

NEBRASKA COURT IMPROVEMENT PROJECT

2005 REASSESSMENT OF COURT AND LEGAL SYSTEM FOR CHILD ABUSE AND NEGLECT AND FOSTER CARE

Nebraska Supreme Court
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EXECUTIVE SUMMARY

Nebraska Court Improvement Project 2005 Reassessment of Court and Legal System for Child Abuse and Neglect and Foster Care

Introduction

Nebraska's federally funded State Court Improvement Project conducted an assessment of the foster care legal system in 1996 and repeated an assessment in 2005. This report summarizes the findings of the current evaluation of court and legal system for abused and neglected children and children in foster care. This reassessment included a review of Nebraska statutory conformity to federal legislation that has occurred since 1996; statewide surveys of judges, attorneys, child protection workers, court administrative personnel, Foster Care Review Board specialists, and Court Appointed Special Advocates; focus groups in four judicial districts; a review of appellate cases time frames; and an analysis of outcome data for children across judicial districts from the Nebraska Child and Family Services Review Data Profile (provided by NDHSS).

Strengths of the System

- **System is Improving:** There are a number of significant improvements in the system over the past eight years, since the time of the first Court Improvement assessment. There was across the board improvement in the overall satisfaction of survey respondents regarding all aspects of the court system. Similarly, focus group participants almost all spontaneously reported significant improvements and gave concrete examples of what has changed. These improvements have occurred even in the areas that are cited below as system weaknesses. For example, guardian ad litem work is considered to continue to be a significant problem area. However, the surveys indicate that GALs are more active now than they were. Additionally, focus group respondents reported that ten years ago most GALs did not meet with their clients and did not provide reports to the court. Now, although not uniform as it should be, many GALs are providing written reports to the court and are at least occasionally meeting with their clients. Judicial oversight has also improved in many parts of the state. Although still unusual, judges are occasionally making "no reasonable efforts" findings, suggesting that they are not a rubber stamp of agency plans. Courts are considerably more likely to make active inquiry into potential ICWA status at the beginning of cases, are considerably more likely to make active inquiry into the appropriateness and availability of services, and are covering more issues at the front end of cases (e.g., visitation, alternatives to out-of-home placement), especially in Omaha and Lincoln.
- **One Family-One Judge:** Most courts in the state continue to offer consistency to families with one judge handling all significant hearings as cases work through the system. A small number of the county courts in rural areas are not as consistent in providing this, with judges rotating to different courts for different

time periods. Still, most children and families in Nebraska courts have the same judge for all their juvenile court matters.

- **Separate Juvenile Court:** The judges in the Separate Juvenile Court are all well trained, experienced and committed to the work they do with abuse and neglect cases and children in foster care. Nebraska's commitment to the Separate Juvenile Court, as evidenced by the status given Juvenile Court Judges – their salaries are at the same level as District Court Judges- has resulted in a judiciary that views juvenile court as a professional goal, not a stepping stone or rotation. There are also many committed and well trained county judges, but there are some county judges who do not enjoy and who are not committed to their juvenile work.
- **Court Staff:** Court staff are uniformly viewed as well trained and committed, and in most parts of the state are viewed as adequate to support the court services. The main exception is Lancaster County, where there appears to be a need for more administrative support to the judges. Also, statewide delays in preparing the Bills of Exception for appeals appear to be at least partly due to staffing issues.
- **New Resources and Practices:** Survey respondents and focus group participants described a number of new resources and practices that they believe have enhanced the work of the courts in their work with children. The Court Appointed Special Advocate (CASA) program has expanded across the state, most significantly developing very well run programs in Lincoln and Omaha. CASA volunteers are consistently viewed as extremely helpful in providing individualized attention to and advocacy for children in the system. Family Group Conferencing (FGC) has become a well developed program across the state and Expedited FGCs have been found to be especially useful in involving relatives in the care and protection of children at the start of cases. Omaha and Lincoln have expanded their Preliminary Protective Custody Hearings including developing pre-hearing conferences. These more detailed hearings are viewed as significantly expediting the legal process at the beginning of cases.
- **Court-Agency Collaboration:** There is increased local collaboration and communication between the Court and the Health and Human Services Agency across the state, and especially in the communities where there is a Separate Juvenile Court. Additionally, there is increased collaboration at the level of the Supreme Court/Administrative Office of the Court and Health and Human Services top administration. One demonstration of that collaboration is the section of this Reassessment that reports data that was provided by the Health and Human Services system.

Weaknesses of the System

- **Nebraska Law:** Nebraska is in compliance with the federal law. However, Nebraska statutes incorporate the minimum requirements, do not have penalties for non-compliance, have considerable confusion associated with the mandate for the state to file TPR petitions at specific times, and have very loose time frame

standards for adjudications (and none for dispositions) that allow children to be in the state's custody for many months before parents are required to engage in rehabilitative services.

- **Completeness and Depth of Hearings:** As was true in 1996, many court hearings are considerably briefer than they need to be to cover all the critical information. It also appears that hearing lengths are becoming slightly briefer than they were during the first assessment. Further, significant issues are not consistently reviewed in hearings. For example, a number of important issues should be presented to the court at the preliminary protective custody hearing to ensure that children are not unnecessarily removed from their families and if they are to ensure that they are in the best environment, preferably with someone they know. Alternatives to out-of-home placement are presented only half the time. Placement with or visitation with siblings are presented only half the time. Placement with relatives is presented only half the time. Identification of non-custodial parent and identification of potential ICWA status is presented only about half the time. Finally, the availability of voluntary services for parents is presented only half the time. Similarly, the following critical issues are reportedly reviewed only about half the time in review hearings: the appropriateness of the child's education, visitation with siblings, placement with siblings, placement with relatives, caseworker visits with children. And, permanency planning hearings, which are intended to be a thorough, in-depth examination of the likelihood of a child's timely reunification with her parents and the finalization of alternative permanency plans if timely reunification is not possible, only occasionally differ from regular review hearings in substance or form.
- **Notice to and Participation of Foster Parents:** Despite federal and state law requiring notice to foster parents and relative caregivers, such notice is not yet standard practice in Nebraska. Court administrative staff report that they send notice to foster parents from 24 to 44% of the time, depending on the hearing type. Further, when foster parents are present in hearings, they are asked to speak (by the judge or an attorney) only about half the time.
- **Representation of parties:** Guardian ad litem work has reportedly improved over the past several years with more visits with children and more written or verbal reports to the court than in the past. Still, there are substantial deficiencies. GALs reportedly only perform advance preparation activities for disposition, review, and permanency hearings about half the time. Surveys and focus groups indicate that GALs do not typically perform independent investigation activities and their reports are often considered to be a "rubber stamp" for the HHS report. The situation is comparable for parents' attorneys. Although the majority of parents do have attorneys representing their interests during hearings, most parents do not have attorneys who are prepared enough to provide effective and meaningful advocacy.
- **Timeliness of Judicial Decision-making:** Focus group discussions suggest that there has been improvement in most courts (but not all) in completing

adjudications within ninety days of the petition as required by Nebraska statute. However, continuances are requested and granted in approximately half of adjudications, so more improvement is still needed. Concerns were raised that the 90-day time frame for adjudications and flexible time frame for dispositions may result in children being in the state's custody for many months before their parents are required to engage in rehabilitative services. This delay at the front end of the case makes it less likely that the twelve-month permanency hearing will result in a permanent home for children. Consistent with these early delays are significant delays in filing Termination of Parental Rights petitions in most parts of the state, even for children where no exception has been found to the state's requirement to file such a petition. Finally, the median number of days for appeals of TPRs to go through the appellate process was 329 days, resulting in still further delays for children awaiting permanency.

- **Placement Appropriateness and Stability:** The Nebraska Family Policy Act (NRS § 43-533 (4)) affirms as state policy that children who need to be removed from their families because of safety considerations be placed with their relatives as a preferred placement resource and that the number of placement changes for these children be minimized. Unfortunately, the goals of this policy are not being met for children in foster care. Only 15% of children in foster care were placed with relatives. Further, 46% of children had 3 or more placements; 16% had 6 or more placements. Although there is some variation across judicial districts, the highest percentage of relative placement is 21% and the lowest percentage of children with 3 or more placement changes is 39%.
- **Timely Achievement of Permanency:** Nebraska children in foster care do not typically find permanent homes in a timely fashion. Of those children who are eventually reunified with their parent(s), only half are reunified within twelve months. Further there is fairly significant variation across judicial districts with some districts having considerably less than half of their children returned to their parents within a year. Similarly, of children who cannot return to their parents, and who are eventually adopted, only 17% are adopted within 24 months of their initial removal. Both of these indices of timely permanency are well below national standards.

Action Plan

A Nebraska State Court Action Plan (adopted at the National Judicial Leadership Summit on the Protection of Children, September, 2005) forms the priority action steps that will support the strengths and address the shortcomings of Nebraska's system. The Supreme Court Commission on Children in the Courts, appointed in December, 2004, will assist the Court in achieving its goals for statewide systemic court improvement.

- **Statewide Implementation of Best Court Practices:** Bringing judicial practice into adherence with the Resource Guidelines of the National Council of Juvenile and Family Court Judges' is the top priority of the action plan. The Resource Guidelines provide a model to make court hearings in child abuse/foster care

cases as effective as possible. Implementing these guidelines in every Nebraska court with juvenile jurisdiction will significantly enhance our effectiveness in promoting safety, timely permanency, well being, and fairness for the children and families that come before it.

- **Statewide Judicial Information System:** Nebraska Courts need a juvenile information system, preferably statewide, that collects systematic data on court performance. With regular information about their caseloads, judges can be more effective in addressing difficulties and/or delays in the court process in their jurisdictions.
- **Expedite Appeals in TPR and Abuse/Neglect Cases:** Court rule changes have already resulted in time reductions since the data in this Reassessment was collected. Continued efforts to modify the appellate process, the annual measurement of appellate time frames, and further recommendations from the Supreme Court Commission on Children in the Courts Subcommittee on Expedited Appeals are all intended to further cut the time that it takes an appeal to make its way through the system.
- **Improve Legal Representation of Children and Parents:** Developing and adopting standards for attorneys and guardians ad litem and making training available and accessible statewide is a significant priority of the action plan. Training and clear standards regarding expected performance are anticipated to improve the quality of legal representation of children and parents.

INTRODUCTION

The State Court Improvement Program (CIP) was created in 1993¹ to provide grants to State court systems to conduct assessments of their foster care and adoption laws and judicial processes, and to develop and implement plans for system improvements. The Adoption and Safe Families Act of 1997² reauthorized CIP through 2001, funded at \$10 million annually.³ The Promoting Safe and Stable Families Amendments of 2001⁴ reauthorized the program through Fiscal Year 2006 at the same funding level but with a broader scope that included developing a corrective action plan in response to findings identified in the child and family services review of the child welfare system. The reauthorization also required each state to conduct a reassessment of their judicial system to “examine the current strengths and challenges of the dependency court system, building on the results of the State’s initial CIP assessment and any evaluation conducted of subsequent court improvement efforts.”⁵ The reassessments were required to examine the effectiveness, timeliness, and quality of judicial proceedings and the effectiveness of State courts in carrying out “related responsibilities for the protection of children under other Federal legislation, such as the Indian Child Welfare Act (ICWA) and the Child Abuse Prevention and Treatment Act (CAPTA).”⁶

Nebraska completed its first CIP assessment in 1996.⁷ The first assessment found several areas of strength including that Nebraska laws conformed to federal mandates, that most judges heard all stages of maltreatment cases, and that children and indigent parents were entitled to state appointed guardians ad litem (for children) and attorneys (for parents). The assessment also found important areas needing considerable improvement including the quality of guardian ad litem and parent representation, the completeness and depth of judicial hearings, the efficiency and timeliness of decision making, and compliance with the Indian Child Welfare Act.

