

## Understanding the Ins and Outs of Juvenile Court ↗

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## 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....

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## 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

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### 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

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### General Nebraska Statistics

- 7.6% of hotline calls end up being substantiated
- Approximately 4000 children in foster care (about 70% out of home, 30% in home)
- Decrease from 5300 in Sept. 2013
- 20% of children end up re-entering foster care at some point
- 44% of children achieve permanency within 12 months

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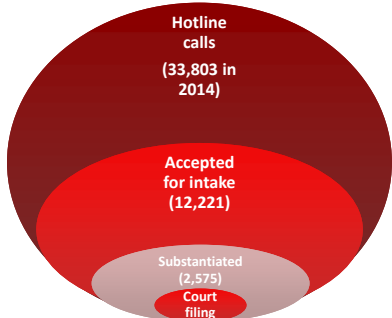
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### How do child welfare cases get opened?



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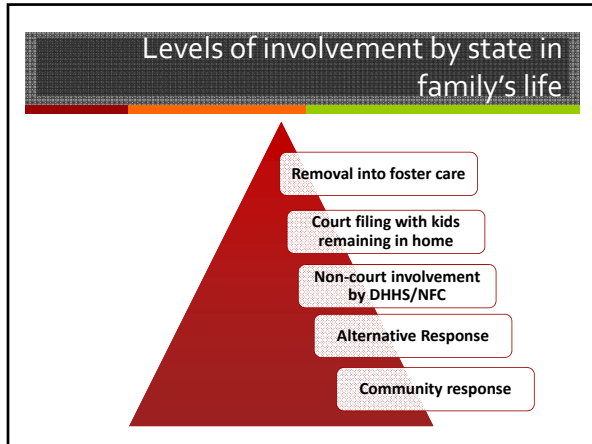
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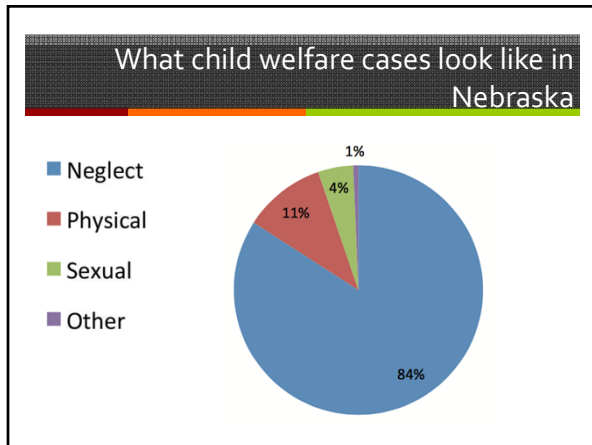
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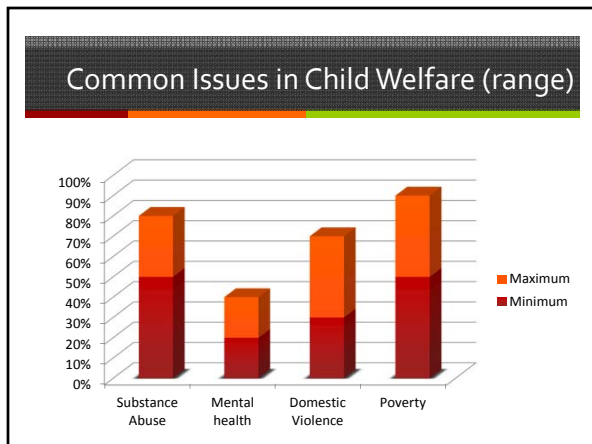
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**Petition**

- 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

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**Separate Juvenile Courts (2, 3, 4) vs. County Courts sitting as Juvenile Courts**

The map shows Nebraska divided into 12 numbered regions, each with a different color: 1 (purple), 2 (green), 3 (light green), 4 (light blue), 5 (orange), 6 (blue), 7 (pink), 8 (cyan), 9 (brown), 10 (green), 11 (yellow), and 12 (tan).

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**Juvenile Courts in Nebraska**

- 5 Separate Juvenile Judges in Douglas (approx. 40% of juv cases)
- 4 Separate Juvenile Judges in Lancaster (approx 25%)
- 2 Separate Juvenile Judges in Sarpy (approx 5)
- 36 County Judges sitting as Juvenile Courts (approx 30%)

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### Understanding juvenile court

- Who are the Players:
  - Judge
  - 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 (NFC in Metro)
  - CASA
  - Foster Care Review Board
  - Mental health professionals
  - Service providers

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### 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)

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### 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

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### The Process

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

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### 1<sup>st</sup> 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
- 1<sup>st</sup> 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

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### Continued Detention or 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

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### 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

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### 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, UAs, etc.
  - Refrain from conduct like contacting certain people, drinking alcohol, etc.
  - Maintain stable housing, legal income, etc.

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### 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
- Lesser burdens of proof:
  - Generally preponderance of the evidence (i.e., 51% vs. 49%)
  - TPR: Clear and convincing
  - ICWA cases: Higher burdens

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**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
- At EVERY review hearing:
  - What progress is being made?
  - Are any additional services needed?
  - Can the child be returned home? If not why?

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**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

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**Possible 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

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## 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
- Nebraska law also provides specific grounds for Termination of Parental Rights (43-292)
  - Must prove at least 1 of the grounds AND best interests!

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## 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

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## Other issues

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

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### Court Terminology

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

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### Your Possible Involvement

- Work with parents and child
- Communicate with parties
  - Caseworker
  - Guardian ad Litem
  - Parents Attorney
- Write report
- Testify in court

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### 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

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### Tips for Home Visitors

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

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### 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

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### 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

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### 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

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### Other Legal Resources for Families

- Civil Cases (divorce, custody, creditors, landlord tenant etc)
  - Legal Aid of Nebraska
    - [www.legalaidofnebraska.com](http://www.legalaidofnebraska.com)
    - (877) 250-2016
  - Volunteer Lawyer's Project
    - (402) 475-7091 or (800) 742-3005
  - 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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NEBRASKA RESOURCE PROJECT  
FOR VULNERABLE YOUNG CHILDREN

## Nebraska Resource Project for Vulnerable Young Children

[www.nebraskababies.com](http://www.nebraskababies.com)

 @nebraskababies

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**Thanks!**

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