. Remember that best interests needs to be proven also.

If a child returns home for at least six months, the “clock” starts over and the fifteen months starts to be counted over again.

**43-292[8] parent has inflicted upon the juvenile, by other than accidental means, serious bodily injury**

The parent has inflicted upon the juvenile, by other than accidental means, serious bodily injury. The key here is “serious.” If the board is considering this reason, there needs to be a discussion of why the abuse is “serious.”

**43-292[9] ... aggravated circumstances, ..., abandonment, torture, chronic abuse, or sexual abuse**

The parent of the juvenile has been found by a court to have subjected the juvenile to aggravated circumstances, including, but not limited to, abandonment, torture, chronic abuse, or sexual abuse. See the appendix for more information about aggravated circumstances.

**43-292 (10) 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.**

**43-292(11) one parent has been convicted of felony sexual assault of the other parent under 28-319.01 or 28-320.01 or a comparable crime in another state.**

**92-1 Grounds for termination of parental rights appears to exist under the following subsections of §43-292 and termination of parental rights is in the child’s best interest.** (List applicable subsections of §43-292)

- The board must identify all subsections of §43-292 that apply and give rationale.
- For each of the grounds, it must also be proven that this would be in the child’s best interests.
- The 15 of 22 months provision must be accompanied by another section and best interests of the child.

**92-2 Grounds for termination of parental rights under §43-292 do not appear to exist.**

- This finding is used when there are not yet grounds to terminate parental rights.

**92-3 Grounds for termination of parental rights appears to exist; however, termination of parental rights is not in the best interests of the child due to [\_\_explain\_\_].**

- Be sure to list the reason for finding a termination not in the child’s best interests. Some examples of those reasons could be the age of the child, the bond that exists between the child and the parents, or the progress being made by the parents. In some case circumstances, such as when the child is working out issues through therapy, it may be appropriate to add “at this time” to the finding.

**92-4 The board’s finding on whether the grounds for termination of parental rights appear to exist is not applicable due to [explain].**

- Examples, parents are deceased; parental rights have already been relinquished or terminated, or the child is adjudicated 3b or a 1.

## **Top Concerns Section / Recommendations**

### **Top Concerns/Recommendations**

Top Concerns/Recommendations and barriers should focus on what currently exists that prevents permanency from occurring.

Top Concerns/Recommendations and barriers will be identified by local board members in the form of open-ended questions from the review specialist.

Review specialists will code the barriers and concerns identified for statistical purposes; these will be the same as those in the Top Concerns/Recommendations section of the recommendations form.

## Other Helpful Information

**The following are some court citations that may be helpful when documenting issues.**

"It is not necessary that the court await until the child shows permanent physical scars before the court can act to terminate parental rights." *In re Interest of J.B. and A.P.* 235 Neb 74, 453 N.W.2d477 (1990)

"It is true that, fortunately, neither the father nor the mother has had an opportunity to have this child in his or her care. Therefore, there is no evidence of any harm having as yet befallen the minor. However, a court need not await certain disaster to come into fruition before taking protective steps in the interest of a minor child". *See In re Interest of S.L.P.*, 230 Neb 635,639 (1988)

"Even though the father has had no unsupervised contact with the child, it is not necessary that the Court await the time the child shows permanent scars of the father's anger and impulsivity before acting to terminate the relationship." *In re interest JDM* 230 NE 272, (1988)

"Parental obligation is a positive duty, which encompasses more than a financial obligation. It requires continuing interest in the child and a genuine effort to maintain communication and association with that child. Abandonment is not an ambulatory thing, the legal effects of which a parent may dissipate at will by token efforts at reclaiming a discarded child." *In Re Interests of J.M.D.*, 233 Neb 540 (1989).

"Although termination of parental rights may sometimes appear cruel or harsh, experience has shown that failure to terminate parental rights in appropriate cases simply punishes the child for the uncorrectable deficiency of the parents, thereby extending the same problems and conditions into successive generations." *In Re Interest of C.A.A. and V.S.A.*, 229 Neb 135, 138-39 (1988).

"Where a parent is unable or unwilling to rehabilitate him or herself within a reasonable time, the best interests of the children require termination of the parental rights." *In Re Interest Ty M. & Devon M.* 265 Neb. 150, 665 N.W.2d 672 (2003).

"A child should not be left suspended in foster care and should not be required to exist in a wholly inadequate home. Further, a child cannot be made to await uncertain parental maturity." *In Re Interest of JS, SC, and LS*, 224 Neb 234 (1986).

## Aggravated Circumstances

In cases where the parent has subjected a juvenile to “aggravated circumstances” as defined by statute, prosecutors can request the court to make a finding that will excuse the State from its duty to make reasonable efforts to preserve and reunify 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.

Boards can 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, local boards can also recommend that the appropriate parties take the necessary steps to obtain such a finding from the court. 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, but do differ in this respect: subjection 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, while parental rights can be terminated under Neb. Rev. Stat. §43-292(9) in the situation where the parent has subjected **only the juvenile himself or herself** to aggravated circumstances.

In other words, the fact that the parent has subjected another one of his or her children to aggravated circumstances (but **not** the juvenile who is the subject of the court proceeding) will not provide a sufficient basis upon which to terminate parental rights under Neb. Rev. Stat. §43-292(9).

The following are some language examples that relate to the issue of aggravated circumstances:

- The board finds that aggravated circumstances exist in this case and that termination of parental rights should be pursued in regard to both parents, or, at a minimum, that grounds exist upon which the court can determine that reasonable efforts are not required under Neb. Rev. Stat. §43-283.01.
- Mr. “Jones” has been convicted of felony child abuse due to the abuse he inflicted on “Sally”. “Sally” suffered bruising all over her body and broken bones at the hands of Mr. “Jones.”
- Ms. “Smith” delayed in seeking proper medical treatment for “Sally.” The Supreme Court found (*in re Interest of Jac’quez N. 266 Neb. 782; 669 N.W.2d 429; 2003*) that “Although the evidence does not tend to establish that [mom] inflicted the initial injuries on [child], it clearly and convincingly establishes that she delayed seeking medical treatment for 48 hours after he had received obvious and serious injuries, thus severely neglecting his medical needs.

# **Appendix B**

## **Legal Resources**

## 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, police, 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 (DHHS-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 DHHS) 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 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.

**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 behavior 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 DHHS. 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. 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 must adopt the DHHS 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 DHHS rehabilitation plan for the parents (case plan) and orders services based on this plan. There is a statutory presumption that the DHHS 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 month 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 hearings** -- 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 DHHS the rights to the child. DHHS 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.

**LANGUAGE IN REPORTS**  
Christine Costantakos, Attorney at Law

**REPLACE**

"The Board is *appalled* at.....;"  
"The Board is *frustrated* with...."  
"The Board *fails to understand* why....."

**WITH**

"The Board is concerned about...."

---

**REPLACE**

"Reunification with the mother is *not appropriate or in Sarah's best interests.*"

**WITH**

"Reunification with the mother is not appropriate because she has failed to substantially comply with the orders of the juvenile court in the following respects:...

or--she has failed to correct the circumstances which brought this matter into the juvenile court, namely...

or the child has been in an out-of-home placement for 15 of the most recent 22 months, and based upon, it is in her best interests not to be reunified with the mother."

---

**ADD**

With Finding 5C "The Board cannot agree or disagree with the permanency objective due to the lack of a current written plan." add the following:

"Neb. Rev. Stat. §43-285 requires the Nebraska Department of Health and Human Services to prepare and file with the court a proposed plan for the care, placement, services and permanency which are to be provided to the juvenile and his or her family. Because this has not been done, the Board cannot agree or disagree...or make a finding as to-----due to the lack of a written plan."

---

**If the Finding is:**

"It is *unclear what reasonable efforts are being made in this case to promote reunification.*"

**The following language could be added.**

"Neb. Rev. Stat. § 43-283.01 requires the State (including the Department) to make reasonable efforts to preserve and reunify the family, absent a judicial finding that aggravated circumstances exist which would eliminate the need to make such reasonable efforts in a particular case. Because no such judicial finding has been made to date in this case, it appears to the Board that reasonable efforts are, in fact, required to be made by the State. However, the Board has been unable to determine what, if any, reasonable efforts have been made by the State, including the Department, during this most recent review period...or- the Board has found no evidence that reasonable efforts have been made by the State during this last review period."

---

**REPLACE**

"The Board *wonders if Mr. and Mrs. Jones truly do want their children to return to their home, despite what they say.*"

**WITH**

"The fact that the parents have made minimal effort to comply with the plan of rehabilitation in this case, raises a serious question as to whether or not they are sincere in their request to have the children reunified with them."

---

**REPLACE**

"*We would appreciate it if a homestudy were done at this time.*"

**WITH**

"The Board recommends that a homestudy be done at this time to ascertain the appropriateness of XYZ as a possible placement for Jeremy."

---

## **REPLACE**

"It appears to the Board that *Mr. ABC is trying to control every aspect of this case* and many of the professionals have withdrawn due to the intensity of their conflicts with him."

## **WITH**

"Although the orders of the juvenile court require Mr. ABC to cooperate with all of the case professionals, he has substantially failed to obey the court's order in this regard, as evidenced by the following:

- 1) Outburst and aggressive behavior of Mr. ABC resulted in termination of psychiatric evaluation (See letter from Dr. Ima Shrink, dated December 6, 2001);
- 2) Sixteen of thirty-seven possible visits with his children were canceled by visitation specialist due to threatening and verbally abusive behaviors exhibited by Mr. ABC (See visitation documents dated 8/9, 8/16, 9/12, 9/16, 10/14/ 10/21. etc. etc.)
- 3) Notice of change of case manager filed by NDHHS on 12-14-01, due to threat made by Mr. ABC to kill the previous case manager (See case plan and court report dated 12-16-02)

## **STATE JUST THE FACTS, NOT CONCLUSIONS.**

---

## **REPLACE**

"*Once again, the Department appears to be ignoring the best interest of this child by placing him in an institution which is harmful to his well-being.*"

## **WITH**

"On January 9, 1999, the juvenile court granted the motion to change Roger's placement and in so doing, made the following finding, 'Placement at the Harper House is inappropriate and harmful to the minor child, insofar as he has sustained bruises, scrapes, and emotional trauma from inappropriate application of physical restraint, which has been utilized with him on an almost daily basis. The Department is hereby directed to remove said child immediately and place him in a suitable placement which will promote his best interest.'

"On May 14, 1999, the Court again granted another motion to change Roger's placement and in so doing, made the following finding, 'Placement at the Charles Institute is inappropriate and harmful to the minor child, insofar as he has sustained bruises, and further emotional trauma from having been locked in his room for a period of eight days. The Department is hereby directed to remove said child immediately and place him in a suitable placement which will promote his best interest.'

"The Board has communicated its concerns directly to the Department that Roger's current placement at Last Hope is adverse to his best interest and well-being, based upon that institution's inappropriate use of chemical restraints. (See letters to case manager, dated ...). These communications have failed to result in either any response from the Department or any action being taken by the Department to remove Roger from Last Hope.

"The Board respectfully recommends that proceedings be initiated at this time to require the Department to show cause as to why it should not be held in contempt of court for violation of the orders of the juvenile court, as well as additional proceedings to remove Roger from Last Hope."

---

## **REPLACE**

*"According to the maternal grandmother for the children, her own daughter has stolen from her on several occasions. She also stated that her daughter was in the habit of "taking off" and thought she did so most recently because the gas and water might have been shut off at the daughter's house."*

## **WITH**

### **Nothing.**

The basis for the adjudication in this case was the mother's incarceration and her continued usage of illegal drugs. The inclusion of the information from the grandmother that her daughter has stolen from her is irrelevant. The author might have chosen to include this information in an effort to imply to that the mother is stealing items in order to sell them to obtain money to buy drugs; or at a minimum, to convince the reader that the mother is a bad person because she would stoop so low as to steal from her own mother. The additional information regarding the daughter's habit of "taking off" is also not helpful, and potentially problematic as being reliable information, depending upon the grandmother's opinions and attitudes toward her daughter. Finally, the information regarding the reason why the daughter most recently "took off" is speculative, at best, and would not likely be received into evidence if the grandmother testified in court.

### **When assessing whether or not to include certain information in reports, try to determine:**

1) Is there any link between the information being reported and the factual bases for the adjudication in the case, or the actual requirements contained in the court-ordered plan of rehabilitation? If not, ask yourself, what purpose does the inclusion of this information serve? Does it underscore the validity of the factual basis upon which the Board's recommendations rest, or is it an attempt to characterize the parent(s) or any party in an adverse light? Remember, the judge can only read the actual recommendations of the FCRO reports, not the factual bases or history underlying your recommendations.

2) When considering information which has been provided to you, be aware of the possibility that the providing of negative information could be motivated by bias or hostility, especially when such information is volunteered by a grandparent, parent or step-parent, or other collateral relative, or even a foster parent. Find out whether the party volunteering the information is himself/herself trying to obtain custody, visitation or certain legal status or rights in relation to the child who is the subject of the juvenile court proceeding. Try to determine whether there has been any history of hostility or hard feelings between the reporting party and the party about whom the information is volunteered. Attempt to verify the information you receive, and if you cannot, it might not be appropriate to include it in the FCRO report. If you do receive information indicating that there is or has been hostility between the reporting party and the party about whom the negative allegation has been volunteered, it might be best not to include the negative allegation unless you are prepared to give equal time to addressing the other version given by the defending party. However, unless the conflicting information has a direct link to the one of the relevant issues of the case, it would seem best to disregard it. In other words, what purpose is served by including in the FCRO report the grandmother's allegation that her daughter is in the habit of "taking off," and the daughter's corresponding denial of that accusation along with a counter-allegation that her mother is a drunk who imagines things?

3) Differentiate between what is factual from what is speculative. Statements such as "I thought," "I believe "or "I heard..." or "Probably she left because the utilities were shut off" do not establish any fact other than the speaker's own belief. Be leery of allegations such as:

"The neighbor told me she had heard they were selling their food stamps in order to get money to buy drugs."

"The grandmother reports that the girls cry each time they return home from a visit with their mother, and hopes that the court will act soon to stop the visits so that the girls will not become further traumatized."

"The foster parent reports that Jeremy continues to have difficulty with wetting the bed, nightmares, and focusing on sexual vocabulary, all indications that he has been the victim of sexual abuse."

\*\*\*\*\*

## **12-Month Permanency Hearings**

These hearings are required by law to occur in all cases when children have been in foster care for 12 months, and must focus on appropriate permanency in order that children can move out of the foster care system.

Local boards can recommend what permanency direction they believe to be appropriate, and identify the factors that support their decisions. The following are some language examples:

**Example 1: The Board does not support the permanency objective of reunification and recommends that a permanency objective of adoption be ordered for these young children. Ms. “Black” and Mr. “Brown” have made little progress to correct the issues that led to adjudication.**

- Ms. “Black” and Mr. “Brown” have not complied with any Court Ordered services. They have not participated in individual therapy, substance abuse programs, or AA/NA meetings as ordered by the court.
- Ms. “Black” and Mr. “Brown” did not comply with drug and alcohol testing from August of 2007 until they were Court ordered in December of 2007 to submit to random testing prior to visits with the children. All drug screens since that time have been positive.
- The children have been in out-of-home care for nearly one year, with little progress made, and it is in their best interest that permanency be established.

**Example 2: The Board does not agree with the permanency objective of reunification and recommends that the Court order a permanency objective of adoption.**

- Ms. “Jackson” has had 11 months to work on her case plan goals, however has not complied with any of her court-ordered services.
  - She has not completed a chemical dependency evaluation.
  - She has not regularly participated in supervised visitation.
    - From October 2007 until December 2007 she had no contact with her daughter.
  - She has not submitted to regular random UA testing.
  - It is unclear if she has abstained from drugs and alcohol due to her lack of participation in random UA’s.
  - She has not obtained safe and adequate housing despite having been ordered by the court to do so since (DATE).
  - She has not maintained consistent contact with the caseworker.

## **Guardian ad litem Representation**

The Nebraska Supreme Court's Guidelines for Guardian ad litem representation are attached. These guidelines are designed to improve the quality of representation and advocacy that foster children receive from their guardians ad litem.

**Local board members should be familiar with these Guidelines and use them when making recommendations regarding guardians ad litem. The following are some language examples:**

**Example 1:** The Board recommends that the Guardian ad litem visit the children in their placement as soon as possible to ensure their safety and well-being and to insure the effectiveness of the guardian ad litem's advocacy for the children in the court proceedings.

As stated in the Guardian ad litem guidelines adopted by the Supreme Court, "*The Guardian ad litem should make every effort to see the juvenile in his or her placement at least once, with respect to each such placement*"

**Example 2:** The Board recommends that the Guardian ad litem have in-person contact with the children prior to the upcoming Court hearing. In-person contact is especially important in this case because.....

The Guardian ad litem should make such contact before the next hearing because.....