The Nebraska CIP has undertaken a number of initiatives since 1998, mostly targeted towards specific issues in particular parts of the state. Major CIP projects have included developing, implementing, and evaluating Family Group Conferencing, providing the initial funding (first two years) for the Douglas County CASA program, establishing and supporting local court-agency collaborative groups in Douglas, Lancaster, and Sarpy counties (including assisting in the development of expanded preliminary protective custody hearings), developing, publishing, and disseminating guides to the juvenile court system for abuse/neglect for parents, relatives, and foster parents (including a Spanish version), and providing a number of trainings at the local and state level for judges and/or attorneys.

¹ Omnibus Budget Reconciliation Act of 1993, PL 103-66

² PL 105-89

³ Each state receives a base of \$85,000 plus an appropriation based on the State’s proportionate share of children under age 21. Nebraska has received approximately \$138,000 annually.

⁴ PL 107-133

⁵ Program Instruction ACYF-CB-PI-03-04, attachment E

⁶ *Id.*

⁷ See Appendix A for Executive Summary

The CIP program has also collaborated with the Nebraska Department of Health and Human Services on a number of initiatives including participation in the federal Child and Family Services Review and the development and monitoring of the Program Improvement Plan.

As described above, the CIP has been active in addressing a variety of concerns in the abuse and neglect court system during the past several years. Only recently, however, has the CIP focused on statewide system improvements. The recently developed Supreme Court Commission on Children in the Courts and the Nebraska State Court Action Plan are both system wide efforts that will broaden the impact of the Nebraska CIP.

In 2005, the Nebraska Supreme Court appointed the Supreme Court Commission on Children in the Courts, lead by Chief Judge Everett Inbody of the Nebraska Court of Appeals and Judge Douglas Johnson of the Douglas County Separate Juvenile Court, to study and make recommendations regarding appropriate steps for the judicial system to undertake to insure that the court system is as responsive as possible for children who interact with, or are directly affected by the courts. The CIP is providing support and technical assistance to the work of the general Commission and to the work of the subcommittees. The initial work of the Commission has focused on two areas relevant to child abuse/neglect and foster care. Subcommittees are studying and developing recommendations for standards and trainings for guardians ad litem in abuse/neglect cases and are studying and developing recommendations for expediting the appellate process for these cases. Recommendations for the Commission to the Supreme Court are anticipated in early 2006.

Chief Justice John V. Hendry led a team consisting of Judges Inbody and Johnson, NDHSS Director Nancy Montanez, Protection and Safety Administrator, Todd Reckling, Court Administrator Janice Walker, and CIP Director Vicky Weisz to the National Judicial Leadership Summit on the Protection of Children in September, 2005. This team developed a Nebraska State Court Action plan consisting of four major goals:

1. Statewide implementation of best court practices based on the National Council Of Juvenile and Family Court Judges' Resource Guidelines
2. Statewide Judicial Information System to obtain data to ensure compliance with national standards and state/federal law
3. Expedite appeals in TPR and abuse/neglect cases
4. Improve legal representation of children and parents

The data for the reassessment that is described in this report represents Nebraska Court functioning prior to these recent system wide efforts.

REVIEW OF STATUTES

The 1996 Court Improvement Assessment of Nebraska Courts reviewed the statutory law at the time and determined that the significant mandates of the Adoption Assistance and Child Welfare Act of 1980 (PL 96-272) and the Federal Indian Child Welfare Act (25 U.S.C.A. § 1901 et seq.) were all adequately included in state law. This review will not repeat that analysis but will review the conformity of the Nebraska Revised Statutes with the significant new federal legal requirements imposed since that review, specifically, the Adoption and Safe Families Act of 1997 (ASFA) PL 105-89). Nebraska law was revised in 1998 (LB 1041) and brought the state's code in compliance with the federal legislation, including, but not limited to, the following revisions:

ASFA Requirements

Health and safety of children is paramount concern in determination of reasonable efforts

Nebraska followed the federal law⁸ and inserted variants of the phrase “the health and safety of the juvenile should be the paramount concern” or inserted “health and safety” to existing language regarding children’s welfare throughout the juvenile code.⁹

Requirement for reasonable efforts is not required for certain parents

Nebraska incorporated, essentially verbatim, the language of the federal law¹⁰ that discontinues the requirement for providing services to reunify children with certain dangerous parents¹¹. These statutes do not expand upon the minimal federal requirement by either delineating other possible aggravating circumstances or by including other groups of parents (e.g. severely mentally retarded; severally mentally ill with a history of unsuccessful treatment) for whom the possibility of reunification at any time or within a reasonable time frame is virtually non-existent. Thus, although the Nebraska statutes comply with the federal law, they could be broader and clarify other instances where reasonable efforts are not going to result in children being returned to their parents and only serve to delay the time to permanency for the children.

⁸ PL 105-89 § 101 (a) (A)

⁹ See, for example NRS § 43-283, NRS § 43-284, NRS § 43-285, NRS § 43-533.

¹⁰ PL 105-89 § 101 (a) (D)

¹¹ NRS § 43-283.01 (4) Reasonable efforts to preserve and reunify the family are not required if a court of competent jurisdiction has determined that:

- a) The parent of the juvenile has subjected the juvenile to aggravated circumstances, including, but not limited to, abandonment, torture, chronic abuse, or sexual abuse;
- b) The parent of the juvenile has (i) committed first or second degree murder to another child of the parent, (ii) committed voluntary manslaughter to another child of the parent, (iii) 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 (iv) committed a felony assault which results in serious bodily injury to the juvenile or another minor child of the parent; or
- c) The parental rights of the parent to a sibling of the juvenile have been terminated involuntarily.

Expedited permanency hearings are required when reasonable efforts are not required

Nebraska also incorporated the language of the federal law¹² that requires a permanency hearing within 30 days after a judicial determination that reasonable efforts are not required¹³.

Concurrent planning is allowed

The federal legislation permitted concurrent planning that would permit agencies to be working on other permanent plans such as adoption or permanent guardianships for children at the same time they are providing reasonable efforts to reunify the child with his parent(s).¹⁴ Nebraska emphasized that preserving and/or reunifying the family remained the priority in its allowance of concurrent planning.¹⁵

Permanency Planning Hearings are required within twelve months

The Adoption and Safe Families Act shortened the time frame for a permanency hearing from 18 to 12 months.¹⁶ Nebraska adopted this time frame change and specified required findings for this hearing.¹⁷ As can be seen in the footnote below, this statute is somewhat confusing. Further, the statute does not clarify the mechanism for referring to the state for TPR filings.

¹² PL 105-89 § 101(a) (E)

¹³ NRS § 43-283.01(5) If reasonable efforts to preserve and reunify the family are not required because of a court determination made under subsection (4) of this section, a permanency hearing, as provided in section 43-1312, shall be held for the juvenile within thirty days after this determination, reasonable efforts shall be made to place the juvenile in a timely manner in accordance with the permanency plan, and whatever steps are necessary to finalize the permanent placement of the juvenile shall be made.

¹⁴ PL 105-89 § 101(a) (F)

¹⁵ NRS § 43-283.01(6) Reasonable efforts to place a juvenile for adoption or with a guardian may be made concurrently with reasonable efforts to preserve and reunify the family, but priority shall be given to preserving and reunifying the family as provided in this section.

¹⁶ PL 105-89 § 302

¹⁷ NRS § 43-1312(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.

State is required to initiate or join in Termination of Parental Rights petitions at specified times

The federal legislation requires that a TPR petition be filed if a child has been in foster care for 15 of the most recent 22 months, or in some other specified conditions unless specified exceptions are found.¹⁸ Nebraska adopted the federal language and added several additional exceptions.¹⁹ As can be seen from survey results reported in this document, this statute is only followed about half the time. Focus group participants suggest that the statutory intent of mandating TPR filings for all children who do not fall under specified exceptions is hampered by several issues. One involves separation of powers concerns that prevent judges from being able to direct the state to file petitions. Another issue is a conflict for county attorneys who are mandated by this statute to file TPRs but also are constrained from filing petitions that they cannot support with best interests evidence. Thus, although Nebraska law follows the federal law, its full implementation may require some further clarification.

Extending notice of reviews and hearings and opportunity to be heard to foster parents, relatives and others caring for child

ASFA requires that foster parents, preadoptive parents and relatives caring for children be provided notice of all reviews and hearings and given an opportunity to be

¹⁸ PL 105-89 § 103 (a) (3)(E)

¹⁹ NRS § 43-292.02 (1) A petition shall be filed on behalf of the state to terminate the parental rights of the juvenile's parents or, if such a petition has been filed by another party, the state shall join as a party to the petition, and the state shall concurrently identify, recruit, process, and approve a qualified family for an adoption of the juvenile, if:

(a) A juvenile has been in foster care under the responsibility of the state for fifteen or more months of the most recent twenty-two months; or

(b) A court of competent jurisdiction has determined the juvenile to be an abandoned infant or has made a determination that the parent has committed murder of another child of the parent, committed voluntary manslaughter of another child of the parent, 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 committed a felony assault that has resulted in serious bodily injury to the juvenile or another minor child of the parent. For purposes of this subdivision, infant means a child eighteen months of age or younger.

(2) A petition shall not be filed on behalf of the state to terminate the parental rights of the juvenile's parents or, if such a petition has been filed by another party, the state shall not join as a party to the petition if the sole factual basis for the petition is that (a) the parent or parents of the juvenile are financially unable to provide health care for the juvenile or (b) the parent or parents of the juvenile are incarcerated. The fact that a qualified family for an adoption of the juvenile has been identified, recruited, processed, and approved shall have no bearing on whether parental rights shall be terminated.

(3) The petition is not required to be filed on behalf of the state or if a petition is filed the state shall not be required to join in a petition to terminate parental rights or to concurrently find a qualified family to adopt the juvenile under this section if:

(a) The child is being cared for by a relative;

(b) The Department of Health and Human Services has documented in the case plan or permanency plan, which shall be available for court review, a compelling reason for determining that filing such a petition would not be in the best interests of the juvenile; or

(c) The family of the juvenile has not had a reasonable opportunity to avail themselves of the services deemed necessary in the case plan or permanency plan approved by the court if reasonable efforts to preserve and reunify the family are required under section 43-283.01 .

heard at these reviews and hearings, but clarifies that these individuals are not parties to the proceedings.²⁰ Nebraska’s statutory language mimics the federal language.²¹

Statutory timelines

ASFA required that the states establish timelines for permanency hearings (12 months from removal) and termination of parental rights filings (after 15 of 22 months out-of-home placement) and Nebraska has incorporated these into our statutes. However, despite the tightening of time frames at the late stages of these cases, the timelines at the front end have not been similarly tightened. Adjudication hearings are required within 90 days of the filing of a petition, but the court may continue the case beyond 90 days for good cause.²² Further, this statute has been found to be “directory” not mandatory.²³ Additionally, there is no time frame requirement for the disposition hearing. Consequently, parents may be provided a court ordered case plan just a few months before the permanency hearing when the court is required to make a decision about the parent’s progress and likely prospects for reunification within a few more months.

