

Nebraska Child Welfare by the Numbers

- Approximately 5,200 children are state wards (about 64% out of home, 34% in home) (Aug 2019)
- 20% of children end up re-entering foster care at some point
- Approx 40% of children achieve permanency within 12 months (Aug. 2017)

How families get involved in juvenile court

- Two main areas: Child Welfare and Juvenile Justice
- Child Welfare:
 1. Law enforcement removal/county attorney filing
ex: LE gets 911 call to home on DV, finds unsafe home
 2. Hotline call/DHHS investigation
ex: Mandatory reporter calls and reports parental drug use

Nebraska Statute 28-707/28-710

A person commits child abuse if he or she knowingly, intentionally, or negligently causes or permits a minor child to be:

- a. Placed in a situation that endangers his/her life or physical or mental health
- b. Cruelly confined or cruelly punished
- c. Deprived of necessary
 - Food
 - Clothing
 - Shelter
 - Care
- d. Sexually abused
- e. Sexually exploited by allowing, encouraging, or forcing such person to solicit for or engage in
 - Prostitution
 - Debauchery
 - Public indecency
 - Obscene or pornographic photography, films, or depictions

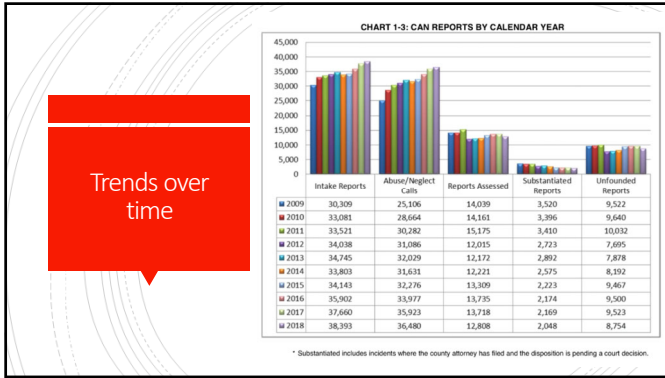
Nebraska Mandatory Reporters

- Physicians
- Medical Institutions
- Nurses
- School Employees
- Social Workers
- Anyone who observes or suspects a child is being abused or neglected is a mandatory reporter

Hotline Report Screening

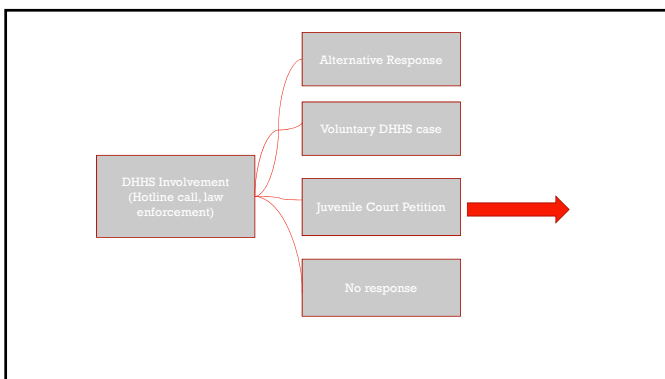
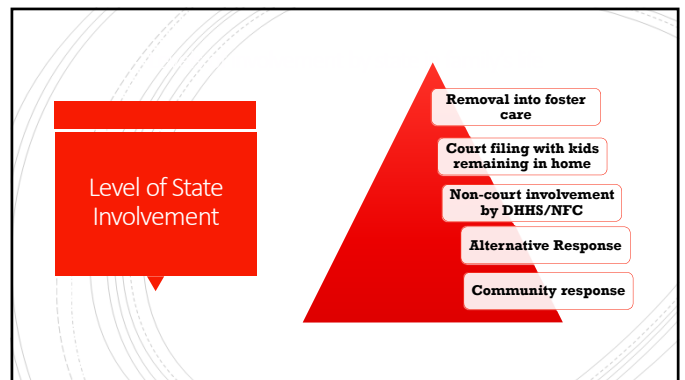
- Nebraska
 - Priority 1 – within 24 hours
 - Priority 2 – within 5 days
 - Priority 3 – within 10 days

How do Nebraska child welfare cases get opened?