As stated in the Guardian ad litem guidelines adopted by the Supreme Court, "*In addition to the statutorily required intervals for consulting with the juvenile, when possible, the Guardian ad litem should consult with the juvenile...prior to any hearing at which substantive issues affecting the juvenile's legal or best interests are anticipated to be addressed by the court*"

**Example 3:** The Board finds that the Guardian ad litem has not had contact with the children as required by statute. The Board recommends that the Guardian ad litem make in-person contact with the children as soon as possible.

Neb. Rev. Stat § 43-272.01 (2)(d) requires that the Guardian ad litem consult with the juvenile within the two weeks after his or her appointment and once every six months thereafter.

## **“Best Practices for Guardians ad Litem”**

### **Supreme Court Sets New Standards for Guardians ad litem, Requests Our Assistance**

In July 2007, the Nebraska Supreme Court adopted guidelines to define what were Guardian ad litem “best practices” to ensure effective representation of children’s legal and best interests in dependency and abuse/neglect proceedings in juvenile court. 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.

### **Guardian ad litem Defined:**

The Guardian ad litem is an attorney appointed by the court for the child who is to represent the juvenile’s legal interests and advocate for the juvenile’s best interests. A Guardian ad litem is under a legal duty to conduct an *independent determination* as to the juvenile’s best interests and must take the necessary actions to advocate and protect the best interests of the juvenile

### **Guardian ad litem Best Practices**

The Supreme Court Guidelines recommend that as a best practice Guardians ad Litem should:

- Consult with the juvenile when required by statute (“consult” means meeting in person with the juvenile, unless prohibited or made impracticable by exceptional circumstances):
  - within the first two weeks of appointment, and at least once every six months thereafter.
  - In addition, the Guidelines *suggest* that the Guardian ad litem also consult with the juvenile as follows:
    - When the juvenile requests that the Guardian ad litem meet with him or her; and
    - When the Guardian ad litem has received notification of any emergency, or other significant event or change in circumstances affecting the juvenile, including a change in the juvenile’s placement;
- Make every effort to see the juvenile in his or her placement at least once, with respect to each such placement.
- Submit a written report to the court at every dispositional hearing and review hearing. This report should include, but is not limited to, the following information
  - Dates of, and description of, the type of contact and communication with the juvenile;
  - Listing of documents reviewed;
  - The guardian ad litem’s concerns regarding any specific matters or problems which, in the opinion of the guardian ad litem, need special, further, or other attention in order to protect or facilitate the juvenile’s legal and best interests; and
  - The guardian ad litem’s independent assessment of and recommendations regarding the juvenile’s placement, in light of his or her needs and legal and best interests.

### **Examples of how a Guardian ad litem concern will be documented in a FCRO Recommendation**

- “Contrary to Section V.A.3.d. of the Supreme Court’s guidelines on best practice, the Guardian ad litem has not seen Billy 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.”

## **Legal/Judicial Terminology / Sequence in 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 can not 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.

## OTHER TERMS

**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:

1. The parents have abandoned the juvenile for 6 months or more immediately prior to the filing of the petition.
2. The parents have substantially and continuously or repeatedly neglected the juvenile and refused to give the juvenile the necessary parental care and protection.
3. The parents, being financially able, have willfully neglected to provide the juvenile with the necessary subsistence, education, or the care, or failed to pay child support when 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 is found by the Court to be seriously detrimental to the well-being of the juvenile.
5. The parents are unable to discharge parental responsibility because of mental illness or mental deficiency and there are reasonable grounds to believe that such condition will continue for a prolonged indeterminate period of time.
6. Reasonable efforts under the direction of the court have failed to correct the conditions leading to the determination.
7. Child being placed in foster care for 18 consecutive months.

**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)

## **Public Reporting of Suspected Child Abuse or Neglect**

State law requires any person who has reason to suspect abuse or neglect to report this to law enforcement, an HHS local office, or the child abuse/neglect reporting number at **1-800-652-1999**. All reports are confidential.

**Child abuse** is any behavior directed toward a child age birth through 18 by a parent, guardian, or other adult that endangers the child's physical or emotional health. Children of all ages may be affected, but young children who see few adults outside the home are often at particular risk.

**Possible signs of physical abuse include:** intentional, unexplained or repeated injuries like bruises, welts, burns and cuts; injuries inconsistent with the explanation given; verbal assaults; withholding of positive emotional support needed for a child's development; and physical violence in the home.

**Possible signs of neglect include:** depriving children of necessary food, clothing, shelter, or care; verbal assaults; withholding of positive physical and emotional support needed for a child's development; leaving a child under the age of six in a car unattended; and parental incapacitation due to drug/alcohol abuse or parental mental health issues. Nationally, more children die each year from neglect than from physical abuse.

**Sexual abuse and exploitation** is when an adult touches or uses a child for sexual stimulation of themselves or others. Possible signs of this can include excessive fearfulness of particular individuals, injuries in the genital area, or behaviors indicating sexual knowledge beyond the norm for the child's age.

## **Selected Supreme Court Rulings and Quotes from Research**

### **Adjudication delays, delay case planning and permanency for children:**

“The fact that a parent may be indicted or charged in criminal court in connection with alleged conduct toward a child is no excuse for prolonged delays of an adjudication hearing.” See: *In Re Interests of D.M.B.* 481 N.W.2d905, 240 Neb. 349(1992)

A parent and a child, both being parties, have a right to a speedy adjudication hearing. “A delay of 8 months between the time a child is temporarily taken from the child’s parent until the child and parent are given the evidentiary safeguards of an adjudication hearing cannot be condoned, even when, as here, the parties agreed to repeated continuances.” See: *In Re Interests of D.M.B.* 481 N.W.2d905, 240 Neb. 349(1992)

“Keeping a child in limbo for 8 months by way of a temporary custody order on the basis of hearsay does not instill confidence in the integrity and fairness of our juvenile justice system. To preserve the integrity of the juvenile justice system, a juvenile court judge must control his or her docket to prevent long delays in the processing of juvenile cases.” See: *In Re Interests of D.M.B.* 481 N.W.2d905, 240 Neb. 349(1992)

“A child should not be left suspended in foster care and should not be required to exist in a wholly inadequate home. Further, a child cannot be made to await uncertain parental maturity.” *In Re Interest of JS, SC, and LS*, 224 Neb 234 (1986).

### **Case Plans are needed to keep children from lingering in foster care:**

Unless the provisions of the Case Plan “tend to correct, eliminate, or ameliorate the situation or condition on which the adjudication has been obtained” a Court-ordered plan “is nothing more than a plan for the sake of a plan, devoid of corrective and remedial measures.” *In Re Interest of J.S, A.C., and C.S.*, 227 Neb. 251, 268, 417 N.W. 2d 147, 158 (1987).

"Neb. Rev. Stat. §43-285 requires the Nebraska Department of Health and Human Services to prepare and file with the court a proposed plan for the care, placement, services and permanency which are to be provided to the juvenile and his or her family.

Include foster parents in Court; they know the children and their needs.

Foster parents are to be notified of Court reviews, and have the right to be heard at review hearings. [see:§43-1314 (6)]

**Children should not be subjected to repeated severe abuse:**

The right of the parent to custody and control of her or his children is not an inalienable right. The public has paramount interest in the protection of children from neglect. *In Re Interest of M.L.B.*, 221 Neb 396 (1985)

"It is not necessary that the court await until the child shows permanent physical scars before the court can act to terminate parental rights." *In re Interest of J.B. and A.P.* 235 Neb 74, 453 N.W.2d477 (1990)

"It is true that, fortunately, neither the father nor the mother has had an opportunity to have this child in his or her care. Therefore, there is no evidence of any harm having as yet befallen the minor. However, a court need not await certain disaster to come into fruition before taking protective steps in the interest of a minor child". *See In re Interest of S.L.P.*, 230 Neb 635,639 (1988)

"Even though the father has had no unsupervised contact with the child, it is not necessary that the Court await the time the child shows permanent scars of the father's anger and impulsivity before acting to terminate the relationship." *In re interest JDM 230 NE 272, (1988)*

"While there are indeed many child maltreators who can be helped to be competent parents with timely and effective services, other parents can not be assisted to be caring and nurturing parents." "Research clearly indicates that there is not a continuum of abuse with severe abuse occurring because of increased stress and disadvantage. Instead there seem to be distinct categories of maltreatment. Thus, parents who inflict severe harm on their children or kill offspring are categorically different from those parents whose maltreatment does not involve life-threatening harm to children." "With some kinds of maltreatment, one strike is sufficient to warrant terminating parental rights." (*Gelles, 1991; Wolfner and Gelles, 1993*)

### **Children need permanency:**

Neb. Revised Statutes § 43-533 (5) mandates that when families cannot be reunited, and when active parental involvement is absent, adoption shall be aggressively pursued.

“Proceedings in juvenile court involve impressionable children in their formative years, not impersonal flotsam and jetsam adrift on a sea of indecision, or much worse, societal insensitivity or apathy.” *In re Interest of L.D. et al.*, 224 Neb. 249, 398 N.W.2d91(1986).

Indefinite foster care is not acceptable where the evidence suggests the need for a fixed and permanent home. *In re Interest of J.A. and T.A.*, 229, Neb 359 (1988).

Parental obligation is a positive duty which encompasses more than a financial obligation. It requires continuing interest in the child and a genuine effort to maintain communication and association with that child. Abandonment is not an ambulatory thing, the legal effects of which a parent may dissipate at will by token efforts at reclaiming a discarded child. *In re Interests of J.M.D.*, 233 Neb 540 (1989).

"Although termination of parental rights may sometimes appear cruel or harsh, experience has shown that failure to terminate parental rights in appropriate cases simply punishes the child for the uncorrectable deficiency of the parents, thereby extending the same problems and conditions into successive generations." *In Re Interest of C.A.A. and V.S.A.*, 229 Neb 135, 138-39 (1988).

Where a parent is unable or unwilling to rehabilitate himself or herself within a reasonable time, the best interests of the children require termination of the parental rights. *In re Interest Ty M. & Devon M.* 265 Neb. 150, 665 N.W.2d 672 (2003).

### **Children need attachments:**

“Adults must remember that once new attachments are formed, separation from these substitute parents is no less painful and no less damaging to the child than separation from birth or adoptive parents.” *Goldstein, J. Freud, A. and Solnit, A.J. Beyond the Best Interests of the Child. 1973.*

“Moves from foster home to foster home should be limited to all but the most unavoidable situations. Every loss adds psychological trauma and interrupts the tasks of child development.” *Vera I. Fahlberg, M.D., A Child’s Journey Through Placement, page 176. Perspectives Press, c. 1991.*

“Insecure attachment is not equivalent to mental disorder, but rather creates a risk of psychological and social dysfunction. Disorganized/disoriented attachments are sometimes associated with dissociative symptomology, which, if such individuals are exposed to overwhelming experiences later in life, may make them prone to developing post traumatic stress disorder. Persons in this group also have deficits in attention and the regulation of emotion and impulse control.” *Daniel J. Siegel, The Developing Mind: Toward a Neurobiology of Interpersonal Experience, c. 1999.*

“The stronger the attachment between child and previous caregiver, the more important the process of transferring attachment will be. Although we have found that sometimes verbal or written communications, without accompanying direct contact between the parenting adults, may be successful in aiding the transfer of attachment in children of school age, it is not enough for the infant, toddler, or preschooler. The younger the child, the more important it is that there be direct contact between past and future caregivers. We noted in the last chapter that after only several days of separation from parents, toddlers show marked distress.” *Vera I. Fahlberg, M.D., A Child’s Journey Through Placement, page 178. Perspectives Press, c. 1991.*

One example of risk for emotional disturbance is seen in the experience of children who experience trauma at an early age. Allan Schore writes “Although the critical overproduction on synapses in the brain is genetically driven, the pruning and maintenance of synaptic connections are environmentally driven. Developmental over pruning refers to a toxic effect of overwhelming stress on the young brain.” *Daniel J. Siegel, The Developing Mind: Toward a Neurobiology of Interpersonal Experience, c. 1999.*

“During the toddler years, the primary aim during the moving process is to transfer attachment from previous caregivers to the new parenting persons as much as possible. The two sets of parents must have contact and the parents the child is leaving need to actively transfer the day-to-day care taking tasks and routines to the new parents.” *Vera I. Fahlberg, M.D., A Child’s Journey Through Placement, page 182. Perspectives Press, c. 1991.*

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“Planned transitions are less harmful to children than abrupt moves...in general, it takes more time to correct the harm done by inadequate pre-placement work than to do the work in the first place.” *Vera I. Fahlberg, M.D., A Child’s Journey Through Placement, page 177. Perspectives Press, c. 1991.*

The presence of even one positive attachment figure can be a protective factor to promote resilience in children who suffer trauma or separation. *Susan Downs, et al, Child Welfare and Family Services Policies and Practice, c. 1991, page 280.*

## **Consequences of child abuse and neglect**

The U. S. Advisory Board on Child Abuse and Neglect in 1995 released results from a two and one half year study that showed that abuse and neglect in the home is a leading cause of death for young children in the United States. The report also states that child abuse fatalities have risen 50% over the past eight years.

Nationally, almost as many children die each year from neglect as from physical abuse. *National Clearinghouse on Child Abuse and Neglect, 2003.*

“The impact of abuse is far greater than its immediate, visible effects. Abuse and neglect are associated with short-and long-term consequences that may include brain damage, developmental delays, learning disorders, problems forming relationships, aggressive behavior, and depression. Survivors of child abuse and neglect may be at greater risk for problems later in life—such as low academic achievement, drug use, teen pregnancy, and criminal behavior—that affect not just the child and family, but society as a whole.” *U. S. Health and Human Services, Administration for Children and Families, Aug. 2003.*

“The risk of maltreatment is highest for children under four years of age. Moreover, children with a prior history of victimization were more than three times as likely to experience recurrence compared with children without a prior history.” *National Clearinghouse on Child Abuse and Neglect, July 2003.*

“Over half of the babies who come before dependency [juvenile] court have significant cognitive, language, and developmental delays stemming from the neglect and mistreatment they have experienced.” *A Scientific Approach to Child Custody, National Public Radio broadcast, March 3, 2003.*

**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.

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- 1. Abandonment:** The parents have abandoned the juvenile for six months or more immediately prior to the filing of the petition;
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Even though a juvenile court ordered a mother to have no visitation with her children approximately 7 weeks before the State filed a petition to terminate her parental rights based on abandonment, it was determined that the mother did abandon her children within the meaning of subsection (1) of this section where the mother failed to present any evidence which would show a continuing interest in the children or a genuine effort to maintain communication and a meaningful relationship with the children. *In re Interest of Dustin H. et al.*, 259 Neb. 166, 608 N.W.2d 580 (2000).

In the context of subsection (1) of this section, "abandonment" is defined as a parent's intentionally withholding from a child, without just cause or excuse, the parent's presence, care, love, protection, maintenance, and the opportunity for the display of parental affection for the child. Under subsection (1) of this section, the question of abandonment is largely one of intent, to be determined in each case from all the facts and circumstances. Under subsection (1) of this section, if a parent voluntarily, but unreasonably or unjustifiably, departs from the state of residence of the parent's child or children, such departure may constitute parental abandonment of the child or children. Under subsection (1) of this section, abandonment is not an ambulatory thing, the legal effects of which a parent may dissipate at will by token efforts at reclaiming a discarded child. With respect to cases arising under subsection (1) of this section, parental obligation requires a continuing interest in the child and a genuine effort to maintain communication and association with that child. Under subsection (1) of this section, small tokens of parental affection for a child are an inadequate substitute for parental presence in a child's life. *In re Interest of Sunshine A. et al.*, 258 Neb. 148, 602 N.W.2d 452 (1999).

Mother abandoned her children when she voluntarily left the State of Nebraska temporarily to look for her common-law husband's children. *In re Interest of C.K., L.K., and G.K.*, 240 Neb. 700, 484 N.W.2d 68 (1992).

Parental incarceration may be considered in reference to abandonment as a basis for termination of parental rights under subsection (1) of this section. "Abandonment," for the purpose of subsection (1) of this section, is a parent's intentionally withholding from a child, without just cause or excuse, the parent's presence, care, love, protection, maintenance, and opportunity for the display of parental affection for the child. The question of abandonment is largely one of intent, to be determined in each case from all of the facts and circumstances. *In re Interest of L.V.*, 240 Neb. 404, 482 N.W.2d 250 (1992).

A father who makes no effort to secure his parental rights for over 3 years has abandoned his child within the meaning of subsection (1) of this section. *In re Interest of K.M.S.*, 236 Neb. 665, 463 N.W.2d 586 (1990).

"Abandonment," for the purpose of subsection (1) of this section, is a parent's intentionally withholding from a child, without just cause or excuse, the parent's presence, care, love, protection, maintenance, and the opportunity for the display of parental affection for the child. In re Interest of C.A., 235 Neb. 893, 457 N.W.2d 822 (1990).

Whether a parent has abandoned a child within the meaning of subsection (1) of this section is a question of fact and depends on parental intent, which may be determined by circumstantial evidence. In re Interest of C.A., 235 Neb. 893, 457 N.W.2d 822 (1990).

A parent who has voluntarily chosen to violate the law so as to have been convicted of five separate felonies may have placed himself in a position where he has effectively abandoned the child pursuant to subsection (1) of this section. In re Interest of B.A.G., 235 Neb. 730, 457 N.W.2d 292 (1990).