Summary

Nebraska is in compliance with the federal law. However, Nebraska statutes incorporate the minimum requirements, do not have penalties for non-compliance, have considerable confusion associated with the mandate for the state to file TPR petitions at specific times, and have very loose time frame standards for adjudications (and none for dispositions) that allow children to be in the state’s custody for many months before parents are required to engage in rehabilitative services.

²⁰ PL 105-89 § 104

²¹ NRS § 43-1314 Review of dispositional order: right to participate; notice. Except as otherwise provided in the Nebraska Indian Child Welfare Act, notice of the court review and the right of participation in all court reviews 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 either in court, by mail, or in such other manner as the court may direct. Such notice shall be provided to: (1) The person charged with the care of such child; (2) 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; (3) the foster child if age fourteen or over; (4) the foster parent or parents of the foster child; (5) the guardian ad litem of the foster child; and (6) the state board. Notice of the court review shall also be provided to the preadoptive parent or relative providing care for the child. 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 be made a party to the review solely on the basis of such notice and opportunity to be heard.

²² NRS § 43-278

²³ In re Interest of Brandy M. et al., 550 N.W.2nd 17 (1996).

METHODOLOGY

The reassessment consisted of four methods of gathering information about court performance. Professionals across the state completed written surveys. Focus groups of professionals were conducted in a sample of urban and rural courts. The Nebraska Department of Health and Human Services provided data organized by judicial district from its current Child and Family Services Review Data Profile. Finally, docket sheets from the Nebraska Supreme Court were reviewed and analyzed to determine time frames for the appeal process.

1. Surveys

Participants- Two hundred and twenty-one surveys were sent to judges, attorneys (selected for experience with abuse and neglect cases and including guardians ad litem, county attorneys, and attorneys for parents), court administrative staff, child protective service workers, CASA volunteers, and Foster Care Review Board specialists across all twelve Nebraska Judicial districts. Reminders and a second mailing were sent approximately six weeks after the initial mailing to those who had not responded. Overall, one hundred and sixty-seven complete surveys were returned reflecting a 76% response rate. Response rates by professional category were: 83% for judges, 64% for attorneys, 79% for court administrative staff, 89% for child protective service workers, 81% for CASA, and 45% for Foster Care Review Board specialists.

Materials- Surveys were adapted from the surveys used in the 1995-96 Nebraska Court Improvement Assessment. These original surveys were adapted from the sample surveys provided by the American Bar Association's Center on Children and the Law (ABACCL). The ABACCL also provided sample items for the reassessment that reflected changes in the law (ASFA) and other development in court best practices. Many of these additional sample items were modified and included in the surveys.

Each professional group had a different survey that reflected the kind of information a person in the particular role would likely have. All respondents were asked several overall assessment questions about their evaluation of the court process. Most of the surveys, however, did not ask for evaluation but instead asked for estimates on how often a particular event occurred or how long time frames typically are. Judges were asked about their workload, specific judicial findings they make, issues that arise in hearings, information that comes to the court in reports, the length of hearings, continuances, the representation of children and parents, notice to foster parents and relative caregivers, ICWA, CASA, judicial training, community resources, and collaboration activities. Attorneys were asked about the same issues from their perspective but were asked about attorney workload and training rather than judicial workload and training. Court administrative staff were asked about their responsibilities, the structure of the court, judicial case load and case load management, procedures regarding notice to parties and procedures regarding appointment of attorneys. Child protection workers were asked about judicial findings, issues that arise in hearings,

ICWA, continuances, representation of children and parents, notice to foster parents, CASA, and collaborative activities. CASA volunteers were asked about judicial findings, issues that arise in hearings, the representation of children and parents, community resources and collaborative activities of the court. FCRB representatives were asked about judicial findings, FCRB participation, and community resources.

2. Focus Groups

Participants- Ten judges, 21 attorneys, 13 child protection workers, 4 CASA volunteers, and 4 FCRB reviewers participated in eleven focus groups organized around professional roles in 4 judicial districts across the state. Focus groups were facilitated by faculty/staff/graduate assistants of the UNL Center on Children, Families and the Law and the Administrative Office of the Nebraska Supreme Court.

Methods – Participants were given an opportunity to read the Executive Summary of the 1996 Nebraska Court Improvement Assessment that summarized the key strengths and problem areas that were found in that assessment. See Appendix A for the 1996 Executive Summary. Each strength and problem area was discussed in terms of how the participants viewed that issue today compared to when the initial assessment was completed, if there were changes what were possible reasons for the changes, and whether there were other compelling issues that were not addressed in the 1996 Assessment.

3. Nebraska Child and Family Services Review Data Profile

The Nebraska Department of Health and Human Services provided a data profile of court related outcome measures organized around judicial districts. Data was provided relating to children’s placement types, permanency goals, number of placement settings, number of children in care 17 of 22 months, median length of stay in foster care, length of time to achieve permanency, length of time to reunification for children who reunified, and length of time to adoption for children who were adopted.

4. Review of Appellate Time Frames for TPRs

All Terminations of Parental Rights cases that were appealed in Nebraska from January, 2002 until October, 2004 that had been completed (mandate issued) by October, 2004 were reviewed. Docket Sheets of these cases were provided by the Clerk of the Supreme Court. Dates of various events in the appellate process were determined for each case in order to assess time frames for each event.

FINDINGS

Completeness and depth of hearings

General Satisfaction

Average general satisfaction with the completeness and depth of hearings for all disciplines was 3.9 on a 5-point scale with 1 representing very dissatisfied and 5 representing very satisfied. This represents a fairly high level of overall satisfaction and a higher overall rating than in the first assessment in 1996 (3.6). The average attorney rating of this item was a 4, the average rating for CASA was 3.8, and the average for judges and child protection workers was 3.7.

In contrast to the generally positive ratings in the surveys, focus group members reported that hearing completeness and depth is hampered by overburdened dockets and limited information presented by the parties. Additionally, some judges do not view hearings as an important process for judicial decision making.

Heavy judicial caseloads prevent more than 15-20 minutes to be available for most uncontested hearings in the separate juvenile courts. This does not provide the courts for enough time to cover enough issues in depth. Also, some parent's attorneys suggest that they rarely have time to obtain testimony from a parent, even when the information from the department appears to be biased against the parent. Judges also report that limited or generic information that is presented by the parties affects the depth of the hearings. One judge reported that information is usually too general (relying on conclusory language rather than specific, concrete information); another judge reported that rapidly changing caseworkers result in caseworkers appearing in court who do not know anything about the case (this judge offered that he had just been on vacation for a week, and when he returned he received 20 letters of transfer of caseworkers; another judge reported that one parent had eleven workers in ten months).

Further, some judges do not view the hearings as a time for judicial decision making. One judge wants the parties to deal with differences in mediation or team meetings and then update the court, rather than require a decision by the court. One judge has been holding paper reviews for the past two years and does not hold hearings if there are no objections to the department's case plan filed with the court.

Hearing Lengths

The National Council for Juvenile and Family Court Judges (NCJFCJ) issued Resource Guidelines: Improving Court Practice in Child Abuse & Neglect Cases in 1995. These Guidelines were developed by a national committee of judges and attorneys and continue to be the standard for good judicial practice. The guidelines present minimum

hearing lengths that are derived from outlining necessary activities and estimating the time requirements for each activity.²⁴

Tables 1 and 2 show how average hearing lengths across the state compare to the NCJFCJ standards and how frequently extremely brief hearings occur. These tables indicate that the majority of Nebraska’s children do not have hearings of sufficient length to address key issues in their cases.

Table 1
Estimate of average length in minutes of uncontested/contested hearings with NCJFCJ recommended uncontested hearing lengths

	Judges’ estimates	Attorney’s estimates	Child protection worker’s estimates	NCJFCJ recommendations for uncontested hearings
Preliminary protective custody hearings	17/51	16/51	15/47	60
Adjudications	22/184	17/143	20/104	30
Dispositions	19/78	17/58	20/81	30
Review hearings	17/68	17/49	17/41	30
Permanency planning hearings	19/66	18/47	17/49	60
TPR hearings	43/549	33/377	198/477	60

Table 2
Percentage and length of briefest hearings (Judge’s estimates)

	Uncontested	Contested
Preliminary protective custody hearings	9% reported 5 minutes; 44% reported 10 minutes or less	7% report 20 minutes or less
Adjudications	21% report 10 minutes or less	27% report 60 minutes
Dispositions	56% report 15 minutes or less	15% report 30 minutes or less
Review hearings	6% report 5 minutes; 27% report 10 minutes or less	6% report 20 minutes
Permanency planning hearings	6% report 5 minutes, 21% report 10 minutes or less	13% report 20 minutes
TPR hearings	10% report 10 minutes	21% report 180 minutes or less

²⁴ See Appendix B for Resource Guidelines calculations of hearing lengths.

Table 3 shows that the percentages of contested hearings (as compared to uncontested hearings) are fairly low suggesting that parents admit to charges and parties resolve issues in a large majority of cases. Still, as the Resource Guidelines indicate, there are many issues that need to be addressed by the court even when hearings are uncontested.

Table 3
Percentages of hearings that are typically contested

	Judges' estimates	Attorney's estimates	Child protection worker's estimates
Preliminary protective custody hearings	13%	19%	29%
Adjudications	18%	30%	43%
Dispositions	18%	24%	22%
Review hearings	14%	20%	16%
Permanency planning hearings	14%	21%	17%
TPR hearings	74%	68%	65%

Range of Issues

Table 4 shows issues that should be addressed at every preliminary protective custody to ensure that 1) children are not unnecessarily removed from their parents, 2) children who must be removed for their safety are placed with non-custodial parents or relatives if possible and that, 3) arrangements for contact with their parents and siblings are quickly made. Additionally, identifying and locating non-custodial parents, determining whether children are subject to the provisions of the Indian Child Welfare Act, and offering voluntary services to parents are all “front loaded” activities that eliminate barriers to timely resolution of cases. As can be seen from the table, these issues are estimated to be addressed only about half the time in these hearings indicating that many children are placed into protective custody without a thorough judicial review of the removal and related placement issues.

Table 4
Frequency that issues are presented during preliminary protective custody hearings

	Judges' estimate	Attorneys' estimate	CPS workers' estimate
Alternatives to out-of-home placement	About half the time (56-65%)	Mostly (66-95%)	About half the time
Visitation with parents	Mostly	Mostly	Mostly
Visitation with siblings	About half the time	About half the time	About half the time
Placement with siblings	About half the time	About half the time	About half the time
Placement with relatives or other adults close to the child	About half the time	Mostly	About half the time
Identity and address of non-custodial parent	About half the time	Mostly	About half the time
Child's membership or eligibility for membership in a tribe	About half the time	About half the time	About half the time
Availability of voluntary services	About half the time	About half the time	Occasionally (11-35%)

Table 5 indicates that many essential issues are not consistently addressed at review hearings.

