

An Overview of the Juvenile Court System

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NEBRASKA RESOURCE PROJECT
FOR VULNERABLE YOUNG CHILDREN

Objectives

You will learn about the juvenile court child welfare system process, including:

- Basic data on the child welfare system
- Types of hearings and their sequence
- Juvenile court parties and their roles
- Juvenile court terminology
- How rules of evidence apply
- Tips for working with juvenile court parties including what to do if you're called to testify

Background

- Purpose of NE juvenile court:
 1. to assure rights of children to care and protection, a safe living environment and development of their capacities
 2. To provide for intervention for children who are not getting proper care while affording due process protection to parents
- However....

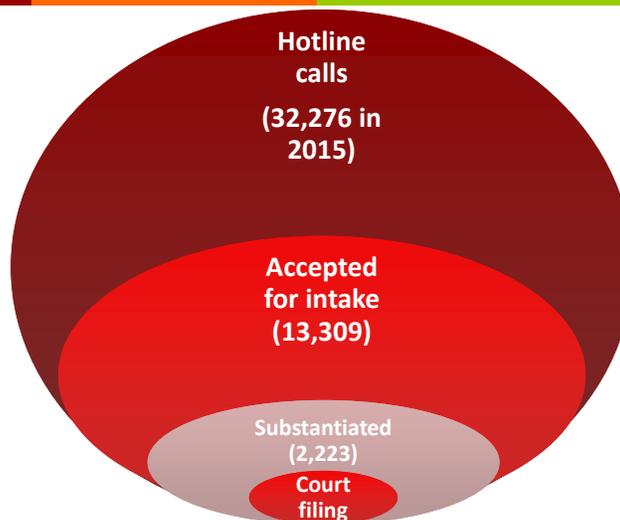
Risk of Harm/Minimal Standards of Care

- Parents have constitutional rights to parent their children
- Juveniles have a right to necessary care and protection that must be balanced with the parents rights
 - “that the foster parents in this country might provide a higher standard of living does not defeat [the parents]rights” – In re Angelica L. 767 N.W.2d 277
 - DHHS often refers to “minimal standards” – ensuring safety is the bottom line
- There must be “definite risk of future harm” – In re Anaya, 758 N.W.2d 10

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

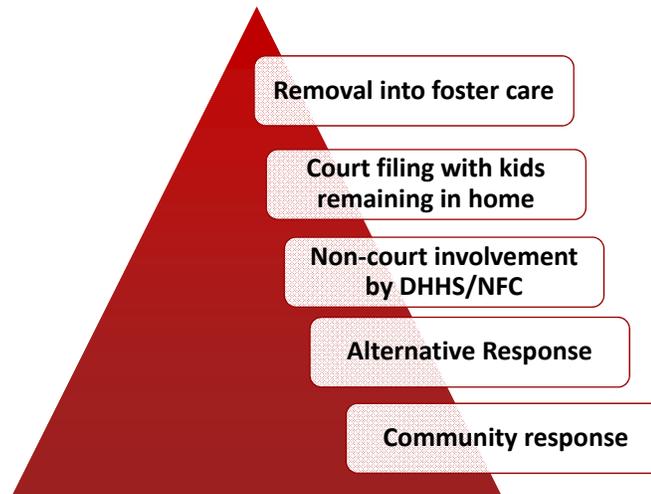
How do child welfare cases get opened?