"Abandonment" under subsection (1) of this section is a parent's intentionally withholding from a child, without just cause or excuse, the parent's presence, care, love, protection, maintenance, and the opportunity for the display of parental affection for the child. In re Interest of J.L.M. et al., 234 Neb. 381, 451 N.W.2d 377 (1990).

Pursuant to subsection (1) of this section, if a parent voluntarily, but unreasonably or unjustifiably, departs from the state of residence of the parent's child or children, such departure may constitute parental abandonment of the child and cannot be used as an excuse for noncompliance with a court-ordered plan for parental rehabilitation. In re Interest of J.L.M. et al., 234 Neb. 381, 451 N.W.2d 377 (1990).

Under subsection (1) of this section, abandonment is an intentional withholding from the child, without just cause or excuse, by the parent of the parent's presence, care, love, and protection; maintenance; and the opportunity for the display of filial affection. Abandonment is not an ambulatory thing the legal effects of which a parent may dissipate at will by token efforts at reclaiming a discarded child. In re Interest of J.M.D., 233 Neb. 540, 446 N.W.2d 233 (1989).

A specific condition of termination of parental rights under subsection (1) of this section is that the parent abandon the child for at least six months preceding the filing of the petition. In re Interest of M.B., R.P., and J.P., 222 Neb. 757, 386 N.W.2d 877 (1986).

Abandonment, for purposes of this section, is a parent's intentionally withholding from a child, without just cause or excuse, the parent's presence, care, love, protection, maintenance, and opportunity for display of parental affection for the child. In re Interest of Joseph L., 8 Neb. App. 539, 598 N.W.2d 464 (1999).

A parent who has voluntarily chosen to violate the law, who has been imprisoned for the vast majority of his child's life, and who will continue to be imprisoned for several years may have placed himself in a position where he has effectively abandoned the child pursuant to subsection (1) of this section. A juvenile court may consider evidence of a parent's conduct prior to the birth of the child in proceedings to terminate parental rights pursuant to subsection (1) of this section. In re Interest of Theodore W., 4 Neb. App. 428, 545 N.W.2d 119 (1996).

Evidence did not support juvenile court's finding that father abandoned children for 6 months prior to termination hearing, pursuant to subsection (1) of this section, when in fact visitations were discouraged by Department of Social Services until court order denying visitation was granted 2 months prior to termination hearing. In re Interest of B.J.M. et al., 1 Neb. App. 851, 510 N.W.2d 418 (1993).

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- 2. Neglect:** 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;
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One need not have physical possession of a child to demonstrate the existence of neglect contemplated by subsection (2) of this section. In re Interest of Kalie W., 258 Neb. 46, 601 N.W.2d 753 (1999).

Trial court did not err in terminating parental rights where the children were traumatized to an extent that the mere presence of the parents sent them into a panic and the parent-child relationships were effectively destroyed by the neglect and cruelty of the parents. It is only when the State seeks to terminate parental rights pursuant to subsection (6) of this section that the State is required to prove that it has instituted a reasonable plan for rehabilitation of the parents and that they have failed to comply. In the absence of any reasonable alternative and as the last resort to dispose of an action brought pursuant to the Nebraska Juvenile Code, termination of parental rights is permissible when the basis for such termination is provided by clear and convincing evidence. In re Interest of S.B.E. et al., 240 Neb. 748, 484 N.W.2d 97 (1992).

Because of mother's lack of insight and her lack of motivation to place the interests of her children ahead of her own, the trial court did not err in finding there was clear and convincing evidence to establish that the mother had substantially, continuously, and repeatedly neglected her children and had refused to give them the necessary parental care and protection. In re Interest of B.B. et al., 239 Neb. 952, 479 N.W.2d 787 (1992).

A parent's failure to take proper measures to protect children from abuse by another furnishes sufficient cause to terminate parental rights under subsection (2) of this section. In re Interest of C.P., 235 Neb. 276, 455 N.W.2d 138 (1990).

A parent's fright does not, by itself, excuse his or her failure to extricate children from a dangerous environment. In re Interest of C.P., 235 Neb. 276, 455 N.W.2d 138 (1990).

A parent's failure to take proper measures to protect children from abuse by another furnishes sufficient cause to terminate parental rights under subsection (2) of this section. In re Interest of J.B. and A.P., 235 Neb. 74, 453 N.W.2d 477 (1990).

When a parent fails to protect some but not all children from the physical abuse by another, a court may terminate parental rights in the children not physically abused. In re Interest of J.B. and A.P., 235 Neb. 74, 453 N.W.2d 477 (1990).

Where poor housekeeping degenerates into a continuing health hazard, the best interests of the children require termination of parental rights. In re Interest of E.R., J.R., and A.R., 230 Neb. 646, 432 N.W.2d 834 (1988).

One need not have physical possession of a child to demonstrate the existence of the neglect contemplated by this provision. In re Interest of J.N.V., 224 Neb. 108, 395 N.W.2d 758 (1986).

Under this statute, to justify the termination of parental rights, the state must prove by clear and convincing evidence that a parent has substantially and continuously or repeatedly neglected the child. In re Interest of L.J., J.J., and J.N.J., 220 Neb. 102, 368 N.W.2d 474 (1985).

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**3. Mental illness or deficiency:** 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;

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Subsection (5) of this section authorizing termination of parental rights for mental illness or mental deficiency means only those mental illnesses or mental deficiencies which render the parents unable to discharge their parental responsibilities. In re Interest of Michael B. et al., 258 Neb. 545, 604 N.W.2d 405 (2000).

Under subsection (5) of this section, when a natural parent suffers from a mental deficiency and cannot be rehabilitated within a reasonable period of time, the best interests of the child require that a final disposition be made without delay. A "mental deficiency", as used in subsection (5) of this section, includes an impairment in capacity such that a parent is unable to profit from instruction and acquire parenting skills. Under subsection (5) of this section, the State must show that termination of parental rights is in the best interests of the children. In re Interest of Natasha H. & Sierra H., 258 Neb. 131, 602 N.W.2d 439 (1999).

When a natural parent suffers from a mental deficiency and cannot be rehabilitated within a reasonable period of time, the best interests of the children require that a final disposition be made without delay. In re Interest of D.A.B. and J.B., 240 Neb. 653, 483 N.W.2d 550 (1992).

A borderline personality disorder is a mental illness or deficiency for purposes of statute. In re Interest of B.M., 239 Neb. 292, 475 N.W.2d 909 (1991).

A Guardian ad litem appointed for a parent pursuant to subsection (5) of this section is entitled to participate fully in the proceeding to terminate parental rights. In re Interest of D.S. and T.S., 236 Neb. 413, 461 N.W.2d 415 (1990).

The parental rights of a parent who is unable to discharge parental duties because of a mental illness or deficiency may be terminated under subdivision (5) of this section, while the parental rights of a parent who is unable to discharge parental duties because of a physical illness or deficiency may be terminated under subdivision (2) or (6) of this section; thus, the statutory scheme for termination of parental rights does not unconstitutionally differentiate between a parent with a mental deficiency and one with a physical deficiency. In re Interest of S.L.P., 230 Neb. 635, 432 N.W.2d 826 (1988).

"Mental deficiency", as used in subdivision (5) of this section, includes an impairment in learning capacity such that one is unable to profit from instruction and acquire parenting skills. In re Interest of D.L.S., 230 Neb. 435, 432 N.W.2d 31 (1988).

Appointment of a Guardian ad litem for parents whose parental rights are sought to be terminated under subdivision (5) of this section is mandatory. Failure to appoint a Guardian ad litem to protect the interests of such a parent is plain error which requires that the judgment be reversed. In re Interest of M.M., C.M., and D.M., 230 Neb. 388, 431 N.W.2d 611 (1988).

While no absolute definition of the term "mental deficiency" as used in subdivision (5) of this section is adopted, where a personality disorder is manifested by acts of extraordinary violence, the mental condition certainly rises to the level of mental deficiency. In re Interest of J.D.M., 230 Neb. 273, 430 N.W.2d 689 (1988).

Parental rights were properly terminated under subdivision (5) of this section where parents, who were both of limited intellectual ability, were unable to care for their daughter, who was developmentally and physically handicapped and required an extraordinary amount of care. In re Interest of A.M.K., 227 Neb. 888, 420 N.W.2d 718 (1988).

Supreme Court urges appointments of an attorney and of a Guardian ad litem under subsection (5) of this section be separated. In re Interest of C.W., 226 Neb. 719, 414 N.W.2d 277 (1987).

Record supported termination of parental rights as in the best interests of the child where the parent was unable due to a mental deficiency to discharge her responsibilities and there existed reasonable grounds to believe that this condition would continue for a prolonged and indefinite period. In re Interest of Fant, 214 Neb. 692, 335 N.W.2d 314 (1983).

A trial court has discretionary authority to appoint a Guardian ad litem in termination proceedings for a parent with a mental deficiency, regardless of whether mental illness or deficiency is pled as a ground for termination. In re Interest of Michael B. et al., 8 Neb. App. 411, 594 N.W.2d 674 (1999).

The presence of a mental deficiency in a parent does not preclude the State from seeking, or the courts from granting, termination of parental rights under subsections (2) and (4) of this section. In re Interest of Michael B. et al., 8 Neb. App. 411, 594 N.W.2d 674 (1999).

- 4. Rehabilitation or reunification plan:** 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;

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The Legislature intended that the issue of reasonable efforts required under section 43-283.01 must be reviewed by the juvenile court (1) when removing from the home a juvenile adjudged to be under subsections (3) or (4) of section 43-247 pursuant to section 43-284, (2) when the court continues a juvenile's out-of-home placement pending adjudication pursuant to section 43-254, (3) when the court reviews a juvenile's status and permanency planning pursuant to section 43-1315, and (4) when termination of parental rights to a juvenile is sought by the State under subsection (6) of this section. In re Interest of DeWayne G., Jr. & Devon G., 263 Neb. 43, 638 N.W.2d 510 (2002).

Pursuant to subsection (2) of this section, termination of parental rights under this subsection does not require proof that a parent has failed to comply with a rehabilitation plan. In re Interest of Clifford M. et al., 261 Neb. 862, 626 N.W.2d 549 (2001).

In order to terminate parental rights under subsection (6) of this section, the State must prove by clear and convincing evidence that (1) the parent has failed to comply, in whole or in part, with a reasonable provision material to the rehabilitative objective of the plan and (2) in addition to the parent's noncompliance with the rehabilitative plan, termination of parental rights is in the best interests of the child. In order to terminate parental rights under subsection (6) of this section, the State is required to prove that the parents have been provided with a reasonable opportunity to rehabilitate themselves according to a court-ordered plan and have failed to do so. The State is not required to show that noncompliance with a court-ordered rehabilitation plan is willful in order to prove that termination of parental rights should be ordered under subsection (6) of this section. In re Interest of Kassara M., 258 Neb. 90, 601 N.W.2d 917 (1999).

Pursuant to subsection (6) of this section, the State need not prove in an action to terminate parental rights, that a parent's failure to comply with a court-ordered rehabilitation plan was willful. The purpose of subsection (6) of this section is to advance the best interests of the child by giving the juvenile court power to terminate parental rights where the grounds for adjudicating the child within section 43-247(3)(a) have not been corrected. Whether a parent is willful or not in his or her noncompliance with a rehabilitation plan is not directly relevant to this purpose. Mother's failure to comply with rehabilitation plan's requirement that she end contact with man who had sexually assaulted one of her children was sufficient evidence for termination of her parental rights under subsection (7) of this section. In re Interest of Joshua M. et al., 251 Neb. 614, 558 N.W.2d 548 (1997).

In order to terminate parental rights pursuant to subsection (6) of this section, the State is required to prove that the parents have been provided with a reasonable opportunity to rehabilitate themselves according to a court-ordered plan and have failed to do so. Fact that parent partially complied with one provision of a rehabilitative plan does not prevent

termination of his or her parental rights. In re Interest of L.H. et al., 241 Neb. 232, 487 N.W.2d 279 (1992).

A rehabilitation plan is a court-ordered plan, judicially fashioned and judicially determined. The court may not delegate this authority to evaluators, counselors, social workers, child protection workers, or probation officers. In re Interest of D.M.B., 240 Neb. 349, 481 N.W.2d 905 (1992).

In order to terminate parental rights, the requirement is not that all possible alternatives be exhausted, but that reasonable efforts be made to reunite the juvenile and his or her family. In re Interest of S.R., D.R., and B.R., 239 Neb. 871, 479 N.W.2d 126 (1992).

Under subsection (6) of this section, the court is not limited to reviewing the efforts of the parent under the reunification plan last ordered by the court; rather, the court looks at the entire reunification program and the parent's compliance with the various plans involved in the program, as well as any effort not contained within the program which would bring the parent closer to reunification. In re Interest of L.J., M.J., and K.J., 238 Neb. 712, 472 N.W.2d 205 (1991).

A period of 1 year 2 months is a reasonable amount of time for a parent to comply with a plan of rehabilitation. In re Interest of C.E.E., 238 Neb. 260, 469 N.W.2d 782 (1991).

Under subsection (6) of this section, "reasonable efforts, under the direction of the court" means efforts in relation to a court-ordered plan for parental rehabilitation, not an extrajudicial agreement between a parent and an administrative agency. In re Interest of A.H., 237 Neb. 797, 467 N.W.2d 682 (1991).

Under subsection (6) of this section, the fact of participation in certain elements of the court-ordered plan of reunification does not necessarily prevent the court from entering an order of termination where the parent has not made satisfactory progress toward reunification. In re Interest of A.M.Y., F.E.Y., and K.C.Y., 237 Neb. 414, 466 N.W.2d 93 (1991).

Under subsection (6) of this section, there is no requirement that the parent's failure to comply with the plan for rehabilitation be willful. In re Interest of A.B. et al., 236 Neb. 220, 460 N.W.2d 114 (1990).

It is only to terminate parental rights pursuant to subsection (6) of this section that the State is required to prove that the parents have been provided with a reasonable opportunity to rehabilitate themselves according to a court-ordered plan and have failed to do so. In re Interest of L.C., J.C., and E.C., 235 Neb. 703, 457 N.W.2d 274 (1990).

A judgment terminating parental rights pursuant to subsection (6) of this section will be affirmed where the State has proved by clear and convincing evidence that (1) the parent has willfully failed to comply, in whole or in part, with a material provision of the rehabilitative plan, and (2) termination of parental rights is in the best interests of the children. In re Interest of L.K.Y. and A.L.Y., 235 Neb. 545, 455 N.W.2d 828 (1990).

A judgment terminating parental rights pursuant to subsection (6) of this section will be affirmed where the State has proved by clear and convincing evidence that (1) the parent has willfully failed to comply, in whole or in part, with a material provision of the rehabilitative plan, and (2) termination of parental rights is in the best interests of the children. In re Interest of L.B., A.B., and A.T., 235 Neb. 134, 454 N.W.2d 285 (1990).

Under subsection (6) of this section, participation in a court-ordered plan does not necessarily prevent the court from entering an order of termination where parent made no progress toward rehabilitation. In re Interest of M., 235 Neb. 61, 453 N.W.2d 589 (1990).

Pursuant to subsection (6) of this section, a parent's failure to make reasonable efforts to comply with a court-ordered plan of rehabilitation presents an independent reason justifying termination of parental rights. A judgment terminating parental rights will be affirmed when the State has established by clear and convincing evidence that the parent has willfully failed to comply, in whole or in part, with a material provision of a plan, and termination of parental rights is in the best interests of the children. Where a parent is unable or unwilling to rehabilitate herself within a reasonable time, the best interests of the children require termination of the parental rights. In re Interest of C.C. and E.C., 234 Neb. 218, 450 N.W.2d 392 (1990).

Under subsection (6) of this section, the record supports termination of parental rights where parent willingly failed to comply with reasonable plan of rehabilitation. In re Interest of R.T. and R.T., 233 Neb. 483, 446 N.W.2d 12 (1989).

Regarding parental compliance with a court-ordered rehabilitative plan, under subsection (6) of this section, as a ground for termination of parental rights, the State must prove by clear and convincing evidence that the parent has willfully failed to comply in whole or in part with a reasonable provision material to the rehabilitative objective of the plan and the termination of parental rights is in the best interests of the child. In re Interest of Q.R. and D.R., 231 Neb. 791, 438 N.W.2d 146 (1989).

Under subsection (6) of this section, a juvenile court has the discretionary power to prescribe a reasonable plan for parental rehabilitation to correct the conditions underlying the adjudication that a child is a juvenile within the Nebraska Juvenile Code. This court has held that to terminate parental rights under subsection (6) of this section, the State must prove by clear and convincing evidence that the parent has willfully failed to comply, in whole or in part, with a reasonable provision material to the rehabilitative objective of the plan and termination of parental rights is in the best interests of the child. In re Interest of P.M.C., 231 Neb. 701, 437 N.W.2d 786 (1989).