Table 5
Frequency that issues are presented during review hearings

	Judges' estimates	Attorneys' estimates	CPS workers' estimates
Appropriateness of child's education	About half the time	About half the time	About half the time
Parents' involvement in case planning	Mostly	Mostly	About half the time
Alternatives to out-of-home placement	Mostly	Mostly	About half the time
Visitation with parents	Mostly	Mostly	Mostly
Visitation with siblings	About half the time	Mostly	About half the time
Caseworker visits with child	About half the time	About half the time	About half the time
Caseworker visits with parents	Mostly	About half the time	Occasionally
Placement with siblings	About half the time	About half the time	About half the time
Placement with relatives or other adults close to the child	About half the time	About half the time	About half the time

The following table (6) indicates that although courts are mostly complying with the legally mandated permanency hearing requirement, these hearings are not usually different from a review hearing, and rarely trigger a change in the child’s permanency plan. Table 1 above indicates that the average length of permanency planning hearings is between 17 and 19 minutes so it is not surprising that these hearings are not able to have a meaningful impact on finalizing a permanent home for children.

Table 6
Permanency planning hearings

	Judges’ estimates	Attorneys’ estimates	CPS workers’ estimates	CASA estimates
Does the court conduct a permanency planning hearing within a year after the placement of the child into foster care?	Mostly	Mostly	Mostly	
Does the court, at the first permanency planning hearing approve family reunification as the permanency plan?	Mostly	Mostly	Mostly	
Does the permanency planning hearing substantially differ from the review hearings?	Occasionally	Occasionally	Occasionally	

Judicial findings, orders

Contrary to Welfare

Responses to the survey questions about judicial findings are presented in the aggregate because there was substantial agreement among the different professional groups in their assessments. Judges reported that they mostly had the information that they needed to make specific “contrary to the welfare” findings in their ex parte orders regarding children’s removals. All respondents reported that judges made these findings in the first order “mostly” (66-95% of the time). They also reported that judges referred about equally to written information from HHS and law enforcement in making these finding, although there were some regional differences as to which source they were more likely to cite. Statewide respondents reported that judges mostly made specific

contrary to the welfare findings that described or cross-referenced the child’s individual circumstances, but again, there were regional differences with some judicial districts reporting that individual circumstances are only noted about half the time.

Reasonable efforts

Table 7 shows how often attorneys raise issues or judges question parties about required reasonable efforts made by the government to prevent removal of a child, reunify a family, or secure and finalize a new permanent home, which ever applies. As can be seen in the table, attorneys raise these issues about half the time, and judges question parties about the most central of these issues most of the time.

Table 7
Reasonable efforts issues raised by attorneys/questioned by judges

	Raised by attorney	Questioned by judge
What services and help were provided to the family.	About half the time	Mostly
The sufficiency or appropriateness of the services provided	About half the time	Mostly
The workers’ diligence in following through to make sure help was provided	About half the time	About half the time
The prompt availability of services	About half the time	About half the time

The results in the above table remain the same when only the attorneys who report that at least 80% of their caseload is child abuse/neglect are considered.

Participants report that judges make findings that reasonable efforts to reunify a family are not required, occasionally (11-35% of the time).

Focus group participants discussed whether court ordered rehabilitative efforts by parents were well monitored. Most participants reported that the hearing time frame continues to drive the process and that considerable time passes before parents might be provided services or held accountable for not participating in services. Further, if too much time has elapsed the courts are unable to determine whether the lack of service participation reflects a lack of reasonable efforts by the department or non-compliance by the parent. Some judges are scheduling hearings more frequently than the mandated six month period so that the monitoring occurs more frequently. Team meetings, reported to be conducted routinely for the families in the contracted private Integrated Care and Coordination Units (ICCU), are considered to be an effective monitoring tool for service provision as well as service cooperation. These team meetings were not reported to be provided by regular case workers.

Services, visitation

Judicial orders are not always specific regarding how children are returned home. Judges specify phased-in extended visits as a transition before children are returned home about half of the time and specify a timetable for a child's return home about half the time. They do generally order continued monitoring by HHS after the child's return.

Concurrent Planning

All participants report that courts "mostly" support concurrent planning by the department: working for reunification of a family but at the same time arranging for placement with foster parents or relatives who are willing to adopt if the reunification does not succeed.

Reports

Courts and parties receive considerable information through reports. All judges report that they typically receive the HHS case plan/court report and that these reports are helpful to their decision making. About 75% of judges report that they typically receive CASA reports. They find these reports very helpful (more helpful than all the other reports.) All judges report that they typically receive reports from guardians ad litem and that these reports are helpful. Almost 90% of judges report that they typically receive Foster Care Review Board reports and they find these reports somewhat helpful.

Termination of Parental Rights

Courts are frequently (approximately 45% of the time) making findings that there is an exception to the state's requirement to file a TPR when children have been in out of home placement for 15/22 months. When judges **have not** made such a finding, the state (county attorney) reportedly files a TPR petition about half the time. Consequently, it appears that TPR petitions are filed on behalf of children who have been out of home 15/22 months about 25% of the time.

Focus group participants report that permanency hearings that are distinct from regular review hearings are not happening in Nebraska. Permanency issues are covered in every review hearings. Most focus group participants do not view this as a problem although some believe that there is not sufficient focus on permanency. Most participants reported that there has been an increase in TPR filings but several participants indicated that their county attorney was not filing a sufficient number of TPR petitions.

ICWA

Courts are asking for, requiring, or reviewing evidence regarding whether a child is a member of a recognized tribe in approximately 31% of their cases. This represents considerably more early judicial activity than was reported in the first CIP assessment. Of the cases where it is ultimately found that the child is a member of a recognized tribe, the court typically learns this prior to adjudication approximately 80% of the time, and learns it after disposition approximately 5% of the time.

The focus group participants suggest that inquiries regarding potential tribal membership are now routinely made at the preliminary protective custody hearings in the separate juvenile courts and that notice to tribes is occurring. This does not appear to be happening as routinely in other parts of the state. Further, some participants report that there are often later difficulties with tribes not responding in a timely fashion or other difficulties working with tribes.

Sufficiency and timeliness of notice to parties; involvement of parties

General Satisfaction

Average general satisfaction with the sufficiency and timeliness of notice to parties for all disciplines was 3.2 on a 5-point scale with 1 representing very dissatisfied and 5 representing very satisfied. This represents a neutral level of overall satisfaction and a slightly lower overall rating than in the first assessment in 1996 (3.8). The average court administrator rating for this item was 4.5, the average for attorneys was 4.2, the average for CASA was 4., for judges was 3.9, and for child protection workers was 3.6.

The focus groups reported that notice to most parties is provided in a timely fashion but that non-custodial parents, especially alleged fathers, and foster parents are not consistently provided notice.

Courts are doing a better job getting non-custodial parents identified and located early in the cases in most courts although one court was reported not to focus on this. Expanded preliminary custody hearings in the separate juvenile courts are reported to have improved early identification of parents.

One court that was involved in the focus groups reported that foster parents were consistently noticed, another county reported that they were never noticed, and others reported that notice to foster parents has greatly improved but it was not consistently done. The courts do not consistently have the name and address of the foster parents so providing notice to them often involves court staff time tracking this information down from HHS. One county reported that the GALs provide informal notice to foster parents and that works well.

Notice to Parties

Court administrators reported whether written notice of hearings was “typically” sent to the following persons or their attorneys. Table 8 shows the percentage of time that notices were typically sent for a variety of hearings. This table confirms the information from the focus groups, with most difficulties in providing notice to putative fathers and foster parents.

<p>Table 8 Frequency that notice is sent for various hearings</p>
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	Custodial Parents	Non-custodial parents	Putative fathers	Foster parents
Preliminary protective custody hearings	88%	73%	68%	24%
Adjudications	89%	81%	69%	24%
Dispositions	92%	85%	73%	28%
Review Hearings	89%	85%	73%	36%
Permanency planning hearings	92%	80%	72%	29%
Termination of parental rights proceedings	96%	92%	81%	44%

The court administrators reported that, on average, notice is mailed about 20 days in advance of the hearings. They reported that they had difficulty serving notice (e.g. because of inability to locate) for about 9% of custodial parents, 28% of non-custodial parents, and 31% of putative fathers. Court administrators report various methods to assist in locating parties, including notifying the county attorney, requesting services of the sheriff, contacting the children’s school, and publishing in the local newspaper.

Notice to and Participation of Foster Parents and Relative Caregivers

Despite federal and state law requiring notice to foster parents and relative caregivers, such notice is not yet standard practice in Nebraska. The Nebraska courts notify foster parents and relative caregivers of hearings about half the time. Not surprisingly, foster parents and relative caregivers are only present in review and permanency planning hearings about half the time. When they are present at hearings, foster parents and relative caregivers are asked to speak (by the judge or an attorney) about half the time. And, when foster parents and relative caregivers do provide information in court, judges report that the information they provide “is an important factor in your decision or order” about half the time.

Representation of parties

General Satisfaction

Average general satisfaction with the representation of parties for all disciplines was 4.1 on a 5-point scale with 1 representing very dissatisfied and 5 representing very satisfied. This represents a fairly high level of overall satisfaction and a higher overall rating than in the first assessment in 1996 (3.7). The average rating for attorneys was 4.1, the average for CASA was 3.9, for judges was 4.2, and for child protection workers was 3.9.

Focus groups concentrated on the representation of children. In general, guardian ad litem work is reported to have improved over the last several years. GALs are visiting children more than before and are providing either written or verbal reports to the court more than before. Still, focus group members reported serious deficiencies in GAL work. GAL reports are considered to often be rubber stamps for the HHS report. In one county, with contracts for GALs, the attorneys are viewed as basically competent, but often fairly passive in their involvement. In another county with contracts, many GALs are viewed to be lacking in skills, unable or unwilling to prepare meaningful, independent reports; unable or unwilling to file pleadings; unable or unwilling to cross examine witnesses at adjudication hearings. GALs in the rural counties report that their high case loads and great distances to travel make it very difficult for them to regularly meet the children beyond their statutory obligation of once every six months.

Guardians ad Litem

Nebraska statutes require that all children removed from their homes have attorney guardians ad litem appointed to represent them. Participants reported that approximately 70% of children are represented by guardians ad litem at their preliminary protective custody hearing (an increase from the 1996 estimate of 63%). Children are reported to be represented by GALs at later hearings between 94 and 96% percent of the time.

Despite the overall high levels of satisfaction reported above, GALs are reported to perform advance preparation activities for disposition, review and permanency hearings only about half the time. The following table shows estimates of GAL and CASA activities On a five point scale with 1 = rarely, 3 = about half the time and 5 = always, GAL preparation activities were estimated in Table 9. As can be seen from the table, and consistent with the information provided by the focus groups, GALs are not performing independent investigation activities in many cases.