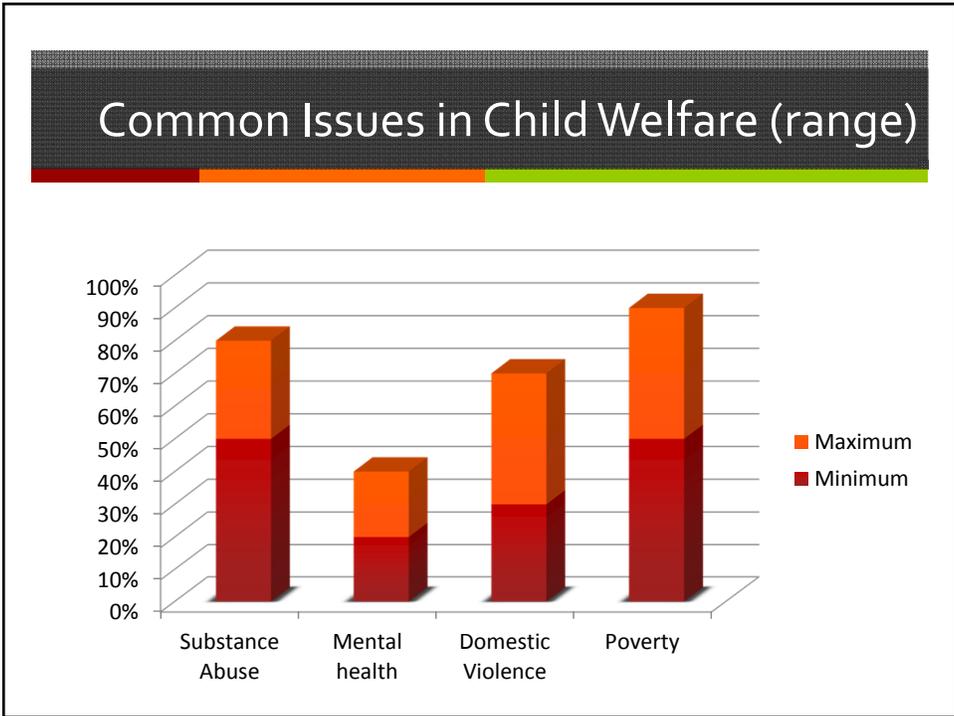
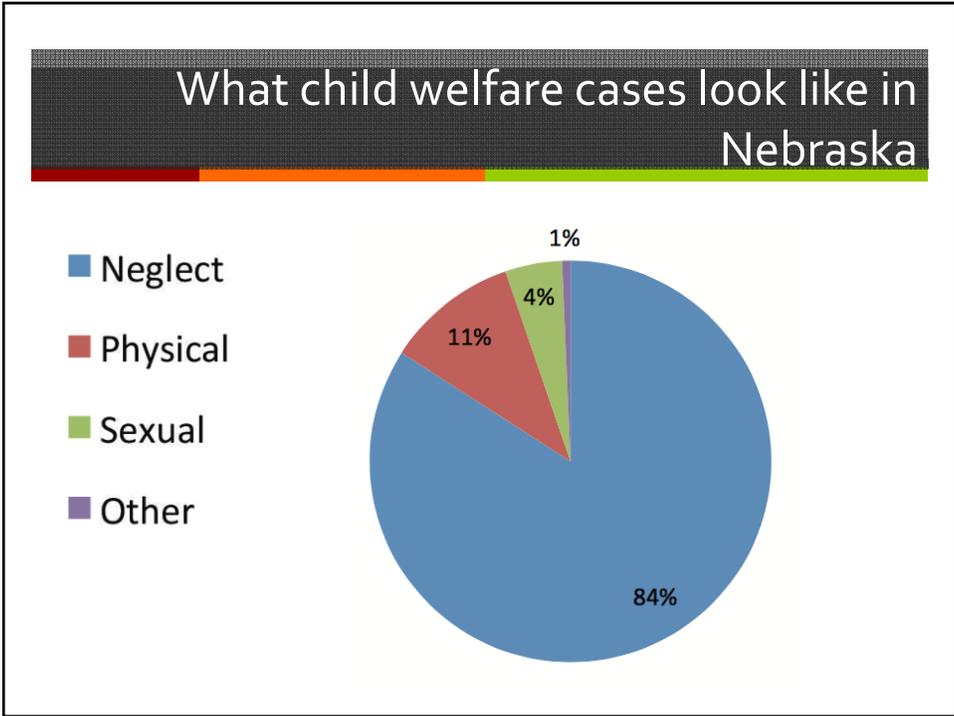


General Nebraska Statistics

- 6.9% of hotline calls end up being substantiated
- Approximately 4,500 children are state wards (about 78% out of home, 22% in home) (Sept 2017)
- Decrease from 5,300 in Sept. 2013 but increase from 4,100 in Sept. 2015
- 20% of children end up re-entering foster care at some point
- 41% of children achieve permanency within 12 months (Aug. 2017)