A parent's failure to make reasonable efforts to comply with a court-ordered plan of rehabilitation designed to reunite the parent and child presents an independent reason justifying termination of parental rights under subdivision (6) of this section. The state must prove this failure by clear and convincing evidence. In re Interest of P.D., 231 Neb. 608, 437 N.W.2d 156 (1989).

A parent's failure to make reasonable efforts to comply with a court-ordered plan of rehabilitation designed to reunite the parent and child presents an independent reason

justifying termination of parental rights under subdivision (6) of this section. In re Interest of D.L.S., 230 Neb. 435, 432 N.W.2d 31 (1988).

Regarding parental noncompliance with a court-ordered rehabilitative plan, under subdivision (6) of this section, as a ground for termination of parental rights, the State must prove by clear and convincing evidence that the parent has willfully failed to comply, in whole or in part, with a reasonable provision material to the rehabilitative objective of the plan and, in addition to the parent's noncompliance with the rehabilitative plan, termination of parental rights is in the best interests of the child. In re Interest of A.Z., B.Z., and R.Z., 230 Neb. 291, 430 N.W.2d 901 (1988).

As grounds for termination, the State must prove by clear and convincing evidence that the parent has willfully failed to comply with a reasonable provision material to the rehabilitative objective of the plan, and, in addition to the parent's noncompliance, termination is in the best interests of the child. In re Interest of L.O. and B.O., 229 Neb. 889, 429 N.W.2d 388 (1988).

Regarding parental noncompliance with a court-ordered rehabilitation plan under subdivision (6) of this section as a ground for termination of parental rights, the State must prove by clear and convincing evidence that (1) the parent has willfully failed to comply, in whole or in part, with a reasonable provision material to the rehabilitative objective of the plan and (2) termination of parental rights is in the best interests of the child. In re Interest of J.S., A.C., and C.S., 227 Neb. 251, 417 N.W.2d 147 (1987).

When a rehabilitation plan is implemented, the plan must be reasonable and conducted under the direction of the juvenile court before failure to comply with the plan can be an independent reason for termination. In re Interest of K.L.N. and M.J.N., 225 Neb. 595, 407 N.W.2d 189 (1987).

The primary consideration in termination proceedings is the best interests of the child and, while termination of parental rights should be considered as a last resort, this section requires that the best interests of the child and evidence of fault or neglect be considered together in reaching such a determination. The failure to comply with a court-ordered plan of rehabilitation, where a parent is ordered to make reasonable efforts to rehabilitate, presents an independent reason justifying termination of parental rights. In re Interest of J.W., 224 Neb. 897, 402 N.W.2d 671 (1987).

The failure of a parent to follow a rehabilitation plan which is not conducted under the direction of the court is not sufficient reason to terminate parental rights under this statute. In re Interest of M.L.B., 221 Neb. 396, 377 N.W.2d 521 (1985).

Parental rights terminated of mother who failed to comply with a plan of rehabilitation and who suffered from a personality disorder likely to last for an indefinite period. In re Interest of R.L.T., 221 Neb. 251, 376 N.W.2d 310 (1985).

The state need not show harm to the child in order to terminate parental rights. The failure of the parent to follow a plan of rehabilitation is sufficient grounds for termination. In re Interest of S.P., N.P., and L.P., 221 Neb. 165, 375 N.W.2d 616 (1985).

The trial court did not abuse its discretion by terminating the parental rights of a parent who failed to rehabilitate herself within a reasonable time after the adjudicative hearing. In re Interest of S.W., 220 Neb. 734, 371 N.W.2d 726 (1985).

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## **5. Appeal**

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The right to appeal from orders of a county court sitting as a juvenile court, insofar as that right is vested in the child's custodian, is vested only in individuals or entities having legal custody of such a child, and not in those persons having only possession of the child. In re Interest of S.R., 217 Neb. 528, 352 N.W.2d 141 (1984).

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## **6. Miscellaneous**

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In order to terminate parental rights with respect to a child on the basis of neglect under subsection (2) of this section, as amended, the State must prove by clear and convincing evidence that (1) the parents have substantially and continuously or repeatedly neglected and refused to give the child or a sibling of said child necessary parental care and protection and (2) termination of parental rights is in the best interests of the child. In re Interest of Lisa W. & Samantha W., 258 Neb. 914, 606 N.W.2d 804 (2000).

In order to terminate parental rights, the State must prove by clear and convincing evidence that one of the statutory grounds enumerated in this section exists and that termination is in the children's best interests. In re Interest of Michael B. et al., 258 Neb. 545, 604 N.W.2d 405 (2000); In re Interest of Kalie W., 258 Neb. 46, 601 N.W.2d 753 (1999).

The fact that children benefit from foster placement after they are removed from the custody of a natural parent does not lend support to an argument that termination of parental rights is not in their best interests. Where a parent is unable or unwilling to rehabilitate himself or herself within a reasonable time, the best interests of the child require termination of the parental rights. A significant piece of evidence bearing on the issue of whether termination of parental rights is in the best interests of the child is the fact that while in foster care, the child's "arrested state of development" at the time of removal from custody is being reversed. Children cannot, and should not, be suspended in foster care or be made to await uncertain parental maturity. The concept of permanency is not simply a "buzzword", but, rather, a recognition that when there is no reasonable expectation that a natural parent will fulfill his or her responsibility to a child, the child should be given an opportunity to live with an adult who has demonstrated a willingness and ability to assume that responsibility and has a permanent legal obligation to do so. In re Interest of Sunshine A. et al., 258 Neb. 148, 602 N.W.2d 452 (1999).

The language of this section imposes two requirements before parental rights may be terminated. First, requisite evidence must establish the existence of one or more of the circumstances described in subsections (1) to (10) of this section. Second, if a circumstance designated in subsections (1) to (10) of this section is evidentially established, there must be the additional showing that termination of parental rights is in the best interests of the child, the primary consideration in any question concerning termination of parental rights. Each of the requirements imposed by this section must be proved by clear and convincing evidence. *In re Interest of Sunshine A. et al.*, 258 Neb. 148, 602 N.W.2d 452 (1999).

Through the plain language of this section, the Legislature has demonstrated its intent that under certain circumstances, prior court action or an adjudication may be required before parental rights can be terminated. The plain and ordinary meaning of this section and section 43-291, taken together, is that parental rights may be terminated in an original proceeding. *In re Interest of Joshua M. et al.*, 256 Neb. 596, 591 N.W.2d 557 (1999).

Pursuant to subsection (3) of this section, a court cannot deny a natural parent custody based on the fact that he or she has limited resources or financial problems, or because the parent's lifestyle is different or unusual. Pursuant to subsection (4) of this section, the children need not be present while the parent commits acts described in the section for this section to apply. *Gomez v. Savage*, 254 Neb. 836, 580 N.W.2d 523 (1998).

A court may terminate parental rights when such action is in the best interests of the child and one or more of the statutorily specified conditions exist. The special needs of the child in question do not provide a basis for terminating parental rights if the record does not clearly and convincingly establish that the parent is not capable of providing the required special attention. *In re Interest of Constance G.*, 254 Neb. 96, 575 N.W.2d 133 (1998).

Before parental rights may be terminated, requisite evidence must establish existence of one or more of the circumstances described in subsections (1) to (6) of this section, and there must be an additional showing that termination is in the best interests of the child. *In re Interest of C.K., L.K., and G.K.*, 240 Neb. 700, 484 N.W.2d 68 (1992); *In re Interest of L.V.*, 240 Neb. 404, 482 N.W.2d 250 (1992).

In the absence of any reasonable alternative and as the last resort to dispose of an action brought pursuant to the Nebraska Juvenile Code, termination of parental rights is permissible when the basis for such termination is proved by clear and convincing evidence. *In re Interest of M.P.*, 238 Neb. 857, 472 N.W.2d 432 (1991); *In re Interest of C.C.*, 226 Neb. 263, 411 N.W.2d 51 (1987); *In re Interest of T.C.*, 226 Neb. 116, 409 N.W.2d 607 (1987).

A juvenile court may terminate parental rights under the various grounds specified in subsections (1) through (5) of this section without providing the parent with a reasonable opportunity to rehabilitate himself or herself. *In re Interest of L.C., J.C., and E.C.*, 235 Neb. 703, 457 N.W.2d 274 (1990).

In order to terminate parental rights, it must be shown that termination of parental rights is in the child's best interests and that at least one of six bases provided in this section exists. *In re Interest of J.B. et al.*, 235 Neb. 530, 455 N.W.2d 817 (1990).

In order to terminate parental rights, the State must prove by clear and convincing evidence that termination of parental rights is in the child's best interests and that at least one of the six bases provided in this section exists. *In re Interest of C.D.C.*, 235 Neb. 496, 455 N.W.2d 801 (1990).

In order to terminate parental rights under this section, there must be clear and convincing evidence of the existence of one or more of the circumstances described in subsections (1) to (6), and if one of the conditions described in subsections (1) to (6) has been evidentially established, there must be an additional showing by clear and convincing evidence that termination of parental rights is in the child's best interests. *In re Interest of J.B. and A.P.*, 235 Neb. 74, 453 N.W.2d 477 (1990).

Subsection (6) of this section does not require the court to proceed under that subsection whenever a determination has been made under section 43-247; the court may terminate parental rights when it appears that any one of the six conditions under this section has been met. *In re Interest of J.A. and T.A.*, 229 Neb. 271, 426 N.W.2d 277 (1988).

Language of this section imposes two requirements before parental rights may be terminated: First, requisite evidence must establish existence of one or more of the circumstances described in subdivisions (1) to (6); and second, there must be the additional showing that termination of parental rights is in the best interests of the child, the primary consideration in any question concerning termination of parental rights. The standard of proof for each of the two preceding requirements is evidence which is "clear and convincing." *In re Interest of J.S., A.C., and C.S.*, 227 Neb. 251, 417 N.W.2d 147 (1987).

Clear and convincing evidence was before the trial court to show that reasonable efforts, under the court's direction, had failed to correct the conditions which had led to the determination that the child in question was a child as defined in section 43-247(3)(a). *In re Interest of J.W.*, 224 Neb. 897, 402 N.W.2d 671 (1987).

Section 43-1505 provides specific statutory requirements for proving a case for termination of parental rights in a juvenile court action involving an Indian child, and the petition for termination of parental rights must include sufficient allegations of the requirements of section 43-1505 as well as this section to survive a demurrer. *In re Interest of Sabriena B.*, 9 Neb. App. 888, 621 N.W.2d 836 (2001).

In order to justify termination of parental rights pursuant to subsection (6) of this section, the State must prove by clear and convincing evidence that (1) the parent has failed to comply, in whole or in part, with a reasonable provision material to the rehabilitation objective of the plan and (2) that termination of parental rights is in the best interests of the child. *In re Interest of Joseph L.*, 8 Neb. App. 539, 598 N.W.2d 464 (1999).

Pursuant to this section, a court may terminate parental rights when such action is in the best interests of the child and one or more of the statutorily specified conditions exist. *In re Interest of Joseph L.*, 8 Neb. App. 539, 598 N.W.2d 464 (1999).

Parental incarceration is a factor which may be considered in determining whether parental rights should be terminated. A parent's failure to change a lifestyle of chemical dependency

may constitute neglect under subsection (2) of this section. In re Interest of Joshua M. et al., 7 Neb. App. 872, 587 N.W.2d 131 (1998).

A parent's parental rights may not be terminated pursuant to the provisions of this section based solely upon the parent's refusal to waive his or her constitutional and statutory protections against self-incrimination. In re Interest of Clifford M. et al., 6 Neb. App. 754, 577 N.W.2d 547 (1998).

In the absence of an adjudication petition and hearing in compliance with section 43-247, an order purporting to terminate parental rights pursuant to this section is a nullity. In re Interest of Joelyann H., 6 Neb. App. 472, 574 N.W.2d 185 (1998).

Termination of parental rights is protected by due process under the U.S. and Nebraska Constitutions, and in the absence of a valid waiver by all parties to such proceedings, a verbatim transcript of those proceedings shall be made and preserved in the separate juvenile court. In re Interest of M.W. and R.W., 1 Neb. App. 378, 497 N.W.2d 396 (1992).

## **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.

## **Definition of Restraint/Seclusion**

**Restraint**-The application of of physical force without the use of any device, for the purposes of restraining the free movement of a resident's body. The term personal restraint does not include briefly holding without undue force a resident in order to calm or comfort him or her or holding a resident's hand to safely escort a resident from one area to another.

**Chemical Restraint**-1)Drugs are administered to manage a resident's behavior in a way that reduces the safety to resident and others; 2)Has the temporary effect of restricting the resident's freedom of movement, 3)Is not a standard treatment for the resident's medical or psychiatric condition.

**Mechanical Restraint**-Means any device attached or adjacent to the resident's body that he or she cannot easily remove that restricts freedom of movement or normal access to his or her body.

**Seclusion**-The involuntary confinement of a resident alone in a room or an area from which the resident is physically prevented from leaving.

**Following a Case  
of Alleged Child Abuse/Neglect  
Through Juvenile Court**

**REPORT & INVESTIGATION** -- A Case enters Juvenile court when a report of child abuse and/or neglect has been received by law enforcement, investigated, and substantiated. If the case is not diverted through voluntary services, law enforcement gives the evidence to the County Attorney.



**PETITION** -- The County Attorney decides whether to file a petition. For abuse/neglect a petition would be filed under §43-247(3a). At this time the allegations of the problem/crime are stated. Nothing is determined, found, or ordered at this point. A petition must be filed within 48 hours of a child being removed or the child goes home.



**DETENTION HEARING** -- Finds if probable cause exists to warrant the continuance of court action or the child remaining in out of home care. The case is either set for an adjudication hearing or the child is returned home and charges dropped. If set for adjudication, a Guardian ad Litem, also known as a GAL, [attorney representing the child's best interests] should be appointed at this time.



**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 adhered to. An adjudication hearing can be either contested or non-contested. Contested means that the parents deny the allegations and full trial with evidence ensues. At this hearing the finding of fact occurs, the allegations of the petition are found to be either true or false, and the child is either made a state ward or not.



**DISPOSITIONAL HEARING** -- At this time a plan is ordered which addresses the reasons why the court action began. A rehabilitation plan for the parents is ordered.



**DISPOSITIONAL REVIEW HEARINGS** -- Per PL 96-272, this hearing is to occur at least every six months to review the progress made on the dispositional order until conditions warrant the court terminating jurisdiction. The focus should be on whether progress is being made to correct the problem that brought the child into care or not. A Journal Entry should be filed recording what was ordered.

**Following a Case  
When the Case Involves the Actions of the Child  
Through Juvenile Court**

REPORT & INVESTIGATION -- A Case enters Juvenile court when a report of one of the following is received by law enforcement, investigated, and substantiated: status offense [an offense that would not be an offense for an adult, such as truancy], misdemeanor, or felony offense. If the case is not diverted through voluntary services, law enforcement gives the evidence to the County Attorney.



PETITION -- The County Attorney decides whether to file a petition. For a status offense a petition would be filed under §43-247(3b). For a misdemeanor it would be under §43-247(1), for a felony under §43-247(2). At this time the allegations of the problem/crime are stated. Nothing is determined, found, or ordered at this point. Information is sent to County Attorney. County Attorney makes determination.



DETENTION HEARING -- Finds if probable cause exists to warrant the continuance of court action or the child remaining in out of home care. The case is either set for an adjudication hearing or the child is returned home and charges dropped. An attorney for the child may be appointed at this time.



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 adhered to. At this hearing the finding of fact occurs, the allegations of the petition are found to be either true or false. Sometimes delays occur due it being a criminal case.



DISPOSITIONAL HEARING -- At this time a plan is ordered which addresses the reasons why the court action began. A rehabilitation plan is ordered.



DISPOSITIONAL REVIEW HEARINGS -- Per PL 96-272, this hearing is to occur at least every six months to review the progress made on the dispositional order until conditions warrant the court terminating jurisdiction. The focus should be if progress is being made to correct the problem that brought the child into care. A Journal Entry should be filed recording what was ordered.

# **Appendix C**

## **FCRO Forms and Tools**

## **FOSTER CARE REVIEW OFFICE MISSION STATEMENT**

The Foster Care Review Office's mission is to ensure the best interests and safety needs of children in out-of-home care are being met through maintaining a statewide independent tracking system; conducting external citizen reviews; disseminating data, analysis, and recommendations to the public, the child welfare system, and the Legislature; and monitoring youth placements.