Table 9
Preparation activities by GALs and CASAs

	GAL	CASA
Find out how their (school age) clients are doing in school.	About half the time	Mostly
Investigate alternative services that might be provided to the child or family to facilitate family reunification.	About half the time	About half the time
Investigate alternative services that might be provided to the child or family to secure and finalize a new permanent home for the child.	About half the time	About half the time
Investigate medical screening or services provided to the child.	About half the time	Mostly
Investigate mental health services that might be provided to the child.	About half the time	Mostly
Interview service providers before the day of the hearing.	About half the time	Mostly
Investigate parent-child visitation.	About half the time	Mostly
Investigate visitation between siblings in cases where a child in foster care is not living with one or more siblings	About half the time	Mostly
Visit the child at his or her place of residence at least one day before the hearing.	About half the time	Mostly
Talk to the case worker before the day of the hearing.	About half the time	Mostly
Talk to the clients before the day of the hearing.	About half the time	Mostly
Contact tribal ICWA representative (when children are members of a recognized tribe).	About half the time	Occasionally

Parents' Attorneys

Indigent parents whose children are named in petitions alleging abuse or neglect are entitled to court appointed legal representation under Nebraska statutory law. Table 10 shows the percentage of custodial and known non-custodial parents who are represented by attorneys at various hearings.

Table 10 Percentage of parents who are represented by attorneys
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	Custodial parents	Non-custodial parents
Preliminary protective custody hearings	41%	19%
Adjudications	87%	51%
Dispositions	87%	52%
Review hearings	84%	50%
Permanency planning hearings	83%	50%
TPR proceedings	95%	71%

We were also interested in assessing how active and prepared parent's attorneys were. Unfortunately, survey respondents indicated mediocre preparation on the parts of many parent's attorneys. Respondents, including judges, attorneys, child protection workers, and CASA, reported that parent's attorneys talked to their clients and the case worker before the day of the hearing only about half the time; that they interviewed service providers before the day of the hearing only about half the time; and, that the investigated alternative services that might be provided to the child or family about half the time. Consequently, although many parents do have attorneys representing their interests during hearings, most parents do not have attorneys who are prepared enough to provide effective and meaningful advocacy that will most assist the parents in a successful resolution of their to their clients.

Selection and training of attorneys and guardians ad litem

General Satisfaction

Average general satisfaction with the selection and training of guardians ad litem and attorneys for all disciplines was 3.2 on a 5-point scale with 1 representing very dissatisfied and 5 representing very satisfied. This represents a neutral level of overall satisfaction and was the dimension receiving the lowest ratings in this survey. However, this rating showed considerable improvement from the overall rating of the same question in 1996 (2.7). For this reassessment, the average attorney rating for this item was 3.1, the average for CASA was 2.7., for judges was 3.5, and for child protection workers was 2.7.

Selection and training

Guardians ad litem and parent's attorneys are primarily private attorneys appointed on a case-by-case basis or under contract or work in public defender offices. Approximately 41% of respondents reported that there are experience, training, and/or quality control requirements that must be met for court-appointed children's attorneys to remain on the court appointment list. About 28% of respondents report such requirements for parent's attorneys. Of those judges that do have requirements, one judge reported that he/she required 2 years experience as an attorney before appointing. One requires guardian ad litem training. A few judges reported that they monitored the attorney's performance in their court. Several just noted that they checked that the attorney remained in good standing with the state bar association.

The average hourly pay of both GALs and parent's attorneys is \$65 ranging from \$45 to \$85. Most report pay around the average. There are not typically established caps on the overall amount an attorney can bill the counties. We did not get information on contracts.

The focus groups suggest that there is variability around the state. The county attorneys in the areas served by the separate juvenile court and in some other counties are viewed as well trained, but other county attorneys around the state are reported to lack knowledge and skill in child abuse cases. The same pattern holds for guardians ad litem except that attorneys in one of the cities that has contracts are perceived to be experienced and well trained while attorneys in another city with contracts are perceived to be mostly inexperienced and poorly trained.

Efficiency and timeliness of decision making

General Satisfaction

Average general satisfaction with the efficiency and timeliness of decision making for all disciplines was 3.9 on a 5-point scale with 1 representing very dissatisfied and 5 representing very satisfied. This represents a fairly high level of overall satisfaction and is the same overall rating as in the first assessment in 1996. The average rating for court administrators for this item was 4.5, for judges was 4.1, for child protection workers was 3.9, for attorneys was 3.8, and the average for CASA was 3.3.

Focus group participants indicate that in most parts of the state adjudications and dispositions are occurring in a timely fashion (with some notable exceptions) but that decisions regarding permanency, especially terminations of parental rights are rarely occurring within the mandated time frames. One court indicated that crowded dockets prevented scheduling adjudication trials within the needed time frames. Another court reported that JUSTICE has really helped with the scheduling of hearings within time frames.

Mandated Hearing Timeframes

Expanded preliminary protective custody hearings (with all parties having legal representation and preceded by informal prehearing conferences) in Douglas and Lancaster Counties have resulted in considerably more efficient first hearings. Participants in these hearings report that they save several weeks to several months at the front end of these cases.

Focus group discussions suggest there has been improvement in most courts (but not all) in completing adjudication hearings within ninety days of the petition as required by Nebraska statute. However, continuances are requested and granted in approximately half of adjudications, so considerable more improvement is still needed. Also, there was some discussion of a need to tighten the legally mandated time frame from 90 to either 30 or 45 days, because of the ASFA timeframes. Most courts (but not all) appear to be conducting their disposition hearings within the 30 day post-adjudication time frame.

The focus group discussions suggest that courts are virtually always meeting the six month required review hearing mandate, and that many courts, especially the Separate Juvenile Courts, are conducting review hearings more frequently from every three months to every five months. Review hearings include issues relevant to permanency hearings, and those hearings are occurring within the twelve month mandated framework. However, the surveys indicate that permanency planning hearings differ from regular review hearings only occasionally. Thus, hearings that are completely focused on reassessing permanency plans at twelve months after removal are not apparently occurring.

Both the surveys and focus groups indicate that the 15/22 month time frame rarely triggers the filing of a Termination of Parental Rights Petition. Survey results suggest that courts make a finding that there is an exception to the state's requirement to file a TPR in 45% of the cases of children who have been out of their home 15/22 months. Of those remaining 55% of cases, the state files a petition "about half the time". Thus, it appears that TPRs are filed in about one quarter of the cases involving children who have been out of home 15/22 months.

AFCARS (the federal Adoption and Foster Care Analysis and Reporting System) data supports the premise that the 15/22 month time frame does not often trigger TPR filings. On March 31, 2003, 48% of children in foster care had been in out-of-home placement for 17/22 months, were not placed in a pre-adoptive home, were not placed with relatives, and had not had a TPR petition filed.

Appellate Time Frames

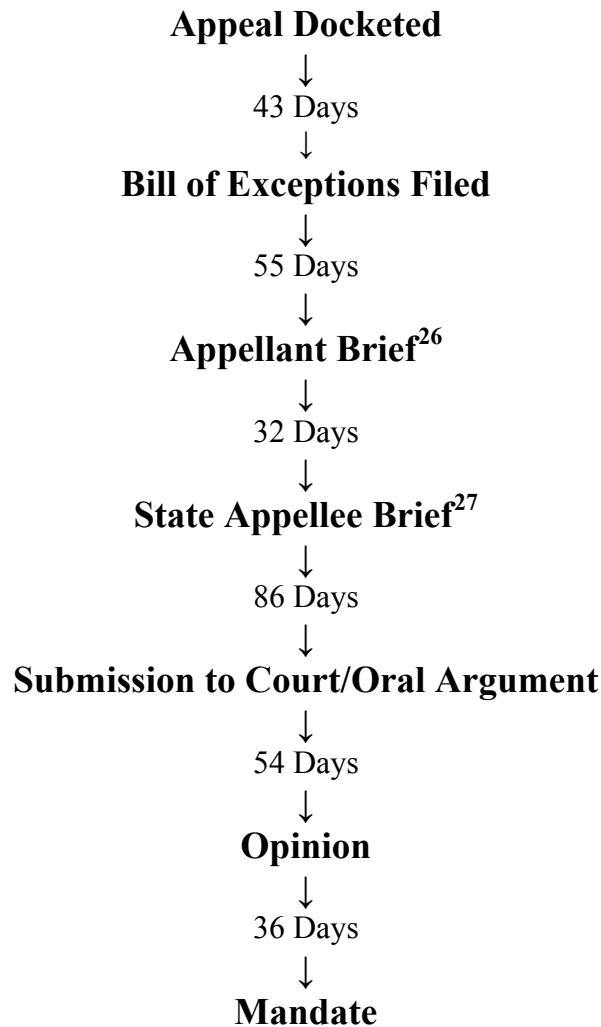
Table 11 shows the median number of days between various events in Terminations of Parental Rights cases that were appealed in Nebraska. All cases from January, 2002 until October, 2004 that had been completed (mandate issued) were

reviewed. Docket Sheets of these cases were provided by the Clerk of the Supreme Court. Of the 121 cases reviewed approximately one third (39 cases), were dismissed at some point in the process. Cases were dismissed upon a motion by the appellant, because the appellant failed to provide a brief, or because of some procedural issue determined by the Court. The following table only includes the cases for which an opinion was issued by either the Court of Appeals or the Supreme Court (82 cases).

Some estimates or extrapolations were made to determine the actual date that the Bills of Exceptions were filed because this information was not always included in the docket sheets.

The median number of days from the docket of the appeal to the mandate was 128 days for cases that were dismissed. This compares to a median of 329 days from appeal docket to mandate for the cases that had opinions issued by the Court.

Table 11
Nebraska Termination of Parental Rights Cases' Appellate Actual (Median²⁵
number of Days) Time Lines



²⁵ The median is the midpoint. Half of the cases take less than this number of days; half take longer.

²⁶ Approximately half of the appellants (40 out of 82) requested and were granted one extension. Only 4 (5%) requested and were granted two extensions.

²⁷ Requests for one extension of the appellee brief were made by the state in approximately one fourth of the cases (21 out of 82). The state requested a second extension only one time.

Bringing unexpected matters to the court

In addition to the timeliness of the predictable judicial decisions in child abuse/neglect cases, we were also interested in whether the court could respond in a timely fashion to situations that came up between scheduled hearings. It should be noted that these matters are often of considerable consequence to the children in questions. 28% of judges, attorneys and child protection workers reported that an urgent matter could be brought to the court within two days. Unfortunately, approximately 25% reported that it would take over eight days to bring an urgent matter to the court. As far as routine matters are concerned, about 50% of the respondents reported that it takes about two weeks to bring a matter to the court; About 29% report that it takes four weeks or more.

Continuances

Continuances are considered to have a significant impact on the efficiency and timeliness of decision making. Table 12 shows the frequency of continuances at different hearings as reported by judges, attorneys, and child protection workers. For example 60% of respondents to the survey reported that continuances are rarely requested at preliminary protective custody hearings.