- ### Tips for Making Hotline Reports
- Include specific dates, times and locations
 - Mention all details of what happened
 - Note who else was present
 - Keep in mind: reports are confidential but sometimes the type of information will identify you

- ### 1184 Teams
- Required for every county
 - To monitor and coordinate investigations when abuse or neglect has been reported, and to monitor and coordinate treatment for families where abuse or neglect has been found
 - Members: Law enforcement, child protection, prosecution, mental health provider, medical staff
 - Confidentiality 28-730:
 - Info "shall" be shared with MDT team
 - All information received by MDT team shall be confidential but not immune from discovery from original sources
 - A person who in good faith cooperates with team shall be immune from civil or criminal liability



- ### Juvenile Court Professionals
- **Judge (county or Separate Juvenile)**
 - **Prosecutor (County Attorney)**
 - **Guardian ad Litem**
 - Dual Role: (1) Best Interests and (2) Expressed Interests
 - **Parent's Attorneys**
 - Parents have right to counsel - §43-272(1)
 - Parent's Guardian ad Litem
 - **DHHS or private contractor (PromiseShip in Omaha metro)**
 - CASA
 - Foster Care Review Board
 - Mental health professionals
 - Service providers
- * Bold is for every case

Juvenile Court Legal Parameters

- Federal law (ex: ASFA, reasonable efforts requirement, Indian Child Welfare Act, FPPSA)
- State law (ex: juvenile court law, adoption law, confidentiality of PHCs, Fostering Connections, reasonable and prudent parenting)
- Agency policies and regulations (for DHHS practice) (ex: using concurrent planning, drug testing, kinship placement, foster care standards)
- Court rules (for court practice) (ex: motions to be made 5 days before hearing)

Juvenile Court Timeline

- Petition Filed; Ex Parte order and potential Emergency Removal
- Protective Custody/1st Appearance Hearing
- Adjudication
- Disposition
- Review Hearings
- Permanency Hearings
- Termination of Parental Rights/Relinquishment

Statutory Grounds in Juvenile Court Petitions

- Nebraska Revised Statute 43-247
 - Child Welfare
 - (3)(a) – abuse and neglect
 - Status Offenses
 - (3)(b) – status offenders, uncontrollable minors
 - School skippers, curfew violators
 - Committing violations that if adult would be legal
 - Juvenile Justice
 - If what the child did would be a criminal offense if they were an adult
 - (1) – Misdemeanor offense if adult
 - (2) – Felony offense if adult

Abuse/Neglect Petitions

- Nebraska Revised Statute 43-247 (3) (a)
 - Homeless or destitute or no fault lack of proper parental support
 - Abandonment
 - Lack of parental care by fault of parent
 - Parental neglect or refusal to provide necessary food, education or other care
 - Neglect based on child's mental health
 - Parent in situation dangerous or injurious to morals/health of child

First Appearance or Protective Custody Hearing

- Purpose to re-affirm the ex parte decision to remove the child (or advise parents of rights if child not removed)
- Prehearing conferences may occur to discuss issues like parenting time, services and paternity
- Ideally occurs within 72 hours of child's removal (state average is 9 days)
- Attorneys, GALs, CASA usually appointed prior to hearing
- Parents may be advised of rights, pleas, possible dispositions
- Review of reasonable efforts to prevent removal and achieve reunification

Adjudication

- Contested or non-contested (admission)
 - Depends on the plea entered
- Similar to a "conviction" in criminal court
- Finds whether children come "within the meaning of 43-247(3)(a)"
- Ideally happens within 60 days of removal but average is about 90 days with some contested cases taking up to a year
- Complicating factor if concurrent criminal charges

Disposition

- Similar to "sentencing" in criminal court
- Ideally held at adjudication or within 30 days after disposition
- A plan is presented for correcting the problems that brought the family to the court's attention – any party can submit a proposed plan to the court
- Court orders the parent(s) to complete a dispositional plan

Common Services in a Child Welfare Case

- Visitation/parenting time
- Substance Abuse treatment and UAs
- Family Support Work/ Intensive Family Preservation
- Home Visiting
- Child-Parent Psychotherapy (under 5) or other parent-child dyadic services
- Individual therapy
- Housing support/general assistance

Review Hearings

- Generally held every 90 days after disposition
- HHS should prepare a case plan at least every 6 months - should have at least a written update at every hearing
- GAL is required to submit a report at every hearing and every time there is a substantial change in the child's life
- Other reports that may be submitted: CASA volunteer, youth court form, FCRO
- At EVERY review hearing:
 - What progress is being made?
 - Are any additional services needed?
 - Can the child be returned home? If not why?