### **The Board accomplishes this mission by:**

- Reviewing the plan, services, and placements of children in foster care by multi-disciplinary, community based, trained citizen volunteers. (Neb. Rev. Stat.43-1308, 43-1312)
- Making findings based on the review and the specific rationale for these findings. (Neb. Rev. Stat.43-1308,(1)(b))
- Sharing the findings with all legal parties to the case. (Neb. Rev. Stat.43-1308, (1)(b))
- Maintaining a computerized tracking system on all children and youth in foster care. (Neb. Rev. Stat .43-1303)
- Collecting and verifying information on children and youth in foster care. (Neb. Rev. Stat.43-1303)
- Disseminating information on children in foster care. (Neb. Rev. Stat. 43-1303)
- Releasing an annual report containing the data collected, an evaluation of such data and recommendations. (Neb. Rev. Stat. 43-1303)
- Promoting safety, security and permanency for children. (Neb. Rev. Stat. 43-1303, 43-1308)
- Improving the foster care experience for children, (Neb. Rev. Stat. 43-1308), which includes working to obtain appropriate, safe, and permanent placements for children, reduce the number of placements children experience, reduce the number of times children enter care, and reduce the time children spend in out-of-home care.
- Maintaining a higher level of case advocacy and involvement through legal standing (Neb. Rev. Stat. 43-1313)
- Visiting facilities for children in foster care (Neb. Rev. Stat. 43-1303(4))
- Organizing, sponsoring and participating in educational programs. (Neb. Rev. Stat. 43-1317)

### **AGENCY VISION**

The vision of the Foster Care Review Office is that every child and youth in foster care live in a safe, permanent home, experience an enduring relationship with one or more caring adults, and have every opportunity to grow up to become a responsible and productive adult.

## **FOSTER CARE REVIEW OFFICE Local Board Meeting**

## **Chairpersons Opening Statement**

Welcome to this meeting of the Foster Care Review Office, Local Board.

The Foster Care Review Office is an independent state agency. We are not a court review. We are not part of the Department of Health and Human Services, and we are not part of any lead service provider agency. (*Such as NFC in Omaha*).

There are several parts to our job. We find out if there are any issues affecting the children while they are in foster care. We find out what needs to happen for the children to go home safely, or reach other permanency. We then make recommendations to the legal parties and the Judge on what needs to happen next.

Members of this local Board serve as volunteers and are private citizens. We have completed training on how to review cases. We have read the case file material, and we will be asking you questions to help us make the most helpful recommendations possible on behalf of this child (these children). What you say during this meeting may be included in the Local Board's final report, which is sent to the court, attorneys, caseworkers and any other legal parties in the case. Please keep in mind that some attorneys may share our recommendations with their clients, and that the final decision in all juvenile cases is made by the Juvenile Judge at court. *Information will not be shared with anyone other than those listed above.*

**Recording of this meeting is not allowed.**

Do you have any questions of us?

Again, welcome, and please tell us your name and your relationship to the child (children).

**STATE OF NEBRASKA**

Appendix C – FCRO Forms and Tools

**FOSTER CARE REVIEW OFFICE  
AGREEMENT REGARDING CONFIDENTIALITY**

Neb. Rev.Stat 43-1310. Records and information; confidential; unauthorized disclosure; penalty. All records and information regarding foster children and their parents or relatives in the possession of the office or local board shall be deemed confidential. Unauthorized disclosure of such confidential records and information or any violation of the rules and regulations adopted and promulgated by the Department of Health and Human Services or the office shall be a Class III misdemeanor.

Class III misdemeanor: Maximum - Three months imprisonment, or five hundred dollars fine, or both.  
Minimum - None

I, \_\_\_\_\_, agree to Nebraska Statute and the rules and regulations of confidentiality set forth by DHHS and the Foster Care Review Office (FCRO).

I understand that I will be required to adequately secure and protect confidential materials from unauthorized access while these materials are in my personal possession and I further promise to return all confidential information to the FCRO per policy.

I promise not to disclose any information obtained from my participation in local board meetings, case meetings, court hearings, Project Permanency visits, and/or any other duties performed on behalf of the FCRO with anyone for any reason outside FCRO staff and Administration.

I understand that confidentiality rules are applied equally to verbal, written and electronic communication and I am subject to statutory penalties if FCRO protocols and/or rules and regulations are not upheld.

I further promise not to use any information or data for my own personal, professional, or monetary advantage.

By signing below I promise to uphold this agreement.

\_\_\_\_\_  
*Signature* \_\_\_\_\_  
*Date*

\_\_\_\_\_  
*Address*

\_\_\_\_\_, \_\_\_\_\_  
*City* *State/ Zip*

Received by the FCRO:

\_\_\_\_\_  
*Signature* \_\_\_\_\_  
*Date*

*Revised 7-9-2012*

**Participant Exit Questionnaire**

**Child's Name:** \_\_\_\_\_

**Date of Board Meeting:** \_\_\_\_\_

**City where Board Meeting occurred:** \_\_\_\_\_

Thank you for participating in this review. Please take a few moments to fill out the following:

YES NO

1. \_\_\_ \_\_\_ Did you understand the reason for this review today?
2. \_\_\_ \_\_\_ Did the opening statement read by the chairperson adequately explain the purpose of this meeting?
3. \_\_\_ \_\_\_ Were you given the opportunity to express your concerns and view of the case?
4. \_\_\_ \_\_\_ Is there anything a reviewer said or did that made you uncomfortable? (If yes, please describe):
5. \_\_\_ \_\_\_ Do you feel the reviewers were objective and neutral during the review? If not, why not? If yes, why?
6. \_\_\_ \_\_\_ Did anyone discourage you from attending this review? If yes, who?
7. \_\_\_ \_\_\_ Did you find the review helpful? Please explain:
8. \_\_\_ \_\_\_ Did the notification letter give directions to find the board meeting?
9. \_\_\_ \_\_\_ Did the questionnaire enclosed with the notification letter give you an idea of what kind of questions the board would be asking you at the review? If not, please explain:
10. \_\_\_ \_\_\_ Please share any additional suggestions you have to improve the reviews done by the Foster Care Review Office: \_\_\_\_\_

*Write on the back or attach another sheet if you have additional comments.*

**Completed by:** (Please circle one)

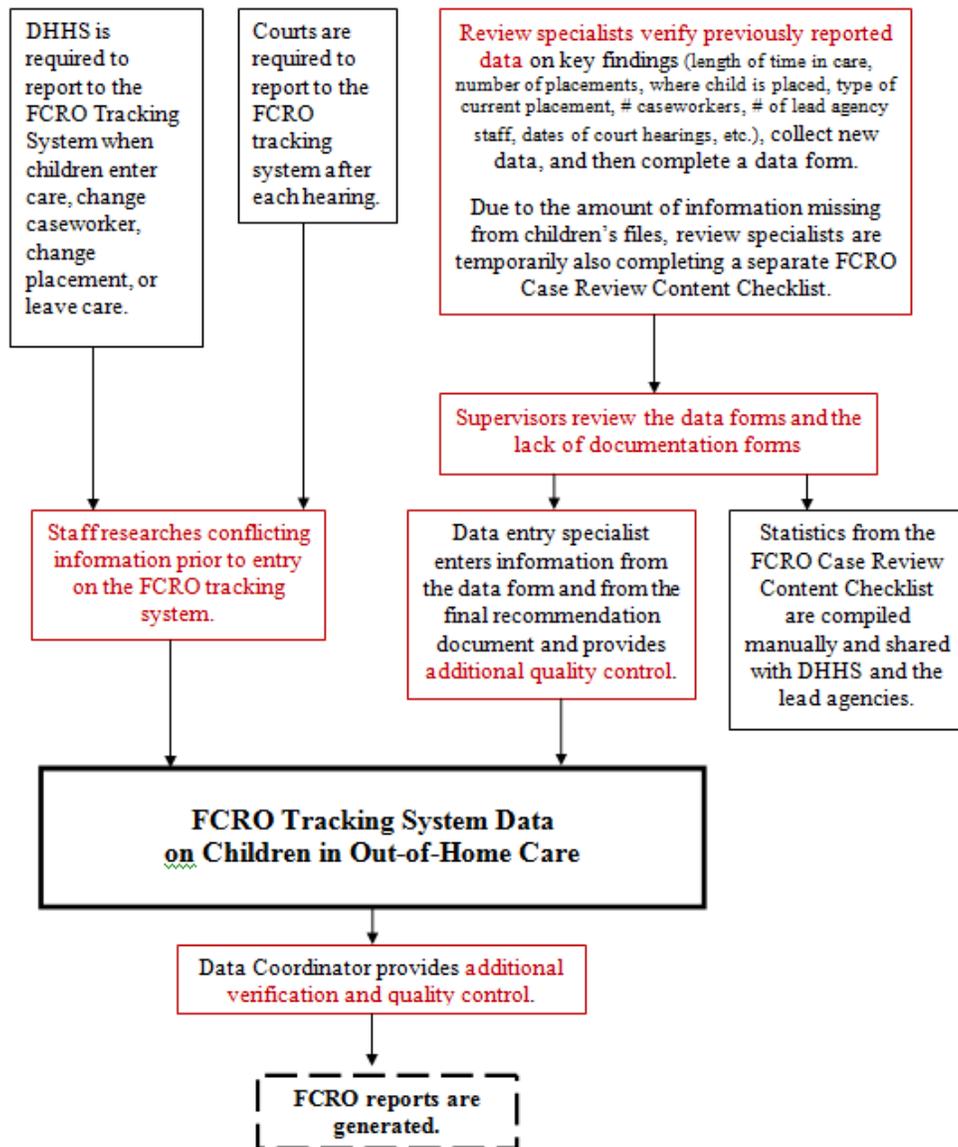
Parent      Attorney for Parent      Case Manager      Relative  
CASA      Attorney for Youth/GAL      Foster Parent      Other \_\_\_\_\_

**Thank you for your participation in this review!**

**Please return the form to:**

Foster Care Review Office  
521 S. 14<sup>th</sup> Street, Suite 401  
Lincoln NE 68508

## The FCRO Tracking Process



<b>Comparison of the Role of the Foster Care Review, DHHS, and the Courts</b>
---

**Role of Citizen Review**

**Federal and State Mandated Review System**

- Local Boards conduct reviews that meet state and federal mandates, and that focus on children's best interests

**Review Function**

- Focus on child's best interest per statute 'to determine the physical, psychological, and sociological circumstances of such foster child'
- Review all documents in the placement agency's file and seek additional information from other concerned parties
- Analyze plan based on variety of backgrounds and expertise available through multi-disciplinary boards
- Make recommendations to be shared with all legal parties based on knowledge of community services, clearly listing main concerns
- Seek legal intervention when the case review indicates a child is in danger
- Tour facilities per mandate and report concerns to appropriate authorities
- Gather information through reviewing children from all placement agencies and provide a statewide picture of all children in out-of-home care

**Tracking Function**

- Track all children in out-of-home care per statute (FCRB Tracking System)
- Provide statewide picture of all children in out-of-home care

**Role of HHS**

**Risk Assessment**

- If not an emergency removal, assesses family to determine child's risk if allowed to remain in the home

**Case Management Planning**

- Provides case management
- Develops the child's case plan, and presents the plan to the courts, updating the plan at least every 6 months
- Initiates action toward termination of parental rights, if in child's best interests
- Facilitates court orders

**Places Children**

- Places children in a foster home, relative's home, or group home that is to meet the child's needs or places the child with the parent(s)
- Provides oversight of the placement and services for the child

*Provider Assessments & Services*

- Assesses the child and family in order to determine needed services to support family reunification
- Provides for services for children in out-of-home care, such as counseling, medical, dental, and treatment services
- Provides for services to children and families where children are able to remain with HHS supervision in the home of origin
- Informs the courts of services offered and accepted

**Reports to the FCRB**

- Informs the FCRB of child's removals from the home, placement or case management changes, and case closings, per statute (using HHS N-FOCUS)

**Role of the Court**

**Due Process**

- Assure due process rights are protected
- Assure all parties are present and have legal advice

**Fact Finding and Decision Making**

- Act as fact finder
- Provide adjudication and disposition of case
- Monitor parental compliance
- Order services based on facts presented as evidence
- Makes judicial record for permanency plan if child is not able to return home
- Makes review that is on record and may be appealed
- Acts as ultimate decision-maker on family reunification, adoption, independent living, termination of parental rights

**Local Board Meeting – AGENDA (example of completed agenda)**

**FOSTER CARE REVIEW OFFICE - LOCAL BOARD AGENDA**

Review Specialist:	(Name of Reviewer)	Board:	IIB - 2
Chairperson:	Betty	Date:	7/7/2012
Meeting Place:	Library (Site Address)	Time:	6:00 PM

**FCRB Business/Discussion:**  
 New Board Forming in Lincoln - Need assistance recruiting new board members

**DATE OF NEXT MEETING:**

Last	First	DOB	FCRB #	Last Review	In Care Date	Next Court Hearing	IV-E	Perm. Obj.	Rev. #	Next Review	Time	Lead Questioner	Case Manager
Last	First	8/5/10	1234	2/2/11	4/13/11	8/10/12	Y	A/G	2		6:10 PM	Betty	Ann
Last	First	8/6/10	1234	2/2/11	4/13/11	8/10/12	Y	A/G	2		6:10 PM	Betty	
Last	First	8/7/10	1236	11/5/11	4/15/11	8/12/12	Y	R/A	6		6:30 PM	Raheem	Bill
Last	First	8/8/10	1236	11/5/11	4/15/11	8/12/12	Y	R/A	2		6:30 PM	Raheem	
Last	First	8/9/10	1236	11/5/11	4/15/11	8/12/12	Y	R/A	2		6:30 PM	Raheem	
Last	First	8/10/10	1239	11/8/11	4/18/11	8/15/12	Y	IL/G	3		6:50 PM	Amelia	Mike
Last	First	8/11/10	1240	11/9/11	4/19/11	8/16/12	N	A/G	2		7:10 PM	Rob	Marla
Last	First	8/12/10	1241	11/10/11	4/20/11	8/17/12	Y	SS	4		7:30 PM	Andy	Steve
<b>Total # of Cases:</b>		5		<b>Total # of Children:</b>		8							

Board Member Name	Present at Meeting	Absent	Board Packet Sent	Board Pack. Returned
1 Betty	x		X	x
2 Andy	x		X	x
3 Karen	x		X	x
4 Raheem	x		X	x
5 Amelia	x		X	x
6 Cheryl		x	X	dropped off
7 Rob	x		X	x



**Barriers List (rev. 1-1-2007)**

**Regarding the case plan, select one of the following:**

- |     |                  |     |                    |
|-----|------------------|-----|--------------------|
| 100 | No Plan Barriers | 103 | Plan is Incomplete |
| 101 | No Case Plan     | 104 | Other _____        |
| 102 | Plan is Outdated |     |                    |

**If the plan is Reunification, identify all of the following barriers that apply:**

- |     |   |     |   |
|-----|---|-----|---|
| 200 | No Barriers to Reunification                    | 240 | Lack of parental visitation   |
| 201 | No current written case plan                    | 241 | Lack of parental willingness/ability                                |
| 210 | Parents need more time to complete services     | 242 | History of family abuse/violence                                    |
| 211 | Services have not been provided to parents      | 243 | Severity of abuse makes safe reunification unlikely                 |
| 212 | Lack of home based services – substance abuse   | 244 | Not in best interests due to child’s attachments                    |
| 213 | Lack of home based services – mental health     | 245 | Length of time in foster care                                       |
| 214 | Lack of home based services – other             | 250 | HHS/Agency lacks documentation regarding progress                   |
| 215 | Economic – housing issues                       | 251 | Caseworker changes or turnover                                      |
| 216 | Economic-employment issues                      | 252 | HHS pressure to return home prematurely                             |
| 217 | Public assistance needed before child goes home | 260 | Court continuances  |
| 220 | Low functioning parent                          | 270 | Child’s illness   |
| 221 | Parental mental illness                         | 271 | Child’s disability  |
| 222 | Parental illness or health issues               | 272 | Child’s mental health issues  |
| 223 | Parental substance abuse                        | 273 | Child’s behavioral issues   |
| 224 | Parental incarceration                          | 274 | Child’s substance abuse issues                                      |
| 225 | Parental whereabouts unknown                    | 275 | Child’s educational needs/lack of special education in child’s area |
| 226 | Paternity not established                       | 276 | Child’s history of violent and/or abusive behaviors                 |
| 227 | Parent not been notified                        | 299 | Other _____   |
| 230 | Parent/purported parent’s immigration status    |     |   |
| 231 | Cultural barriers                               |     |   |
| 232 | Language barriers                               |     |   |

**If the plan is Adoption, identify all of the following barriers that apply**

- No barriers to adoption
- No current written case plan
- A request to file a petition to terminate parental rights has not been sent to the County Attorney
- A request to file was given to the County Attorney, but a petition was not filed
- A petition to terminate parental rights has been filed and the hearing is pending
- Parents whereabouts is unknown
- Paternity has not been addressed
- County Attorney lacks evidence to terminate parental rights
- HHS lacks documentation regarding the lack of parental progress
- Mental health professional unwilling to testify TPR in child's best interests
- Court did not terminate parental rights
- Court continuances
- Issues regarding separating the siblings
- Child is not in a placement willing to adopt
- HHS policy
- Adoption paperwork not complete
- Child's illness
- Child's disability
- Child's mental health issues
- Child's behavioral issues
- Child's substance abuse issues
- Child's education issues
- Child's history of violent and/or abusive behaviors
- Other \_\_\_\_\_

**If the plan is Guardianship, identify all of the following barriers that apply**

- No barriers to Guardianship
- No current written case plan
- Placement not willing to accept guardianship
- An exception to guardianship has not been made by the Dept (child is younger than 13)
- Guardianship subsidy paperwork not completed
- Child's illness
- Child's disability
- Child's mental health
- Child's behavioral issues
- Child's substance abuse issues
- Child's educational issues
- Child's history of violent and/or abusive behaviors
- Other \_\_\_\_\_

**If the plan is Independent Living Skills, identify all of the barriers that apply**

- No barriers to independent living
- No current written case plan
- No independent living skills training
- Case plan does not address a permanency goal of independent living
- Child's illness
- Child's disability
- Child's mental health issues
- Child's behavioral issues
- Child's substance abuse issues
- Child's educational issues
- Child's history of violent and/or abusive behaviors
- Other \_\_\_\_\_

# **INSERT ACROYNMS**

# Psychotropic Medication - Reference

## QUICK REFERENCE TO PSYCHOTROPIC MEDICATION®

DEVELOPED BY JOHN PRESTON, PSY.D., ABPP

To the best of our knowledge recommended doses and side effects listed below are accurate. However, this is meant as a general reference only, and should not serve as a guideline for prescribing of medications. Please check the manufacturer's product information sheet or the P.D.R. for any changes in dosage schedule or contraindications. (Brand names are registered trademarks.)