Levels of involvement by state in family's life





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

Petition

- 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

Understanding juvenile court

- Who are the Players:
 - Judge (county or Separate Juvenile)
 - Prosecutor (County Attorney)
 - Guardian ad Litem
 - Dual Role: (1) Best Interests and (2) Expressed Interests
 - Child's counsel
 - Parent's Attorneys
 - Parents have right to counsel - §43-272(1)
 - Parent's Guardian ad Litem
 - DHHS or private contractor (NFC in Metro)
 - CASA
 - Foster Care Review Board
 - Mental health professionals
 - Service providers

What are parties guided by?

- Federal law (ex: reasonable efforts requirement, Indian Child Welfare Law)
- State law (ex: confidentiality of PHCs, Fostering Connections)
- Agency policies and regulations (for DHHS practice) (ex: using concurrent planning)
- Court rules (for court practice) (ex: motions to be made 5 days before hearing)

Grounds under §43-247(3)(a) when filing petition

- 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

The Process

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

1st Appearance or Protective Custody Hearing/ Pre-Hearing Conference

- Prehearing conferences occur before the hearing to allow the parties to discuss issues like parenting time, services and paternity
- 1st court hearing/ Protective Custody Hearing
 - Ideally occurs within 72 hours of child's removal (state average is 9 days)
 - Attorneys, GALs, CASA all appointed prior to hearing
 - Parents advised of rights, pleas, possible dispositions
 - Can be combined with adjudication if the parents enter a plea
 - Often cases are simply set for a further hearing
 - Review of reasonable efforts to prevent removal and achieve reunification

Protective Custody

- Should be reviewed at EVERY hearing
 - State has the burden to prove that it would be contrary to the health, safety, and welfare of the juvenile to remain with the parents
 - Do not have to establish as specific harm or risk – is the conduct or circumstances of the parent such that it is contrary to the welfare of the juvenile to remain in the home
- May also be called Continued Detention Hearing in some areas

Adjudication

- Contested or non-contested (admission)
 - Depends on the plea entered
- Similar to a “conviction” in criminal court
- 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 may order parent to:
 - Complete services like drug evals or treatment, parenting time, children’s services, UAs, etc.
 - Refrain from conduct like contacting certain people, drinking alcohol, etc.
 - Maintain stable housing, legal income, etc.

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 within 12 months after child is removed
 - Can be held sooner than 12 months
- Things to think about:
 - 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 Termination of Parental Rights - §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 (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

Other issues

- Appeal of case to Nebraska Court of Appeals or Supreme Court
- ICPC (Interstate Compact on Placement of Children)
- Notifying tribes
- Bridge orders and custody to non-custodial parent
- Undetermined paternity or multiple fathers

Court Terminology

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

Best Practices

- Work with parents and child
- 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

Tips for Foster Care Support Workers

- Communicate with case manager and GAL about family and additional needs the child has
- Provide regular updates to the case manager and/or guardian ad litem
- Attend Family Team Meetings, if possible, or send updates

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

Tips for Writing Reports

- Include specific facts, not conclusions
- Your observations are the most important
- Send to parties at least 5 days before the hearing

Tips for Testifying in Court

- Review your notes/records ahead of time to familiarize yourself
- Answer ONLY the question asked
- Think about the question before you answer
- If you don't know, say "I don't know" You can also ask to look at your records for recollection.
- If there is an objection, stop talking. If you don't remember the question after the objection has been overruled, ask for it again
- Do not take cross-examination personally

Other Legal Resources for Families

- Civil Cases (divorce, custody, creditors, landlord tenant etc)
 - Legal Aid of Nebraska
 - www.legalaidofnebraska.com
 - (877) 250-2016
 - Volunteer Lawyer's Project
 - (402) 475-7091 or (800) 742-3005
 - Contact your county or district clerk of court
 - Self-Help Desk
 - Talk to your clerk of court to find out if there is one in your area
 - Limited Scope Representation
- Criminal cases
 - May be entitled to court appointed counsel
 - Encourage the family to talk to the Clerk of the Court



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Thanks!

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