<p>Table 12 How often continuances are requested</p>
--

	Rarely (0-10%)	Occasionally (11-35%)	About half the time (36-65%)	Mostly (66-95%)
Preliminary protective custody hearings	60%	31%	9%	-
Adjudications	3%	55%	36%	5%
Dispositions	14%	68%	15%	2%
Review Hearings	17%	71%	10%	2%
Permanency planning hearings	23%	67%	9%	1%
Termination of parental rights proceedings	9%	35%	45%	8%

Table 13 shows the frequency of different reasons for requests for continuances. As can be seen in this table, a frequent reason for continuances is that an attorney has a court proceeding in another court. The second most frequent reason is that the HHS report was received late or was incomplete.

Table 13
Reasons for continuances

	Rarely (0-10%)	Occasionally (11- 35%)	About half the time (36-65%)	Mostly (66- 95%)
The HHS report was received later or was incomplete	40%	31%	24%	4%
Attorney has a court proceeding in another court	11%	45%	29%	13%
Attorney hasn't met with client; attorney hasn't scheduled adequate hearing time	47%	40%	8%	5%
Status of case was pending (e.g. guardianship, adoption, voluntary relinquishment, or criminal charges were pending; services or evaluation were pending)	22%	52%	18%	8%
Lack of service (client moved; unable to be located)	51%	44%	4%	1%
Statutory requirements demanded that another hearing take priority	88%	12%	-	-
HHS worker, the attorney, or witness were sick	61%	34%	5%	
Attorney failed to appear	82%	17%	1%	
Parents were sick, in treatment, or were otherwise unavailable	41%	52%	6%	1%

Training of judges

General Satisfaction

Average general satisfaction with the training of judges for all disciplines was 3.6 on a 5-point scale with 1 representing very dissatisfied and 5 representing very satisfied. This represents a moderate level of overall satisfaction and a higher overall rating than in the first assessment in 1996 (3.2). The average attorney rating for this item was 3.6, the average for CASA was 3.7, for judges was 3.4, and for child protection workers was 3.2, the lowest rating but still a neutral, rather than negative rating.

Experience and training

Nebraska judges in juvenile court or county court with juvenile jurisdiction tend to be quite experienced. The average length of time that judges reported handling abuse and neglect cases (as a judge) was almost 15 years. Sixty-four percent of judges reported that they had received no specific child abuse and neglect training prior to beginning to hear their cases. 80% of judges reported that they would find training beneficial. A wide range of topics was recommended but a number of judges said that they preferred training from other judges or from the National Council of Juvenile and Family Court Judges.

The focus groups suggest that there is variability around the state. The separate juvenile court judges and some of the county judges are viewed as being well trained. Some other county judges are viewed as well trained in the law, but not knowledgeable about domestic violence and other issues relevant to their work.

Judicial time to prepare for and conduct hearings

General Satisfaction

Average general satisfaction with judicial time to prepare for and conduct hearings for all disciplines was 3.5 on a 5-point scale with 1 representing very dissatisfied and 5 representing very satisfied. This represents a moderate level of overall satisfaction and a higher overall rating than in the first assessment in 1996 (3.2). The average attorney rating for this item was 3.5, the average for CASA was 3.7, for judges was 3.4, and for child protection workers was 3.4.

Hearings and preparation

Judges make decisions in child abuse/neglect regarding the best interests of children including safety, permanency and well being, and the progress of parents. In order to make the best decisions, judges need to review considerable information/evidence. Separate Juvenile Court Judges (on average) report that they spend 13 hours per week in child maltreatment hearings (as opposed to delinquency, etc.)

and almost nine hours per week preparing for the hearings. This compares with the County Judges reporting that they spend (on average) a little over five hours per week in hearings and four hours preparing for the hearings. Hearing lengths are presented earlier in this report. There are not major differences between Separate Juvenile Court and County Judges regarding hearing length – all report an average of 15 minutes for most uncontested hearings, which is considerably less time than has been recommended by the National Council of Juvenile and Family Court Judges. Neither are there significant differences between contested hearing lengths between the Separate Juvenile Court and the County Courts, with the exception of TPR hearings which are (on average) four hours long in the Separate Juvenile Court and six hours long in the County Courts.

Court Staff

General Satisfaction

Average general satisfaction with the numbers and qualifications of court staff for all disciplines was 3.8 on a 5-point scale with 1 representing very dissatisfied and 5 representing very satisfied. This represents a moderate level of overall satisfaction and a higher overall rating than in the first assessment in 1996 (3.4). The average attorney rating for this item was 3.9, the average for CASA was 4.0, for judges was 3.3, and for child protection workers was 3.7.

The focus groups participants generally perceived court staff support as good or excellent with the exception of Lancaster County where both judges and attorneys reported that more staff support was needed. Judges and attorneys in Lancaster County expressed a need for a juvenile court administrator to assist in case flow and information management. Additionally, there was an expressed need for more support for each judge. Each judge's bailiff currently functions as a bailiff, secretary, budget manager, and one bailiff additionally functions as a family drug court coordinator.

Job Duties, Qualifications

The Separate Juvenile Court Judges each have a bailiff and a court reporter assigned to their court. In addition, the Douglas County Juvenile Judges each have a secretary and there is an overall Juvenile Court Administrator. Each County Court has a Clerk Magistrate as well as a Court Reporter. Court staff reported an average of 14 years of experience in court administration. They reported on average less than a day of training in child maltreatment issues or practice. 72% of court administrators believe they have adequate help in carrying out their job responsibilities with no differences between the Separate Juvenile Court and the county courts. Among other responsibilities, approximately two thirds of the court administrators reported that they assist the judge in ensuring compliance with federally mandated time frames for hearings. A very small number of administrators occasionally preside over hearings and issue written findings.

Caseflow and information management

General Satisfaction

Average general satisfaction with case flow management for all disciplines was 3.7 on a 5-point scale with 1 representing very dissatisfied and 5 representing very satisfied. This represents a moderate level of overall satisfaction and a higher overall rating than in the first assessment in 1996 (3.4). The average attorney, CASA and judge ratings for this item were 3.6, and for child protection workers was 3.3.

Findings regarding case flow management issues including continuances, time to schedule hearings, etc. are presented earlier in this report.

Information Management

Only 17% of participants reported that their court collects systematic data about the timing of hearings in child maltreatment cases (to document court compliance with federal and state law). Approximately 25% of participants reported that their court collects other systematic data. Approximately one half of the respondents reported that their court kept some computerized data. 17% reported that there were plans to computerize records within the next two years.

Court facilities

General Satisfaction

Average general satisfaction with physical facilities for both court and non-court individuals for all disciplines was 3.7 on a 5-point scale with 1 representing very dissatisfied and 5 representing very satisfied. This represents a moderate level of overall satisfaction. The average attorney rating for this item was 3.9, the average for CASA was 4.3, for judges was 3.2, and for child protection workers was 3.3.

Meeting space and waiting rooms

Approximately half the respondents reported that the courts they practiced in had private meeting rooms for attorneys and their clients. About one third reported that child protection workers had working space available to them as they waited for court rooms. Only 23% reported that their courts had separate waiting rooms or facilities for children.

CASA

Approximately 65% of respondents reported that CASAs were actively involved in child maltreatment cases in their jurisdiction. 60% reported that the court provides administrative oversight of CASA. Sixteen percent of respondents reported that CASAs were sometimes represented by attorneys in their jurisdiction.

CASAs are typically appointed around the time of dispositions. Estimates are that 7% of preliminary protective custody hearings have CASA involvement; 31% of adjudications have CASA involvement, and 50-60% of all other hearings (dispositions, reviews, permanency planning and TPR) have CASA involvement.

Table 9, earlier in this report, shows the estimates of the frequency that CASAs perform certain preparatory activities as compared to GALs. This table indicates that CASAs perform considerably more independent investigation activities than do guardians ad litem. Additionally, CASAs file reports with the court most of the time; they make motions and requests of the court occasionally and they testify or make oral statements to the court occasionally.

Collaborative activities

Collaboration between the courts and HHS and attorneys has increased dramatically in the past decade in both the Separate Juvenile Court and in the Counties. The Court Improvement Project has supported court-agency collaboration efforts in the Separate Juvenile Court and thus, there are more reports of collaborative activities in the Separate Juvenile Court than in the County Courts. Participants from the Separate Juvenile Court report an average of 5 system focused meetings per year between HHS administrators and judges as compared to an average of 1 ½ meetings such meetings in the County Courts. Similarly, there are on average over 6 system focused meetings between judges and attorneys in the Separate Juvenile Court as compared to less than 2 in the County Courts. 68% of the Separate Juvenile Court participants and 56% of the County Court participants reported that something in the court system had changed as a result of the collaboration efforts. Both Separate Juvenile and County Courts report significant changes from the collaborative efforts including: moving cases through the court system more quickly, expanding the protective custody hearings, giving more priority to infants removed from their parents, improving reasonable efforts language in the court orders, and enhancing front-loaded services.

Permanency Outcomes for Children in Foster Care

The previous sections of this report have analyzed the process of court functioning: how hearings are conducted, whether parties are provided notice, whether parties are well represented, whether judges have adequate information and adequate time to make decisions, etc. This section will look at outcomes for children in foster care, primarily whether children who have been removed from their families are either reunified with their own parents, placed with their relatives who are known to them, or given another permanent home in as timely a fashion as possible. Data for this section has

been provided by the Nebraska Department of Health and Human Services. The most recent available data to answer each question is provided, with information about the time frame that the data came from.

The following outcomes will be presented organized by judicial districts. Differences between judicial districts cannot necessarily be attributed to court functions. There are also differences in child protection services and other important resources for families. Nonetheless, courts can only improve their work with children in the foster care system if they have accurate feedback as to how the children under their jurisdiction are faring.

How many children are in foster care?

Table 14 indicates the number of children in foster care in each judicial district. This number includes all children in foster care, including dependency, status offense and OJS cases. In general, about 80% of the cases are abuse/neglect.

**Table 14
Number of Children in Foster Care**

Judicial District^{28 29}	Number of Children in Foster Care on 3/31/05
1	163
2	445
3	1,109
4	2,352
5	359
6	566
7	192
8	143
9	330
10	241
11	388
12	327
Out of state	6
Total	6,621

Where are the children living?

The following table shows the placements of children in foster care in each judicial district. As can be seen, the highest percentages of children are placed in foster homes of non-relatives and the second highest are children placed with their parents,

²⁸ Judicial Districts refer to County Court Judicial Districts in all references in this document.

²⁹ See Appendix C for list of counties in each District.

presumably near the end of their time in the foster care system. The table suggests that placement with relatives is quite uncommon despite state and federal mandates requiring relative preferences in placement decisions.