### ANTIDEPRESSANTS

Generic	NAMES		Usual Daily Dosage Range	Sedation	ACH <sup>1</sup>	NE	Selective Action On Neurotransmitters <sup>2</sup>	
	Brand						5-HT	DA
imipramine	Tofranil		150-300 mg	mid	mid	++	+++	0
desipramine	Norpramin		150-300 mg	low	low	+++++	0	0
amitriptyline	Elavil		150-300 mg	high	high	++	++++	0
nortriptyline	Aventyl, Pamelor		75-125 mg	mid	mid	+++	++	0
protriptyline	Vivactil		15-40 mg	mid	mid	++++	+	0
trimipramine	Surmontil <sup>3</sup>		100-300 mg	high	mid	++	++	0
doxepin	Sinequan, Adapin <sup>3</sup>		150-300 mg	high	mid	++	+++	0
clomipramine	Anafranil		150-250 mg	high	high	0	+++++	0
maprotiline	Ludomil		150-225 mg	high	mid	+++++	0	0
amoxapine	Asendin		150-400 mg	mid	low	+++	++	0
trazodone	Desyrel		150-400 mg	mid	none	0	++++	0
fluoxetine	Prozac <sup>4</sup> , Sarafem		20-80 mg	low	none	0	+++++	0
bupropion-X.L.	Wellbutrin-X.L. <sup>4</sup>		150-400 mg	low	none	++	0	++
sertraline	Zoloft		50-200 mg	low	none	0	+++++	0
paroxetine	Paxil		20-50 mg	low	low	+	+++++	0
venlafaxine-X.R.	Effexor-X.R. <sup>4</sup>		75-350 mg	low	none	++	+++	+
fluvoxamine	Luvox		50-300 mg	low	low	0	+++++	0
mirtazapine	Remeron		15-45 mg	mid	mid	+++	+++	0
citalopram	Celexa		10-60 mg	low	none	0	+++++	0
escitalopram	Lexapro		5-20 mg	low	none	0	+++++	0
duloxetine	Cymbalta		20-80 mg	low	none	++++	++++	0
atomoxetine	Strattera		60-120 mg	low	low	+++++	0	0
<b>MAO INHIBITORS</b>								
phenelzine	Nardil		30-90 mg	low	none	+++	+++	+++
tranylcypromine	Parnate		20-60 mg	low	none	+++	+++	+++
selegiline	Emsam (patch)		6-12 mg	low	none	+++	+++	+++

<sup>1</sup>ACH: Anticholinergic Side Effects

<sup>2</sup>NE: Norepinephrine, 5-HT: Serotonin, DA: Dopamine (0 = no effect, + = minimal effect, +++ = moderate effect, ++++ = high effect)

<sup>3</sup>Uncertain, but likely effects

<sup>4</sup>Available in standard formulation and time release (XR, XL or CR). Prozac available in 90mg time released/weekly formulation

### BIPOLAR DISORDER MEDICATIONS

Generic	NAMES		Daily Dosage Range	Serum <sup>1</sup> Level	Generic	NAMES Brand	Dosage	Daily Range	Serum <sup>1</sup> Level
	Brand								
lithium carbonate	Eskalith, Lithonate		600-2400	0.6-1.5	divalproex	Depakote		750-1500	50-100
olanzapine/					gabapentin	Neurontin		300-2400	(2)
fluoxetine	Symbyax	6/25-12/50mg <sup>4</sup>		2	lamotrigine	Lamictal		50-500	(2)
carbamazepine	Tegretol, Equetro		600-1600	4-10+	topiramate	Topamax		50-300	(3)
oxcarbazepine	Trileptal		1200-2400	(2)	tiagabine	Gabitril		4-12	(3)

<sup>1</sup>Lithium levels are expressed in mEq/L, carbamazepine and valproic acid levels express in mcg/ml.

<sup>2</sup>Serum monitoring may not necessary <sup>3</sup>Not yet established <sup>4</sup>Available in: 6/25, 6/50, 12/25, and 12/50mg formulations

### ANTI-OBSESSIONAL

Generic	NAMES Brand	Dose Range <sup>1</sup>
clomipramine	Anafranil	150-300 mg
fluoxetine	Prozac <sup>1</sup>	20-80 mg
sertraline	Zoloft <sup>1</sup>	50-200 mg
paroxetine	Paxil <sup>1</sup>	20-60 mg
fluvoxamine	Luvox <sup>1</sup>	50-300 mg
citalopram	Celexa <sup>1</sup>	10-60 mg
escitalopram	Lexapro <sup>1</sup>	5-30 mg

<sup>1</sup>often higher doses are required to control obsessive-compulsive symptoms than the doses generally used to treat depression.

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### PSYCHO-STIMULANTS

Generic	NAMES Brand	Daily Dosage <sup>1</sup>
methylphenidate	Ritalin	5-50 mg
methylphenidate	Concerta <sup>2</sup>	18-54 mg
methylphenidate	Metadate	5-40 mg
methylphenidate	Methylin	10-60 mg
methylphenidate	Daytrana (patch)	15-30 mg
dexamethylphenidate	Focalin	5-40 mg
dextroamphetamine	Dexedrine	5-40 mg
lisdexamphetamine	Vyvanse	30-70 mg
pemoline	Cylert	37.5-112.5 mg
d- and l-amphetamine	Adderall	5-40 mg
modafinil	Provigil, Sparlon	100-400 mg

<sup>1</sup>Note: Adult Doses. <sup>2</sup>Sustained release

## ANTIPSYCHOTICS

NAMES		Brand	Dosage Range <sup>1</sup>	Sedation	Ortho <sup>2</sup>	EPS <sup>3</sup>	ACH Effects <sup>4</sup>	Equivalence <sup>5</sup>
Generic								
<b>LOW POTENCY</b>								
chlorpromazine		Thorazine	50-800 mg	high	high	++	++++	100 mg
thioridazine		Mellaril	150-800 mg	high	high	+	+++++	100 mg
clozapine		Clozaril	300-900 mg	high	high	0	+++++	50 mg
mesoridazine		Serentil	50-500 mg	high	mid	+	+++++	50 mg
quetiapine		Seroquel	150-600 mg	mid	mid	+ / 0	+	50 mg
<b>HIGH POTENCY</b>								
molindone		Moban	20-225 mg	low	mid	+++	+++	10 mg
perphenazine		Trilafon	8-60 mg	mid	mid	++++	++	10 mg
loxapine		Loxitane	50-250 mg	low	mid	+++	++	10 mg
trifluoperazine		Stelazine	2-40 mg	low	mid	++++	++	5 mg
fluphenazine		Prolixin <sup>5</sup>	3-45 mg	low	mid	+++++	++	2 mg
thiothixene		Navane	10-60 mg	low	mid	++++	++	5 mg
haloperidol		Haldol <sup>5</sup>	2-40 mg	low	low	+++++	+	2 mg
pimozide		Orap	1-10 mg	low	low	+++++	+	1-2 mg
risperidone		Risperdal	4-16 mg	low	mid	+	+	1-2 mg
paliperidone		Invega	3-12 mg	low	mid	+	+	1-2mg
olanzapine		Zyprexa	5-20 mg	mid	low	+ / 0	+	1-2 mg
ziprasidone		Geodon	60-160 mg	low	mid	+ / 0	++	10 mg
aripiprazole		Abilify	15-30mg	low	low	+ / 0	+	2 mg

<sup>1</sup>Usual daily oral dosage  
<sup>2</sup>Orthostatic Hypotension Dizziness and falls  
<sup>3</sup>Acute: Parkinson's, dystonias, akathisia. Does not reflect risk for tardive dyskinesia. All neuroleptics may cause tardive dyskinesia, except clozapine.  
<sup>4</sup>Anticholinergic Side Effects.  
<sup>5</sup>Dose required to achieve efficacy of 100 mg chlorpromazine.  
<sup>6</sup>Available in time-release IM format.

## ANTI-ANXIETY

NAMES		Brand	Single Dose Dosage Range	Equivalence <sup>1</sup>
Generic				
<b>BENZODIAZEPINES</b>				
diazepam		Valium	2-10 mg	5 mg
chlordiazepoxide		Librium	10-50 mg	25 mg
prazepam		Centrax	5-30 mg	10 mg
clorazepate		Tranxene	3.75-15 mg	10 mg
clonazepam		Klonopin	0.5-2.0 mg	0.25 mg
lorazepam		Ativan	0.5-2.0 mg	1 mg
alprazolam		Xanax, XR	0.25-2.0 mg	0.5 mg
oxazepam		Serax	10-30 mg	15 mg
<b>OTHER ANTI-ANXIETY AGENTS</b>				
bupirone		BuSpar	5-20 mg	
gabapentin		Neurontin	200-600 mg	
hydroxyzine		Atarax, Vistaril	10-50 mg	
propranolol		Inderal	10-80 mg	
atenolol		Tenormin	25-100 mg	
guanfacine		Tenex	0.5-3 mg	
clonidine		Catapres	0.1-0.3 mg	
prazosin		Minipress	5-20 mg	

<sup>1</sup>Doses required to achieve efficacy of 5 mg of diazepam

## OVER THE COUNTER

Name	Daily Dose
St. John's Wort <sup>1,2</sup>	600-1800 mg
SAM-e <sup>3</sup>	400-1600 mg
Omega-3 <sup>4</sup>	1-9 g

<sup>1</sup>Treats depression and anxiety  
<sup>2</sup>May cause significant drug-drug interactions  
<sup>3</sup>Treats depression  
<sup>4</sup>Treats depression and bipolar disorder

## HYPNOTICS

NAMES		Brand	Single Dose Dosage Range
Generic			
flurazepam		Dalmane	15-30 mg
temazepam		Restoril	15-30 mg
triazolam		Halcion	0.25-0.5 mg
eszazolam		ProSom	1.0-2.0 mg
quazepam		Doral	7.5-15 mg
zolpidem		Ambien	5-10 mg
zaleplon		Sonata	5-10 mg
eszopiclone		Lunesta	1-3 mg
ramelteon		Rozerem	4-16 mg
diphenhydramine		Benadryl	25-100 mg

## COMMON SIDE EFFECTS

### ANTICHOLINERGIC EFFECTS (block acetylcholine)

- dry mouth
- blurred vision
- constipation
- memory impairment
- urinary retention
- confusional states

### EXTRAPYRAMIDAL EFFECTS

#### (dopamine blockade in basal ganglia)

- Parkinson-like effects: rigidity, shuffling gait, tremor, flat affect, lethargy
- Dystonias: spasms in neck and other muscle groups
- Akathisia: intense, uncomfortable sense of inner restlessness
- Tardive dyskinesia: often a persistent movement disorder (lip smacking, writhing movements, jerky movements)

Note: The above are common side effects. All medications can produce specific or unique side effects. For a more complete description, please see references listed below

## REFERENCES and RECOMMENDED BOOKS

Handbook of Clinical Psychopharmacology For Therapists (2008) Preston, O'Neal and Talaga

Quick Reference • Free Downloads Website: [www.PsyD-fx.com](http://www.PsyD-fx.com)

Clinical Psychopharmacology Made Ridiculously Simple 5th Edition (2008) Preston and Johnson

# Terminology

**AWOL:** A ward who has left the designated residence without approval. Youths who chronically AWOL present a troubling problem for all those involved with their well-being. As with any individual who is making the transition from childhood to adolescence to adulthood, foster youths are seeking more freedom and independence. Some believe one way to achieve this is to run away. Therefore, child welfare systems need to find ways to appropriately address the issues that cause youths to AWOL. Also called **Runaway** youth.

**Child Care Institution:** A facility that is licensed by the State, including a:

1. Private facility. The private child care institution may be either nonprofit or for profit; or
2. A public child care facility which accommodates no more than 25 children.

Detention facilities, forestry camps, training schools, or any other facilities that are operated primarily for the detention of children who are determined to be delinquent are not licensed as child care institutions.

**Child Support:** Support ordered by a court of competent jurisdiction on behalf of a minor child.

**Contributions:** Verified payments which are paid to or for a foster child. This includes money received from a parent when no order for child support exists.

**Court Order:** A document signed by a judge and entered in a court of competent jurisdiction.

**Department:** The Nebraska Department of Health and Human Services.

**Discharged Ward:** An individual who has been discharged as a ward of the court or DHHS or DHHS - Office of Juvenile Services (OJS).

**Emergency Shelter Care:** A short-term service that is intended to support children and families that are experiencing a crisis situation that requires a break from the home in a safe, secure place for less than 30 days.

**Family Matters:** Name given to Child and Family Services at DHHS in 2011.

**Former Ward:** An individual age 18 through 20 who has been discharged as a ward by DHHS or DHHS-OJS and who is in a continuing educational program.

**Foster Care Payment Determination Checklist:** A checklist that indicates the needs and behaviors of a child in order to determine the foster care payment for the child.

**Foster Care Review Office – Citizen Reviews:** All children and youth in out-of-home [foster] care are vulnerable and have special needs due to their experiencing abuse or neglect and out-of-home care. Citizen review and oversight brings attention to 1) what these children and youth need while they are in foster care, and 2) barriers to the children reaching a timely and appropriate permanency, whether through return to a home where the conditions have changed, adoption, guardianship, or another plan. This is done by independently reviewing the children’s plan, and making sure the plan meets statutory requirements. This information is then shared with all legal parties to the individual child’s case.

Reviews can make a life-changing difference for children – they can achieve permanency (return to parents who have corrected the issues that led to the children’s removal from the home, or adoption, guardianship, or other safe, permanent placements), their medical and/or mental health issues can be addressed, and other barriers to case progression can be addressed.

**Foster Home:** A private home, including a relative's home, which has been licensed or approved and evaluated by means of a home study for the 24-hour-a-day care of foster children.

**Foster Parent:** An adult who provides a home and manages and maintains a household which may be used for placement of children.

**Guardian Ad Litem:** An adult appointed by a court to protect the best interests of a minor child in a specific legal action.

**Lead Agency:** Agency under contract with DHHS to provide case management for children in the custody of DHHS.

**Parent: Wherever the term parent, father, or mother is used, it includes birth, adoptive, and stepparents.**

**Physical Removal: A bodily removal of the child from the home.**

**Relinquishment of Parental Rights:** Voluntary surrendering of all legal rights and responsibilities of a parent. Relinquishment of a child to the Department is effective upon written acceptance by the Department. Relinquishment to the Department is irrevocable and transfers guardianship and full parental rights to the Department. (See 390 NAC 8-004.01 for special circumstances on relinquishing a Native American child.)

**Runaway:** A ward who has left the designated residence without approval.

**Temporary Custody:** Custody granted by a court of competent jurisdiction, or through properly executed voluntary placement agreement, voluntary relinquishment, or a law enforcement pickup.

**Termination of Parental Rights:** The legal separation of a parent-child relationship with accompanying transfer of custodial rights over a child through assignment of legal custody and guardianship by:

1. Voluntary relinquishment, the surrender of a child by parent(s), the Department, or licensed child placement agency (Neb. Rev. Stat., sections 43-104.02 through 43-106.01); or
2. Judicial determination, an order of the county, district, or separate juvenile court or tribal court (Neb. Rev. Stat., Chapter 43, Article 2).

**Voluntary Placement - 2-001.01A3**

*479 NAC 2-001.01A3*

A child becomes a Department ward if the parent(s) or legal guardian(s) completes and signs Form DSS-0857, "Voluntary Placement Agreement." The placement is valid only if it is accepted by the Department. A copy is forwarded to the IM worker. While the agreement is in effect, the Department is responsible for the child's care to the extent provided in the agreement.

The legal status of a parent or guardian is not affected by a "Voluntary Placement Agreement." The parent or guardian may withdraw the agreement at any time.

If a parent contributes to the cost of care, the worker shall forward the payment along with Form FA-62, "Maintenance Assistance Cancellation/Refund Transmittal," to Finance and Accounting, Central Office.

**Voluntary Placement Agreement:** An agreement signed by the parent(s) or guardian of a child placing the child in the Department's custody.