Permanency Hearing

- Held at least within 12 months after child is removed
- Questions to ask:
 - Have the issues that led to the adjudication been corrected?
 - What services are still necessary?
 - If reunification has not happened, when can it be expected?
 - Is the permanency plan appropriate?
 - Reunification, Family Preservation, Guardianship, Adoption, Independent Living

Termination of Parental Rights

- Nebraska statute **REQUIRES** the State to file a Petition to Terminate Parental rights anytime child has been out of home for 15 of the most recent 22 months, **UNLESS**:
 - Child is being cared for by relative
 - DHHS has documented in case plan a compelling reason for determining that not in best interests
 - Family has not had reasonable opportunity to avail themselves to necessary services
- GAL may also file petition to TPR
- Nebraska law also provides specific grounds for Termination of Parental Rights (43-292)
 - Must prove at least 1 of the grounds **AND** best interests

Grounds for TPR Neb. Rev. Stat. 43-292

- Abandonment for 6+ months
- Substantial/continuous neglect and refusal to give child or sibling necessary parental care
- Failure to provide for food, education and other care (if financially able)
- Unfit by debauchery, drug or alcohol use that is seriously detrimental to child
- Parental unfitness due to mental illness
- Reasonable efforts failed to correct conditions
- 15+ months out-of-home of recent 22 (**most common**)
- Infliction of intentional, serious bodily injury
- Aggravated circumstances, murder/manslaughter, serious bodily injury, felony sexual assault of other parent

Notes about Juvenile Court

- Limits on rules of evidence
 - Rules of evidence apply to adjudication hearings
 - Strict rules of evidence don't apply to any dispositional hearings, including TPR (due process standards do)
 - Reports may be received into evidence without testimony – depends on judge and type of hearing
- Lesser burdens of proof:
 - Generally preponderance of the evidence (i.e., 51% vs. 49%)
 - TPR: Clear and convincing
 - ICWA cases: Higher burdens

Common Terminology

- Affidavit
- Central Registry
- Ex parte
- Intervention
- In chambers testimony
- Open adoption
- Relinquishment
- Stipulation
- Subpoena

Best Practices

- Communicate with parties
 - Caseworker
 - Guardian ad Litem
 - Parents Attorney
- Attend team meetings
- Make a hotline report
- Write report
- Testify in court

Tips for EDN Professionals

- Talk with caseworker and guardian ad litem
- Ask for written collateral – reports, medical history, etc
- Attend Family Team Meeting
- Send evaluation, letters, to all parties
- For non-verified cases, consider a recommendations letter
- If verify, coordinate services with child welfare caseworker

Tips for School Professionals

- Work with parties in sharing information/documentation
- Notify case manager and/or GAL if significant behaviors are present
- Work with case manager and GAL in obtaining necessary consents and, if needed, securing educational surrogacy

Tips for Home Visitors

- Talk with caseworker and GAL about family
 - Reasons/basis for court involvement
 - Additional identified needs
- Ask for case plan goals and services
- Consider providing summary reports to parties

Tips for Therapists

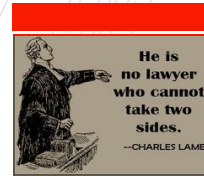
- Provide regular updates to the case manager and/or guardian ad litem
- Articulate the reasons behind recommendations
 - Recommending suspended visits
- Articulate observations that led you to draw certain conclusions
- Attend Family Team Meetings, if possible, or send update for FTM

Testifying



Testifying in Court

- Review your notes/records ahead of time to familiarize yourself
- Be prepared to explain diagnoses and other therapeutic related issues in laymen's terms
- Answer **ONLY** the question asked
- Think about the question before you answer
 - Slow it down, don't feel pressured to speak quickly and answer immediately
- If you don't know, say "I don't know"
 - You can ask to review your records on the stand (but doing so opens the door to counsel seeing them)



- If someone objects, stop talking
 - Overruled: Answer the question
 - If you don't remember the question after the objection has been overruled, ask for it again
 - Sustained: Stay silent
- Do not take cross-examination personally