Table 15
Placement Settings of Children in Foster Care (on 3/31/05)³⁰

Judicial District	With parent	Relative Foster home	Non-relative Foster home	Adoptive home	Group home	Institution	Independent Living	Run-away
1	27%	12%	37%	2%	9%	12%	1%	0%
2	28%	10%	29%	0%	18%	10%	1%	3%
3	22%	16%	33%	1%	13%	13%	1%	2%
4	14%	16%	40%	4%	12%	11%	0%	3%
5	21%	15%	39%	1%	11%	12%	1%	0%
6	31%	16%	28%	1%	13%	10%	0%	1%
7	20%	13%	33%	3%	10%	19%	1%	1%
8	24%	21%	41%	0%	6%	8%	1%	0%
9	20%	16%	31%	4%	13%	16%	1%	0%
10	23%	15%	37%	3%	11%	10%	0%	0%
11	20%	9%	38%	1%	19%	12%	1%	1%
12	16%	11%	40%	5%	10%	14%	3%	1%
Out of state	50%	17%	17%	0%	0%	0%	0%	17%
Total	20%	15%	36%	2%	13%	12%	1%	2%

How many children have been in care for 17 of the previous 22 months?

The Adoption and Safe Families Act (ASFA) and Nebraska statute requires that the state file Termination of Parental Rights (TPR) petitions for children who have been in out of home placement for 15 out of the previous 22 months, and who have not had a finding of an exception to the requirement to file the TPR. In Nebraska the exception needs to be a judicial finding. The primary exceptions include 1) that the child is living with a relative, 2) that the department did not provide reasonable efforts to reunify the family, and 3) that it would not be in the child's best interests to file the TPR. The following table indicates the percentages of children in each judicial district who have been out of their homes for 17 out of the previous 22 months, who are not placed with relatives, who are not in a pre-adoptive home, and who have not had a TPR filed.

The most recent data for this measure is from March 31, 2003.

³⁰ Percentages may not add up to 100% because of rounding.

Table 16
Children in Care for 17/22 Months (on 3/31/03)³¹

Judicial District	Children in Care for 17/22 months
1	43%
2	41%
3	55%
4	46%
5	48%
6	39%
7	46%
8	47%
9	43%
10	52%
11	51%
12	52%
Total	48%

How many placements have children had in the present “foster care experience.”

Table 17 shows the numbers of placement changes experienced by the children who were in foster care at the end of March, 2005. As can be seen, almost half of the children have had at least three placement changes.

Table 17
Percentage of Placement Settings for Children in Care on 3/31/05

Judicial District	1 Placement	2 Placements	3 Placements	4 Placements	5 Placements	6 or more Placements
1	42%	20%	15%	9%	6%	9%
2	31%	26%	14%	11%	5%	14%
3	29%	24%	15%	10%	5%	17%
4	25%	26%	15%	10%	7%	18%
5	40%	28%	12%	8%	3%	10%
6	35%	22%	13%	9%	5%	16%
7	21%	37%	21%	5%	6%	11%
8	39%	25%	11%	9%	6%	10%
9	31%	21%	17%	6%	10%	16%
10	36%	24%	12%	8%	3%	18%
11	30%	21%	18%	9%	4%	18%
12	34%	20%	11%	9%	8%	19%

³¹ who are not placed with relatives, who are not in a pre-adoptive home, and who have not had a TPR filed

Total	30%	25%	15%	9%	6%	16%
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What is the median length of stay in foster care?

Table 18 shows the median length of stay for all children in foster care on March 31, 2005 and the median length of stay for children exiting the system between April 1, 2004 and March 31, 2005. The median is the midway point in a distribution. Thus, in District 1, half of children in foster care on March 31, 2005 had been in care for less than 11 months, and half had been in care for more than 11 months. For those children who exited foster care, half had been in care for less than 13 months and half had been in care for more than 13 months at the time they exited care.

Table 18
Median Length of Stay for Children in Care and Exiting Care

Judicial District	Months In Foster Care on 3/31/05	Months in Foster Care Before Exiting Care Between 4/1/04 and 3/31/05
1	11	13
2	13	10
3	16	23
4	14	13
5	11	14
6	12	13
7	13	18
8	11	15
9	13	15
10	16	21
11	12	12
12	17	12

Table 19 shows the median length of stay for children exiting the system into various permanent homes between April 1, 2003 and March 31, 2004. These numbers do not add up to 100% because there were “other” categories and missing data.

Table 19
Median Length of Stay in Months Depending on Permanency Type (4/1/03-3/31/04)

Judicial District	Reunification	Adoption	Guardianship
1	9	54	20
2	9	48	21
3	18	35	14
4	12	45	27
5	13	33	24
6	11	34	14
7	12	40	33
8	16	40	29
9	14	34	13
10	18	40	22
11	13	32	26
12	13	46	33

Of all children who were eventually reunified with their parents, what percentage was reunified in less than 12 months from the time of the latest removal (national standard: 76.2% or more)?

Timely reunification is considered critical to maintaining children’s healthy development and attachment relationships. If parents can be supported or rehabilitated so that their children can safely be returned to them, it is hoped that in most cases that will occur in less than a year. The national standard is that at least 76.2% of children who are eventually reunified are returned to their parents in less than twelve months. Table 20 shows the percentage of children who were reunified between April 1, 2003 and March 31, 2004 and between April 1, 2004 and March 31, 2005 who were reunified in less than 12 months. Caution must be taken before inferring trends based on two years of data. As can be seen, only two judicial districts (2 and 11) come close to the national standard. At the other end of the spectrum, Districts 3 and 7 only reunify about a third of the eventually reunified children within 12 months.

Table 20
Timely Reunifications

Judicial District	Percentage of Children Reunified between 4/1/2003 and 3/31/2004 who were Reunified in Less than 12 Months	Percentage of Children Reunified between 4/1/2004 and 3/31/2005 who were Reunified in Less than 12 Months
1	58%	56%
2	58%	68%
3	31%	30%
4	52%	58%
5	44%	49%
6	61%	51%
7	54%	36%
8	30%	52%
9	44%	55%
10	33%	40%
11	49%	62%
12	48%	57%
Total	49%	53%

Of all children who exited care to a finalized adoption, what percentage exited care in less than 24 months from the time of the latest removal (national standard: 32% or more)?

Timeliness is also critical for children who cannot be returned to their parents and for whom adoption creates their new permanent home and family. It is hoped that when reunification is not possible, terminations of parental rights and adoptions will occur as quickly as possible so that children have permanency in their lives. The national standard is that 32% of children who are eventually adopted will be adopted within two years of their removal. Table 21 shows the percentage of children who were adopted between April 1, 2003 and March 31, 2004 and between April 1, 2004 and March 31, 2005 who were adopted in less than 24 months. Districts 1 and 6 achieved the national standard last year and District 10 was very close to achieving it. Several districts (2, 7, 8, and 12) had no adoptions finalized within two years of the child's entry into care.

**Table 21
Timely Adoptions**

Judicial District	Percentage of Children Adopted between 4/1/2003 and 3/31/2004 Who were Adopted in Less than 24 Months	Percentage of Children Adopted between 4/1/2004 and 3/31/2005 Who were Adopted in Less than 12 Months
1	0%	40%
2	13%	0%
3	28%	20%
4	9%	15%
5	0%	25%
6	10%	32%
7	0%	0%
8	0%	0%
9	18%	23%
10	27%	31%
11	33%	18%
12	21%	0%
Total	14%	17%

Of all children who entered foster care, what percentage re-entered foster care within 12 months of a prior foster care episode (national standard: 8.6% or less)?

When children are discharged from the foster care system into permanent homes, it is expected that those homes will indeed be permanent. In order to ensure that pressures for timely resolution do not result in non-sustainable permanency arrangements, the percentage of children who left the foster care system but later returned were computed. Table 22 shows the percentage of children who re-entered foster care within a year of leaving foster care for the time periods between April 1, 2003 and March 31, 2004 and between April 1, 2004 and March 31, 2005. As can be seen in last year's data, Districts 1,2,4,8, 10, and 12 all met the national standard.

Table 22
Safe and Permanent Discharges

Judicial District	Percentage of Children Reentering Care between 4/1/2003 and 3/31/2004 within 12 months of prior discharge	Percentage of Children Reentering Care between 4/1/2004 and 3/31/2005 within 12 months of prior discharge
1	9%	7.1%
2	11.4%	8.5%
3	6.7%	9.1%
4	9.2%	7.8%
5	8.4%	9.8%
6	14.2%	13.1%
7	20%	10%
8	9.3%	6.7%
9	9.9%	13.3%
10	8.6%	7.8%
11	17.9%	12.4%
12	10.3%	7.6%
Total	10.6%	9.3%

NEBRASKA STATE COURT ACTION PLAN

Chief Justice John Hendry, of the Nebraska Supreme Court led a team to the National Judicial Leadership Summit in Minneapolis in September, 2005. The team included Chief Judge Everett Inbody of the Court of Appeals, Juvenile Judge Douglas Johnson, Nebraska State Court Administrator Janice Walker, Nebraska Health and Human Services Director Nancy Montanez, Protection and Safety Administrator Todd Reckling, and Nebraska Court Improvement Director, Vicky Weisz. The team developed and adopted a Nebraska State Court Action Plan that will serve as the framework for Court Improvement efforts over the next few years. This Action Plan is consistent with the Court Improvement Strategic Plan.

Priority Area	Recommendations	Action Steps
1) Statewide implementation of best court practices based on the National Council Of Juvenile and Family Court Judges' Resource Guidelines	1. Court-Agency collaboration at top of systems	1. Monthly lunch meetings with Chief Justice, HHS Director, Court Administrator, Court Improvement Director, Juvenile Judge
		2. Court involvement in Child and Family Services Review
	2. State-wide Children's Summit a. Training in Resource Guidelines b. Expectation to follow Resource Guidelines c. Tools to develop court-agency collaborative efforts to implement Resource Guidelines	1. Supreme Court Commission on Children in the Courts Sub-Committee will continue planning, implementation
	3. Support/monitor local compliance	1. Explore staffing options to assist in implementation of guidelines and monitor compliance
2) Statewide Judicial Information System to obtain data to ensure compliance with national standards and state/federal law	1. Determine what we can get <u>now</u> from JUSTICE (court info system) and N-FOCUS (HHS info system)	1. Meeting with CJ, Court Administrator, new IT hire, HHS Director and IT
	2. Implement statewide juvenile information system	1. Finalize juvenile information system plan
		2. Seek state funding
3) Expedite appeals in TPR and abuse/neglect cases	1. Evaluate impact of recent court rule changes that expedite appeals	1. Annual measurement of appellate time frames
	2. Explore additional modifications	1. Continued collaboration

Priority Area	Recommendations	Action Steps
	to appellate process	between Supreme Court CJ and Court of Appeals CJ
		2. Recommendations by Supreme Court Commission sub- committee on Expedited Appeals
4) Improve legal representation of children and parents	1. Develop and implement standards and training for guardians ad litem	1. Supreme Court Commission Subcommittee on GAL standards/training will make recommendations
	2. Develop and implement standards and training for parent's attorneys	1. Supreme Court Commission on Children will form subcommittee on developing standards and training for parent's attorneys
	3. Develop and implement standards and training for attorneys for law violator youth	1. Survey state judges and attorneys about current practice
		1. Supreme Court Commission Subcommittee on Children's attorneys standards/training will make recommendations

Appendix A

NEBRASKA STATE COURT IMPROVEMENT PROJECT EXECUTIVE SUMMARY SEPTEMBER 18, 1996

Center of Children,
Families, and the Law
University of Nebraska-
Lincoln

Administrative Office of the Court
Nebraska Supreme Court

Introduction

An assessment of the functioning of Nebraska courts regarding abused and neglected children was conducted from April 1, 1995 to August 1, 1996. The assessment consisted of a comparative review of United States and Nebraska law regarding abused and neglected children; a statewide survey of judges, attorneys, court clerks, Department of Social Service workers, and Foster Care Review Board Members; in depth interviews of key personnel in three judicial districts in the state; and reviews of 88 case files from ten judicial districts across the state.