**Voluntary Placement Time Limits** - 2-001.01A3a

*479 NAC 2-001.01A3a*

Payment may be made for a voluntary placement for a maximum of six months.

**Ward:** A child whose custody by judicial determination has been retained by the court or assigned to the Nebraska Health and Human Services.

**Workforce Investment Act (WIA):** Legislation designed to prepare youth and unskilled adults for entry into the labor force, previously known as JTPA.

# **Appendix D**

## **Participant Questionnaires**

## Attorney Questionnaire

Name of Child(ren): \_\_\_\_\_ Board #: \_\_\_\_\_

Return by: \_\_\_/\_\_\_/\_\_\_



What do you understand to be the permanency objective for the child(ren)?
Do you agree with the permanency plan and timeline proposed by the Case Manager? If not, what do you recommend as the permanency plan?
Describe any barriers to the permanency plan.
What additional services do you feel could or should be provided to this family?
Have any conditions that caused the child(ren) to come into foster care changed? Please explain.
Do you feel the child(ren) could return safely home? If yes, what services or supports should be recommended? If no, why?
Is there any other information that you believe is pertinent for the board to consider regarding this case? <i>Add extra pages as needed.</i>

Form completed by:

Title:

Date completed:

**THANK YOU, PLEASE RETURN THIS FORM TO:**

You may return this to the Review Specialist through the email address provided at the top of this form.  
*If you return of this document via email, your email serves in lieu of your signature.*

Foster Care Review Office  
521 S. 14<sup>th</sup> Street, Suite 401  
Lincoln, NE 68508-2707  
Fax (402) 471-4437

## CASA Questionnaire

Name of Child(ren): \_\_\_\_\_ Board #: \_\_\_\_\_

Return by: \_\_\_\_/\_\_\_\_/\_\_\_\_



When did you first become involved in this case?
Date of most recent in-person contact with the child(ren) and in what setting:
Date of most recent contact in the placement:
What is the frequency of contact you generally have with the child?
Do you believe that the child(ren)'s placement is safe and appropriate? Please explain:

### Case Plan and Services

Do you agree with the permanency plan and timeline proposed by the Case Manager? If not, what do you recommend as the permanency plan?
Describe any barriers to the permanency plan:
Do you think that the child(ren) could be safely returned home at this time? If yes, list any supports or services that would still be needed:
How much contact do you have with the Case Manager?
How much contact do you have with the GAL?

### Parent Services

Are there any concerns about the services for the parent(s) or suggestions for other services?
--

### Child(ren) Services

Are there any concerns about the services for the child(ren) or suggestions for other services?
Does the child(ren) have any special needs? Explain:



Visitation	
Is visitation occurring? If yes, with which parent?	Is sibling visitation occurring?
Frequency of visitation:	
Describe type and location of visitation:	
Person/agency supervising: _____	
Do you feel that the visitation is in the <u>child(ren)</u> 's best interest?	
Other Information	
Please include any other information that you would like the Board to know about. <i>(Add extra pages if you need more room.)</i>	

*What is reported in this questionnaire may be included in the Local Board's report to the legal parties to the case.*

Form completed by: \_\_\_\_\_ Date completed: \_\_\_/\_\_\_/\_\_\_

**THANK YOU, PLEASE RETURN THIS FORM TO:**

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521 S. 14<sup>th</sup> Street, Suite 401  
Lincoln, NE 68508-2707  
Fax (402) 471-4437 or E-mail to address on the letter.

**If you have completed a CASA Report for the Court, for this child (children)  
within the last 60 days, please attach a copy.**

## Case Manager Questionnaire

Name of Child(ren): \_\_\_\_\_ Board #: \_\_\_\_\_

Return by: \_\_\_/\_\_\_/\_\_\_



### Case Plan and Services

What is the permanency objective for the child(ren)?
Were the parents involved in developing the plan?
What problems, if any, are keeping this plan from succeeding?
What services have the parents participated in or do they need to participate in?

### Visitation

Is visitation occurring? If yes, with which parent?	Is there sibling visitation?
Frequency:	
Are parent(s) participating in all scheduled visits?	
Is visitation in the child(ren)'s best interests? Comments:	
Describe type and location of visitation:	
Person/agency supervising:	
Have all visitation reports been received by DHHS?	

### Child Specific

Date of the most recent in-person contact with the child(ren):	
Where:	
Has the child(ren) been restrained in their placement?	
Type:	Frequency:

<p>Were you notified of the restraint? If yes, by whom?</p>
<p>What services does the <u>child(ren)</u> participate, in or need to participate in?</p>
<p>What medications does the <u>child(ren)</u> currently take?</p>
<p>Is the child authorized for daycare? How many days of the week is the <u>child(ren)</u> attending day care? How many hours per day?</p>
<p>What issues that led to out of home placement still exist?</p>
<p>Have any new issues developed since the initial intervention?  How are the new issues being addressed?</p>
<p>Do you think that the <u>child(ren)</u> could be safely returned home at this time?  If yes, list any supports or services that would still be needed.</p>
<p>Please include any other information that you would like the Board to know. Add extra pages if needed.</p>

*What is reported in this questionnaire may be included in the Local Board's report to the legal parties to the case.*

Form completed by: \_\_\_\_\_ Date completed: \_\_\_/\_\_\_/\_\_\_

**THANK YOU, PLEASE RETURN THIS FORM TO:**

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521 S. 14<sup>th</sup> Street, Suite 401  
Lincoln, NE 68508-2707  
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**If you have completed a Court Report, for this child(ren) within the last 60 days, please attach a copy.**

## School Questionnaire

Name of Child: \_\_\_\_\_ Board #: \_\_\_\_\_

Return by: \_\_\_/\_\_\_/\_\_\_

+	What date was the <u>child(ren)</u> enrolled in this school? <span style="float: right;">Current Grade: _____</span>
Is the child in an alternative education program or any other type of educational program?	
Did you receive adequate information on this child to meet his/her needs in the school setting?	
Is communication adequate between the child's Case Manager and school personnel?	
Is communication adequate between the child's placement and school personnel?	
Is the child's current placement meeting the child's needs?	
Is communication adequate between the child's parents and school personnel?	
Is the child receiving any special education services?	
Does the child have an EDN, IFSP, IEP? <span style="float: right;">Verification _____</span> <i>If yes, to an IEP, please answer the following questions:</i>	
Date of the most recent IEP: _____ <span style="float: right;">Date of last MDT: _____</span>	
Did parents attend the IEP meeting?	
Did foster parents attend the IEP meeting?	
Did Case Manager attend the IEP meeting?	
If applicable, does the child's IEP (14 and older) include an independent living plan?	
Comments:	
Has the child taken the ACT / SAT? <span style="float: right;">___ N/A due to age</span>	
Does the child have any developmental/behavioral/discipline concerns? Please describe:	
What has the school done to prevent or control negative behaviors?	
Is the school day schedule disrupted by visits/therapy? Please explain:	

Is the child receiving any medications at school? If yes, are there any problems?
Are there any transportation issues that are affecting the child's education/ behaviors? Explain:
Please include here anything else that you would like us to know about. Include successes and concerns. (Add extra pages if you need more space.)

**Please attach a copy of the child(ren)'s most recent grade/progress report to this document.**

Completed by: \_\_\_\_\_ Title: \_\_\_\_\_ Date: \_\_\_\_\_

*What is reported in this questionnaire may be included in the Local Board's report to the legal parties to the case.*

**THANK YOU, PLEASE RETURN THIS FORM TO:**

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 521 S. 14<sup>th</sup> Street, Suite 401  
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## Therapist Questionnaire

Parent name(s): \_\_\_\_\_ Board #: \_\_\_\_ Return by: \_\_\_\_/\_\_\_\_/\_\_\_\_

Names of Child(ren): \_\_\_\_\_

What is your understanding of why the child(ren) has entered care?
What do you understand the permanency objective of the child(ren) to be?
What problems if any, are keeping this plan from succeeding?
Has the Case Manager discussed therapy goals/ outcomes with you?
Have you been given a copy of the current case plan?
Do you feel you were given adequate information regarding your client(s)?
Is there contact between you and other mental health professionals regarding this case?
Please identify what, if any, medication your client(s) is currently taking:
Please identify the current therapy schedule:
Please identify the type of therapy being provided:
Who is present during the sessions?
Are appointments regularly attended by your client(s)?
Do you believe your client (s) is progressing in therapy? Please describe:
Have any new problems developed since the initial intervention?
What do you recommend as an estimated duration for therapy for your client(s)?

<p>What additional services would you recommend be provided to your client(s)?</p>
<p>Do you believe that the child(ren) could return home safely at this time? If yes, what if any services or supports do you recommend?</p> <p>If no, why?</p>
<p>Please include here anything else that you would like the Board to know; (Add extra pages if needed)</p>

*What is reported in this questionnaire may be included in the Local Board's report to the legal parties to the case.*

Form completed by: \_\_\_\_\_

Date completed: \_\_\_/\_\_\_/\_\_\_

**THANK YOU, PLEASE RETURN THIS FORM TO:**

Foster Care Review Office  
521 S. 14<sup>th</sup> Street, Suite 401  
Lincoln, NE 68508-2707  
Fax (402) 471-4437 or E-mail to address on the letter.

**If you have completed a Therapy Report for this parent, child (children) within the last 60 days, please attach a copy.**

## Parent Questionnaire

Name of Child(ren): \_\_\_\_\_ Board #: \_\_\_\_\_

Return by: \_\_\_\_/\_\_\_\_/\_\_\_\_



Describe why your child(ren) are in care:

### Case Plan and Services

Describe the permanency plan for your child(ren)?

Did you help develop the plan?

Has anyone explained to you what you need to do to achieve the plan? If yes, who?

### Services

What services have you been offered or court ordered to participate in?

Are you on the waiting list for any services?

Describe any problems you have had with paying for services:

What problems have you had in following the case plan and the court order?

Are there any other services you need?

How often do you have contact with your Case Manager:

Date of last contact:

**Visitation**

How often do you visit with your <u>child(ren)</u> ?
Describe how visits are going:
Where do you have visits?
Are visits supervised, monitored/semi-supervised, or unsupervised?
Who is supervising the visits?
Are you attending all scheduled visitation?
Is sibling visitation occurring?
Do you have any phone contact with your <u>child(ren)</u> ?
Are you enrolled or eligible for enrollment in a Native American Tribe? If so, which one?
What needs to happen in order to have your <u>child(ren)</u> return home?
Is there anything else you would like us to know? <i>(Add extra pages if you need more room.)</i> Describe:

*What is reported in this questionnaire may be included in the Local Board's report to the legal parties to the case.*

Form completed by: \_\_\_\_\_ Date completed: \_\_\_\_\_

**THANK YOU, PLEASE RETURN THIS FORM TO:**

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521 S. 14<sup>th</sup> Street, Suite 401  
Lincoln, NE 68508-2707  
**Fax** (402) 471-4437 or **E-mail** to address on the letter.

## Concerned Party Questionnaire

Name of Child(ren): \_\_\_\_\_ Return by: \_\_\_/\_\_\_/\_\_\_



Board #: \_\_\_\_\_

What is your relationship to the child(ren)?
Describe any contact you have with the child(ren) or family.
Do the child(ren) have unmet needs? Describe:
Do you recommend any specific services or programs to meet these needs?
Do the parents have unmet needs? Describe:
Do you recommend any specific services or programs to meet these needs?
Are you present at the time of visitation or do you have personal knowledge regarding visitation? Describe:
Have any conditions that caused the child(ren) to come into foster care changed? Please explain.
Do you feel the child(ren) could return safely home? If yes, what services or supports should be recommended?  If no, why?

Is there any other information that you believe is pertinent for the board to consider regarding this case?  
*Add extra pages as needed.*

**Form completed by:**

**Date completed:**

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Lincoln, NE 68508-2707  
Fax (402) 471-4437 or E-mail to address on the letter.

## County Attorney/Special Prosecutor Questionnaire

Name of Child(ren): \_\_\_\_\_ Return by: \_\_\_/\_\_\_/\_\_\_  
 Board #: \_\_\_\_\_

### Court Information

+	Are there court delays? If so, why?				
If a 43-247 3(a) case, is the mother included? If no, why not?					
If a 43-247 3(a) case, is the father included? If no, why not?					
Were any of the original petition allegations plea-bargained out? ___ Yes ___ No (If yes, which ones?)					
Has a permanency hearing been held?			If Yes, Date:		
Please check here any pending criminal charges in this case.			If there were no charges filed, please indicate why, here.		
	Mother	Father			
Drug abuse	_____	_____			
Physical abuse	_____	_____			
Neglect	_____	_____			
Sexual Abuse	_____	_____			
	Compliance	Partial Compliance	Resistant to Court order	Progress towards Goal	No progress towards Goal
Mother					
Father					
Do you believe the child(ren) could safely be returned home at this time? ___ Yes ___ No ___ Yes, but would require services (please specify):					

If in care for 15 of the most recent 22 months, has an exception hearing occurred? If yes, what exceptions, if any, were found?

Please include here anything else that you would like us to know; add extra pages if needed.

Completed by: \_\_\_\_\_ Title: \_\_\_\_\_

Date: \_\_\_/\_\_\_/\_\_\_

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Lincoln, NE 68508-2707  
Fax (402) 471-4437 or E-mail to address on the letter.

## Foster Parent Questionnaire

Name of Child(ren): \_\_\_\_\_ Board #: \_\_\_\_\_

Return by: \_\_\_/\_\_\_/\_\_\_

How many children under the age of 19 are currently living in your home?					
Did you receive adequate background information on the <u>child(ren)</u> to meet their needs?					
Did you receive adequate medical information when the youth was placed?					
Medications the child is receiving: (RX and OTC – <i>over the counter</i> )					
<b>Provide dates for exams for each child listed on this form:</b>					
Child's Name					
Physical Exam					
Dental Check-up					
Eye Exam					
Did you receive adequate educational information when the <u>child(ren)</u> was placed?					
How are the <u>child(ren)</u> doing in school? Concerns?					
Do the <u>child(ren)</u> have an IFSP or IEP? Verification _____					
Do you receive adequate communication and ongoing updates from the Case Manager regarding the progress of this <u>child(ren)s</u> case? Comments:					
Has the Case Manager visited the <u>child(ren)</u> in your home? Date of the last visit?					
How much contact do you have with the <u>child(ren)</u> 's Guardian ad Litem? (GAL / Attorney for the Child)					
How much contact does the <u>child(ren)</u> have with their Guardian ad Litem?					
Has the Guardian ad Litem visited the <u>child(ren)</u> in your home? If yes, when was the last time?					
Are you willing to provide a permanent home for the <u>child(ren)</u> should it become necessary? If yes, <i>Guardianship, Adoption, Other (specify):</i> Comments:					
Are you receiving adequate reimbursement for caring for this <u>child(ren)</u> ? If not, what amount do you think would be appropriate?					
Has the <u>child(ren)</u> been restrained in your home in the last 6 months? If yes, did injuries occur? Please describe:					
If yes, was the Case Manager notified of the restraint?					



Visitation	
Is visitation occurring with the parents? With which parent? Frequency:	Is sibling visitation occurring?
Describe type and location of visitation:	
Person/agency supervising:	
Do you feel that the visitation is in the child(ren)'s best interest?	
Is transportation being provided? By who? Concerns?	
How is the child(ren)'s behavior prior to and after visits?	
Services	
What services are being provided to the child(ren)?	
Any additional services needed?	
Does the child(ren) attend daycare?	
_____ Hrs Day _____ Days per Week How is it paid for?	
Approximately how much time do you spend with this child(ren) each week?	
Have you requested services and are they being provided?	
Describe how the child(ren) is doing in your home and anything else that you would like us to know. <i>Add extra pages if you need more room.</i>	

*What is reported in this questionnaire may be included in the Local Board's report to the legal parties to the case.*

Form completed by: \_\_\_\_\_ Date completed: \_\_\_/\_\_\_/\_\_\_

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521 S. 14<sup>th</sup> Street, Suite 401  
Lincoln, NE 68508-2707

Fax (402) 471-4437 or E-mail to address on the letter.

**If you have completed a Progress Report and/or a Care Giver Report for the Court, for this child (children) within the last 60 days, please attach a copy.**

## Family Permanency Specialist (FPS) Questionnaire

Name of Child(ren): \_\_\_\_\_ Board #: \_\_\_\_\_  
 Return by: \_\_\_/\_\_\_/\_\_\_

### Case Plan and Services

What is the permanency objective for the child(ren)?
Were the parents involved in developing the plan?
What problems if any, are keeping this plan from succeeding?
What services have the parents participated in or do they need to participate in?

### Visitation

Is visitation occurring? If yes, with which parent?	Is there sibling visitation?
Frequency:	
Are parent(s) participating in all scheduled visits?	
Is visitation in the child(ren)'s best interests? Comments:	
Describe type and location of visitation:	
Person/agency supervising:	
Have all visitation reports been received by DHHS?	

### Child Specific

Date of the most recent in-person contact with the child(ren):	
Where:	
Has the child(ren) been restrained in their placement?	
Type:	Frequency:

<p>Were you notified of the restraint? If yes, by whom?</p>
<p>What services does the <u>child(ren)</u> participate, in or need to participate in?</p>
<p>What medications is the <u>child(ren)</u> currently taking?</p>
<p>Is the child authorized for daycare? How many days of the week is the <u>child(ren)</u> attending day care? How many hours per day?</p>
<p>What issues that led to out of home placement still exist?</p>
<p>Have any new issues developed since the initial intervention?  How are the new issues being addressed?</p>
<p>Do you think that the <u>child(ren)</u> could be safely returned home at this time?  If yes, list any supports or services that would still be needed.</p>
<p>Please include any other information that you would like us to know. Add extra pages if needed.</p>

*What is reported in this questionnaire may be included in the Local Board's report to the legal parties to the case.*

Form completed by: \_\_\_\_\_ Date completed: \_\_\_\_/\_\_\_\_/\_\_\_\_

**THANK YOU, PLEASE RETURN THIS FORM TO:**  
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 521 S. 14<sup>th</sup> Street, Suite 401  
 Lincoln, NE 68508-2707  
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**If you have completed a Court Report, for this child(ren) within the last 60 days, please attach a copy.**

## Guardian Ad Litem / Child's Attorney

The board requests the following information be provided per Neb. Rev. Stat §43-1309.

### Please reply to this questionnaire by

If you have completed a GAL Report for the Court for this child/ren within the last 60 days, please attach a copy with your returned questionnaire.

Date of the last time you met with the child(ren) in their placement.
Describe all contacts you have had with the child(ren) during the last 6 months, including the date and the place of each contact.
Is the child(ren)'s current placement appropriate? Explain:
Have you been able to interview or consult with the child(ren)'s foster parent or placement provider?
Is visitation occurring with the parents? <i>With who? Type of visitation</i>
Is sibling visitation occurring?
Is the current visitation arrangement in the child(ren)'s best interest?
Are there any services that need to be provided to the parent? If so, please list:
Are there any services that need to be provided to the child(ren)? If so, please list:
Do you agree with the permanency plan and timeline proposed by the Case Manager? If not, what do you recommend as the permanency plan?
Describe any barriers to the permanency plan.

Have any new issues arisen since the initial intervention? Please explain.

Do you think that the child(ren) could be safely returned home at this time? If yes, list any supports or services that would still be needed.

Is there any other information that you believe is pertinent for us to consider regarding this case?

Completed by:

Title:

Date completed:

**THANK YOU, PLEASE RETURN THIS FORM TO:**  
Foster Care Review Office  
521 S. 14<sup>th</sup> Street, Suite 401  
Lincoln, NE 68508-2707  
Fax (402) 471-4437 or E-mail to address on the letter.

**Parent's Attorney Questionnaire**

Name of Child(ren): \_\_\_\_\_ Board #: \_\_\_\_\_

Return by: \_\_\_/\_\_\_/\_\_\_

**Case Plan and Services**

What do you understand to be the permanency objective for the child(ren)?

Do you agree with the permanency plan and timeline proposed by the Case Manager? If not, what do you recommend as the permanency plan?

Describe any barriers to the permanency plan.

What services has your client participated in or would your client like to participate in?

**Visitation**

Are the current visitation arrangements for your client appropriate?  
Describe:

Are visits supervised, monitored/semi-supervised, or unsupervised?

Is visitation occurring with the parents? *With who? Type of visitation*

Is sibling visitation occurring?

Have any conditions that caused the child(ren) to come into foster care changed? Please explain.

Do you feel the child(ren) could return safely home?

If yes, what services or supports should be recommended?

If no, why?

## Youth Questionnaire

Name: \_\_\_\_\_ Board #: \_\_\_\_\_ Return by: \_\_\_/\_\_\_/\_\_\_

+	How long have you been in your current home?
	Do you feel safe where you are living now?
	Explain: .
	What do you understand the plan is for you, and for your future?
	Did you help develop your plan?
	What would you add to your plan if you could?
	How much contact do you have with your Case Manager?
	Most recent date of phone contact?
	Most recent date of in-person contact?
	Are your questions / concerns being addressed?
	How much contact do you have with your Guardian ad Litem/Attorney?
	Most recent date of phone contact?
	Most recent date of in-person contact?
	Are your questions / concerns being addressed?
	Are you receiving services? (e.g., therapy, life skills, tutor, mentor, etc.) If yes, please describe:
	What other services do you think you need and why?
	Have you been physically restrained in your placement? If yes, how often? If yes, were you injured during the restraint? If yes, did you receive medical treatment?

How are you doing in school?
How are things going with your friends?
Are you visiting with your parents? If yes, with who? How often? How do you feel these visits go?
Are you visiting with your siblings? If yes, with who? How often? How do you feel these visits go?
Please tell us anything else about you, your placement, your interests, goals, successes, challenges, or anything else you would like us to know. (Attach extra pages if you need more room.)

*What is reported in this questionnaire may be included in the Local Board's report to the legal parties to the case.*

Form completed by: \_\_\_\_\_ Date completed: \_\_\_/\_\_\_/\_\_\_

**THANK YOU, PLEASE RETURN THIS FORM TO:**

**Mail:** Foster Care Review Office  
521 S. 14<sup>th</sup> Street, Suite 401  
Lincoln, NE 68508-2707  
**Fax** (402) 471-4437 or **E-mail** to address on the letter.

**If you have completed a Youth Report for the Court, within the last 60 days, please attach a copy.**

## Placement (Facility) Questionnaire

**Name of Child(ren):** \_\_\_\_\_ **Board #:** \_\_\_\_\_ **Return by:** \_\_\_/\_\_\_/\_\_\_

Have you received adequate information on the youth to meet their needs?	
Did you receive adequate educational information when the youth was placed?	
Name of school attending: Grade:	
How is the youth doing in school? Concerns?	
Does the youth have an IEP?                      Verification:	
Did you receive adequate medical information when the youth was placed?	
Current medications the youth is receiving:	
Date of last:    Physical exam: _____    Dental Exam: _____    Eye Exam: _____	
If applicable, how much contact has your facility had with the youth's Guardian ad Litem/Attorney?	
How much contact does the youth have with their Guardian ad Litem/Attorney?	
Has the Guardian ad Litem/Attorney visited the youth in this placement? If yes, when was the last time?	
Do you receive adequate communication and ongoing updates from the case manager regarding the progress of this youth's case? <i>Comments?</i>	
Has the case manager visited this youth in your facility? Date of the last visit?	
Is visitation occurring with the parents? With which parent? Frequency:	Is sibling visitation occurring?
Describe type and location of visits: Person/Agency Supervising:	

Is visitation in the youth's best interest? <i>Comments?</i>
How do visits affect the youth's behavior?
Is transportation being provided? By who? <i>Concerns?</i>
What services are being provided to the youth?  Describe compliance and progress:
Are there any services that this youth needs that your facility cannot provide?
Has the youth been restrained in this placement in the last 6 months? If yes, was the case manager notified of the restraint?  If yes, did an injury occur?                      Please describe:
Anticipated date of discharge/release:
Your facilities recommended discharge plan including placement and services:
Please describe how the youth is doing in this placement, and share anything else that you would like the Local Board to know. <i>(Add extra pages if you need more room.)</i>

*What is reported in this questionnaire may be included in the Local Board's report to the legal parties to the case.*

Form completed by: \_\_\_\_\_ Title \_\_\_\_\_ Date completed: \_\_\_/\_\_\_/\_\_\_

**THANK YOU, PLEASE RETURN THIS FORM TO:**

Foster Care Review Office  
521 S. 14<sup>th</sup> Street, Suite 401  
Lincoln, NE 68508-2707  
Fax (402) 471-4437 or E-mail to address on the letter.

**If you have completed a Progress Report / Treatment Plan for this youth  
within the last 60 days, please attach a copy.**

## Probation/Parole Officer Questionnaire

Name of Child \_\_\_\_\_ Return by: \_\_\_/\_\_\_/\_\_\_

Board #: \_\_\_\_\_



What are the conditions the youth must abide by as a condition of their probation /parole?
Is the youth meeting the conditions of their probation/parole?
Has the youth committed any new law violations?
When did you last visit the youth you are assigned?
Describe the problem that brought the child into care:
What do you understand to be permanency objective for the child?
Have you received a copy of the written DHHS Case plan?
Were you involved in formulating the Case plan?
Does the Court order reflect the permanency plan?
Please estimate how long you think it will take to accomplish the plan.
Please describe any barriers you think exist to that might keep this plan from succeeding.
Please describe any services that you feel need to be provided to the family.
Please describe any problems that still exist that precipitated placement outside of the home.

<p>Do you feel the child could return home safely at this time?  <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes, with services (Please describe)</p>
<p>Has the child been restrained in their placement either chemically or physically or by isolation?</p>
<p>If yes, when, by whom, and were you notified?</p>
<p>Please include here any other information that you would like the Board to know; feel free to add extra pages if you need more room.</p>

Completed by: \_\_\_\_\_ Title: \_\_\_\_\_

Date: \_\_\_/\_\_\_/\_\_\_

**THANK YOU, PLEASE RETURN THIS FORM TO:**

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Lincoln, NE 68508-2707  
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# **Appendix E**

## **Other Resources**

### **Does placing a child in foster care have risks?**

Just as there are risks to leaving a child in the parental home, there are risks to placing a child in foster care. As Dr. Ann Coyne of the University of Nebraska Omaha, School of Social Work so eloquently stated:

*“The decisions in child welfare are not between good and bad, they are between worse and least worse. Each decision will be harmful. What decision will do the least amount of damage? We all have a tendency to under rate the risk to the child of being in the foster care system and over rate the risk to the child of living in poverty in a dysfunctional family.”*

## Quotes from Research on Separations and Grief

*“Moves from foster home to foster home should be limited to all but the most unavoidable situations. Every loss adds psychological trauma and interrupts the tasks of child development.”<sup>3</sup>*

*“Adults must remember that once new attachments are formed, separation from these substitute parents is no less painful and no less damaging to the child than separation from birth or adoptive parents.”<sup>4</sup>*

*“Although the critical overproduction on synapses in the brain is genetically driven, the pruning and maintenance of synaptic connections are environmentally driven. Developmental overpruning refers to a toxic effect of overwhelming stress on the young brain.”<sup>5</sup>* The Foster Care Review Office interprets this to mean that if a child has thrived in a particular home, disruptions should not be a consideration.

*“Insecure attachment is not equivalent to mental disorder, but rather creates a risk of psychological and social disfunction. Disorganized/disoriented attachments are sometimes associated with dissociative symptomology, which, if such individuals are exposed to overwhelming experiences later in life, may make them prone to developing post traumatic stress disorder. Persons in this group also have deficits in attention and the regulation of emotion and impulse control.”<sup>6</sup>*

*“The stronger the attachment between child and previous caregiver, the more important the process of transferring attachment will be. Although we have found that sometimes verbal or written communications, without accompanying direct contact between the parenting adults, may be successful in aiding the transfer of attachment in children of school age, it is not enough for the infant, toddler, or preschooler. The younger the child, the more important it is that there be direct contact between past and future caregivers. We noted in the last chapter that after only several days of separation from parents, toddlers show marked distress.”<sup>7</sup>*

*“During the toddler years, the primary aim during the moving process is to transfer attachment from previous caregivers to the new parenting persons as much as possible. The two sets of parents must have contact and the parents the child is leaving need to actively transfer the day-to-day caretaking tasks and routines to the new parents.”<sup>8</sup>*

*“Planned transitions are less harmful to children than abrupt moves...in general, it takes more time to correct the harm done by inadequate pre-placement work than to do the work in the first place.”*

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<sup>3</sup> Vera I. Fahlberg, M.D., *A Child's Journey Through Placement*, page 176. Perspectives Press, c. 1991.

<sup>4</sup> Goldstein, J. Freud, A. and Solnit, A.J. *Beyond the Best Interests of the Child*. 1973.

<sup>5</sup> Daniel J. Siegel, *The Developing Mind: Toward a Neurobiology of Interpersonal Experience*, c. 1999.

<sup>6</sup> Daniel J. Siegel, *The Developing Mind: Toward a Neurobiology of Interpersonal Experience*, c. 1999.

<sup>7</sup> Vera I. Fahlberg, M.D., *A Child's Journey Through Placement*, page 178. Perspectives Press, , c. 1991.

<sup>8</sup> Vera I. Fahlberg, M.D., *A Child's Journey Through Placement*, page 182. Perspectives Press, c. 1991.

## **Definitions of Child Abuse and Neglect**

### **Physical Abuse:**

Physical acts that caused or could have caused bodily injury to a child.

### **Sexual Abuse:**

The offender's involvement of the child in sexual activity to provide sexual gratification or financial benefit to the offender, including contact with the child for sexual purposes, prostitution, exposure, or other sexually exploitative activities.

### **Neglect:**

Deprivation of necessities for the child; the failure to provide the child with needed age appropriate care, even though the caregiver is financially able to do so, or offered financial or other means to do so.

### **Medical Neglect:**

The failure of a caregiver to provide appropriate health care for the child, resulting in harm to the child's health, even though the caregiver is financially able to do so, or is offered financial or other means to do so. This may include prenatal exposure to drugs.

### **Emotional/psychological maltreatment:**

The offender's acts or omissions, other than physical or sexual abuse, that caused or could have caused cognitive, affective, conduct, or mental disorders in the child.

Quoted from Foster PRIDE/Adopt PRIDE Book, Session Three, pg. 7  
© Illinois Department of Children and Family Services

## **ICWA (Indian Child Welfare Act) considerations**

The Indian Child Welfare Act (ICWA) was a federal law passed in 1978. In 1985 the federal law was codified in Neb. Rev. Stat. §43-1501-1516. The intent of ICWA was to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families (25 U.S.C. § 1902). It was enacted in response to the alarmingly high number of Indian children being removed from their homes. ICWA does not apply to divorce proceedings, intra-family disputes, juvenile delinquency proceedings, voluntary placements, or cases under tribal court jurisdiction. The Nebraska Foster Care Review Board can review the cases of children in out-of-home care with Indian heritage so long as the tribal court has not been granted sole jurisdiction.

ICWA sets federal requirements that apply to state child custody proceedings involving an Indian child who is a member or who is eligible for membership in a federally recognized tribe. ICWA defines an “Indian child” as “any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.” (25 U.S.C. § 1903). Under federal law individual tribes have the right to determine eligibility, membership, or both. If a child has some Indian/Native American heritage but not enough to meet the particular definition of the individual tribe involved, then ICWA would not apply.

ICWA defines parent as “any biological person or parents of an Indian child or any Indian person who has lawfully adopted an Indian child, including adoptions under tribal law or custom.” An unwed father is not included in the definition of a parent where paternity has not been acknowledged or established. Neb. Rev. Stat. §43-1503(9), 25 U.S.C.A. § 1903(9).

In all abuse, neglect, and dependency cases it is important that there is an early identification of paternity. However, for children with Indian heritage, early identification of paternity is even more critical. The father’s ancestry will need to be considered when making an ICWA eligibility determination, and when determining what tribe the child is enrolled with, or eligible for enrollment with. Cases can be overturned when the more stringent ICWA standards have not been applied from the onset, placing children at risk. Therefore identification of ICWA eligibility is critical.

The following describes some differences between an ICWA case and a non-ICWA case.

- The tribe and the parents must be notified of the child custody proceeding.
- The Tribe and/or the parent can petition for exclusive tribal court jurisdiction. They have the right to receive all court proceedings and examine all records.
- The caseworker must work to actively involve the child’s tribe and the child’s parents in the proceedings.
- Case caseworkers are to make every attempt to identify a placement that fits under the ICWA preference provisions. A greater degree of evidence and

additional elements of proof are required to support a foster care placement. When placement is a foster care placement, preference is given to the following:

- A member of the extended family.
  - A home licensed, approved, or specified by the tribe.
  - An Indian foster home licensed or approved by an authorized non-Indian licensing authority, or
  - An institution for children approved by a tribe or operated by an Indian organization that has a program suitable to meet the child's needs.
- DHHS must provide "active efforts" to the family. Active efforts include providing services to the family to prevent removal and services to reunify. Active efforts also involve the early participation and consultation with the child's tribe in all case planning decisions. Active efforts are more intensive than "reasonable efforts."
    - Department staff will use tribal social services whenever possible when working with Native American parents and children. Case-planning and service provision will be based upon the social and cultural standards of the tribe. Active efforts will be made to provide culturally relevant remedial and rehabilitative services to prevent the breakup of the family and to reunify the child and family. The "active efforts" standard places a higher burden of proof on the Department than "reasonable efforts." A greater degree of evidence and additional elements of proof are required to terminate parental rights. 390 NAC 4-007.03.
  - A greater degree of evidence (beyond a reasonable doubt, expert witness) and additional elements of proof are required to terminate parental rights.
    - Any party seeking to effect a foster care placement of, or termination of parental rights to, an Indian child under state law shall satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful. Neb. Rev. Stat. §43-1505(4).
    - No termination of parental rights may be ordered in such proceeding in the absence of determination, supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. Neb. Rev. Stat. §43-1505(6).