Strengths of the system

- **Nebraska law:** Review of the federal and state laws indicate that Nebraska law adequately conforms with the federal mandates of the Adoption Assistance and Child Welfare Act of 1980 and the Indian Child Welfare Act.
- **Notice to parties:** Notice to parties is generally timely and courts face minimal problems in having notice served. (One important exception is that in many courts putative fathers are not routinely notified until late in the sequence of maltreatment hearings. This reduces the possibility of the child being placed with a parent rather than state care and can also result in delays in case processing because of unresolved paternity issues.)
- **One Family-One Judge:** Nebraska judges uniformly adhere to the One Family-One Judge concept and typically hear all stages of the maltreatment case. Similarly, in most cases a child has the same guardian ad litem throughout all stages of their case.
- **Court staff:** Court support staff are viewed as well qualified.

Weakness of the system

- **Representation of children:** Attorneys have the responsibility to bring to the court complete and relevant information so that the court can make good decisions. Although there are certainly a number of skilled and committed GALs

who advocate aggressively on behalf of their clients, there are also many who are apparently neither skilled nor committed. A large number of GALs just rubber stamp the CPS reports, do not provide their own independent investigation or report, and do not even meet with their clients. Further, one-third of children removed from their homes were not represented by a GAL at their first hearing which typically occurred about two weeks after their removal.

- **Training and selection of attorneys and judges:** Many are inexperienced and/or uneducated regarding child maltreatment from both psychological/medical and legal perspectives. This is a particularly big problem with county attorneys, especially in the rural areas. There are certainly a number of county attorneys who are committed to the problems of child maltreatment and have educated themselves, but there also are a number who have not. Over half of the judges did not receive training specific to child abuse and neglect before they began hearing cases.
- **Permanency planning:** Petitions to terminate parental rights are not filed in a timely fashion in a majority of cases. This seems to be in large part because of lack of attorney resources to do the filings and participate in the hearings. Additionally, Nebraska does not have a special permanency planning hearing that would in most cases require an abandonment of a reunification plan if children are not returned to their parents within 18 months. Nebraska instead relies on six month dispositional review hearings to address permanency planning issues. This is entirely within the mandate of the federal law, but a blurring of the distinctions between dispositional and permanency hearings may contribute to the delays in permanency for many children.
- **Rehabilitative efforts are not well monitored (and sufficient interventions may not be provided):** Most participants admit that the six month review cycle drives the monitoring system of interventions. A disposition plan will be court ordered and then it will not be until a few days short of six months later (or, in many cases, minutes before the hearing begins) that the attorneys will find out if services have been provided, whether they have been successful, whether there have been barriers to services, etc. if there are problems (and there often are) six months will have been wasted and the court will be unable to determine whether the problem lies in the reasonable efforts of CPS or the resistance of the parents. Also, most rural courts note that there are very limited resources to provide families.
- **Completeness and depth of hearings:** Many hearings appear to be more form than substance. Hearings are considerably briefer than they need to be to cover all the critical information that needs to be considered. A number of hearings around the state are just a few minutes long. The language of reasonable efforts is consistently used in the record but reasons for the findings are usually not spelled out. Courts typically address the appropriateness of services, but are less likely to address whether services in fact are available and whether DSS monitored the family's participation.

- **Efficiency and timeliness of decision making:** Almost one-third of the reviewed cases did not comply with the statutory requirement of an adjudication within 90 days of the petition. Ten percent of the cases did not have dispositional hearings until almost nine months after children were removed. Almost one-third of the cases that culminated in termination of parental rights (TPR) did not reach termination until 3 or 4 years after the children were originally removed from their homes.
- **Indian Child Welfare Act:** Most judges and attorneys are inexperienced with and uneducated about the special protections and provisions required for Native American children. Consequently, few judges make inquiries into children's Indian status at early stages of child abuse and neglect proceedings. This can result in significant problems later in the process.

Appendix B

National Council of Juvenile and Family Court Judges Resource Guidelines Recommended Minimum Time Allocations for Hearings

Preliminary Protective Hearings

Hearing Activity	Time Estimate
1. Introductory Remarks	5 min.
<ul style="list-style-type: none">• Introduction of parties• Advisement of rights• Explanation of the proceeding	
2. Adequacy of Notice and Service of Process Issues	5 min.
3. Discussion of Complaint Allegations/ Introduction of Evidence	15 min.
<ul style="list-style-type: none">• introduction of the complaint• caseworker testimony• witness testimony• parent testimony	
4. Discussion of Service Needs/Interim Placement of Child	15 min.
<ul style="list-style-type: none">• parental visitation• sibling visitation• service referral	
5. Reasonable Efforts Finding	5 min.
6. Trouble Shooting and Negotiations Between Parties	10 min.
<ul style="list-style-type: none">• time for parents to speak and ask questions• explanation of court procedures to confused parents• identification of putative fathers and investigation of paternity issues• identification of potential relative placements• restraining orders	
7. Issuance of Orders and Scheduling of Next Hearing	5 min.
<ul style="list-style-type: none">• issue interim custody order (as necessary)• preparation and distribution of additional orders to all parties prior to adjournment	
Minimum Time Allocation	60 min.

Adjudication Hearings

Hearing Activity	Time Estimate
1. Introductory Remarks	2 min.
<ul style="list-style-type: none">• Introduction of parties• Advisement of rights• Explanation of the proceeding	
2. Adequacy of Notice and Service of Process Issues	3 min.
3. Testimony in Support of Admission Stipulation	10 min.
<ul style="list-style-type: none">• caseworker testimony• testimony by parents and other witnesses• expert witness testimony (as needed)	
4. Service Update/Immediate Service Plan	5 min.
<ul style="list-style-type: none">• reasonable efforts finding• adjustment of the child to placement• family preservation services• visitation	
5. Trouble Shooting and Negotiations Between Parties	5 min.
<ul style="list-style-type: none">• judge-attorney conferences• ensuring parents understand content and consequences of stipulation• resolution of any paternity and child support issues	
6. Issuance of Orders and Scheduling of Next Hearing	5 min.
<ul style="list-style-type: none">• order assessments and evaluations required for case disposition• preparation and distribution of additional orders to all parties prior to adjournment	
<hr/> Minimum Time Allocation	30 min.

Disposition Hearings

Hearing Activity	Time Estimate
1. Introductory Remarks	2 min.
<ul style="list-style-type: none">• introduction of parties• advisement of rights• explanation of the proceeding	
2. Adequacy of Notice and Service of Process Issues	3 min.
3. Reasonable Efforts Finding	5 min.
4. Adequacy of the Agency Case Plan	10 min.
<ul style="list-style-type: none">• parental conditions• agency conditions• visitation plan• service plan for child and family• long-term plan	
5. Trouble Shooting and Negotiations Between Parties	5 min.
<ul style="list-style-type: none">• discuss with parents the specifics of the case plan to ensure that they understand what is expected of them• determine ways that the agency and the court can assist parents in complying with the case plan	
6. Issuance of Orders and Scheduling of Next Hearing	5 min.
<ul style="list-style-type: none">• issue disposition order addressing custody• schedule review and permanency planning hearings• preparation and distribution of additional orders to all parties prior to adjournment	
<hr/> Minimum Time Allocation	30 min.

Review Hearings

Hearing Activity	Time Estimate
1. Introductory Remarks	2 min.
<ul style="list-style-type: none">• Introduction of parties• Advisement of rights• Explanation of the proceeding	
2. Adequacy of Notice and Service of Process Issues	3 min.
3. Case Status/Review of Case Plan	10 min.
<ul style="list-style-type: none">• adequacy and appropriateness of current placement• progress toward long-term goal• continued need for current placement• new or changed case circumstances• additional services needed to achieve long-term goal• modifications regarding visitation and child support	
4. Reasonable Efforts Finding	5 min.
5. Trouble Shooting and Negotiations Between Parties	5 min.
<ul style="list-style-type: none">• confusion regarding specifics of the case plan and what is expected of parents• visitation and child support issues• discuss need for additional orders to facilitate case progress	
6. Issuance of Orders and Scheduling of Next Hearing	5 min.
<ul style="list-style-type: none">• preparation and distribution of additional orders to all parties prior to adjournment	
<hr/> Minimum Time Allocation	30 min.

Permanency Planning Hearings

Hearing Activity	Time Estimate
1. Introductory Remarks	2 min.
<ul style="list-style-type: none">• Introduction of parties• Advisement of rights• Explanation of the proceeding	
2. Adequacy of Notice and Service of Process Issues	3 min.
3. Progress Toward Permanency	15 min.
<ul style="list-style-type: none">• reunification• adoption/termination of parental rights• independent living/long term foster care• guardianship• temporary custody extension	
4. Reasonable Efforts Finding	10 min.
5. Permanency Plan Decision	15 min.
<ul style="list-style-type: none">• permanency decision• time frames for achieving permanency• activities and services needed to achieve permanent plan	
6. Trouble Shooting and Negotiations Between Parties	10 min.
<ul style="list-style-type: none">• case transfer between social workers	
7. Issuance of Orders and Scheduling of Next Hearing	5 min.
<ul style="list-style-type: none">• preparation and distribution of additional orders to all parties prior to adjournment	
<hr/> Minimum Time Allocation	60 min.

APPENDIX C

NEBRASKA COUNTY COURT DISTRICTS

DISTRICT 1

Gage
Jefferson
Johnson
Nemaha
Pawnee
Richardson
Saline
Thayer

DISTRICT 2

Cass
Sarpy
Otoe

DISTRICT 3

Lancaster

DISTRICT 4

Douglas

DISTRICT 5

Boone
Butler
Colfax
Hamilton
Merrick
Nance
Platte
Polk
Saunders
Seward
York

DISTRICT 6

Burt
Cedar
Dakota
Dixon
Dodge

Thurston
Washington

DISTRICT 7

Antelope
Cuming
Knox
Madison
Pierce
Stanton
Wayne

DISTRICT 8

Blaine
Boyd
Brown
Cherry
Custer
Garfield
Greeley
Holt
Howard
Loup
Keya Paha
Rock
Sherman
Valley
Wheeler

DISTRICT 9

Buffalo
Hall

DISTRICT 10

Adams
Clay
Fillmore
Franklin
Harlan
Kearney

Phelps
Nuckolls
Webster

DISTRICT 11

Arthur
Chase
Dawson
Dundy
Frontier
Furnas
Gosper
Hayes
Hitchcock
Hooker
Keith
Lincoln
Logan
McPherson
Perkins
Red Willow
Thomas

DISTRICT 12

Banner
Box Butte
Cheyenne
Dawes
Deuel
Garden
Grant
Kimball
Morrill
Sheridan
Sioux
Scotts Bluff