

PROGRAM MEMO

TO: Holders of Title 390, Protection and Safety # 6-2005

From: Todd Reckling
Office of Protection and Safety

Signed by _____, Director

Date

RE: Permanency Hearings and Termination of Parental Rights

Effective Date: August 15, 2005

Duration: Until revised regulation is issued.

Contact person: If you have questions about this program memo contact Becky Henderson at (402) 471-9333 or a member of the Protection and Safety Legal Team assigned to your area.

Federal Statute (the Adoption and Safe Families Act, or ASFA) and State Statute require four types of permanency hearings for all children in the custody of the Department.

The purpose of this program memo is to clarify the Department's role regarding permanency hearings and the resulting Court findings and to clarify when the Department will recommend or request the filing of a termination of parental rights.

Federal Statute (the Adoption and Safe Families Act, or ASFA) and State Statute require that a petition for termination of parental rights be filed at the time that the child has been in out-of-home care for 15 of the most recent 22 months. Nebraska statute also requires that the court hold a hearing on the record within 30 days after the end of the 15-month period and make a determination on the record as to whether there is an exception to the requirement for filing of the petition to terminate parental rights.

In all cases permanency hearings must be a full hearing, not a paper review.

Types of Hearings: There are four types of permanency hearings.

1. Permanency Hearing within 12 months of removal from the home and every twelve months thereafter as long as the child remains in custody of HHS or HHS-OJS: The purpose of these hearings is to :

- a. Determine the appropriateness of the permanency objective and whether or not reasonable efforts have been made to reach the previously established permanency objective. In the case of a child covered by the Indian Child Welfare Act, the standard is “active efforts” rather than “reasonable efforts”

If the current permanency objective is not appropriate then:

1. A different permanency objective must be determined; and
2. A date must be established by which the permanency for the child is to occur.

2. Permanency hearing within 30 days of a court termination of parental

rights: The purpose of this Permanency hearing is to:

1. Determine whether “reasonable efforts” or “active efforts” are being made to reach the permanency objective of adoption; or
2. To establish an alternative permanency objective; and
3. To establish a date by which permanency for the child is to occur.

3. Permanency Hearing with 30 days of a court determination that reasonable efforts to reunify the child and parent are not required, because the parent has done any of the following:

1. Subjected the child to aggravated circumstances, including but not limited to abandonment, torture, chronic abuse, or sexual abuse;
2. Committed first or second degree murder to another child of the parent;
3. Committed voluntary manslaughter to another child of the parent;
4. Aided or abetted, attempted, conspired, or solicited to commit murder;
5. Aided or abetted voluntary manslaughter of the child or another child of the parent;
6. Committed a felony assault that results in serious bodily injury to the child of the parent; or
7. Had parental rights to a sibling of the child terminated by the court (involuntary termination).

The purpose of these hearings is to:

1. Determine whether “reasonable efforts” or “active efforts” are being made to reach the established permanency objective, and
2. Establish a date by which permanency for the child is to occur.

4. Permanency hearing when a child has been in out-of-home care for 15 of the past 22 months. In this type of hearing the court may grant

an exception to a filing of termination of parental rights if any of the following exists:

1. The child is being cared for by a relative;
2. The Department has documented in the case plan a compelling reason for determining that filing a petition for termination of parental rights would not be in the best interests of the child; or
3. The family has not had reasonable opportunity to avail itself of services deemed necessary in the case plan approved by the court.

The purpose of these hearings is to establish whether a petition for termination of parental rights must be filed.

Examples of Compelling Reasons not to recommend a Termination of Parental Rights Action include any of the following:

1. The child is over 14 and unwilling to consent to adoption;

Nebraska statute requires that a child age 14 or older consent to his/her adoption in order for the adoption decree to be granted.

2. The child is unwilling to accept termination of parental rights, despite intensive and age-appropriate efforts to assist him/her with that acceptance;
3. Termination would be damaging to the child emotionally;
4. The child is adjudicated as a juvenile offender and is placed in a detention center or Youth Rehabilitation and Training Center due to a law offense, and his/her parents continue to participate in a reunification plan;
5. The child is placed in a residential treatment center due to mental health needs, and his/her parents continue to participate in a reunification plan; or
6. The child is Native American and his/her tribe is opposed to terminations of parental rights.

Worker Responsibility:

The worker is responsible for the following in any type of Permanency hearing:

1. Request scheduling of these permanency reviews. If the review is not scheduled or held, the worker must consult with his/her supervisor on further action that must be taken;
2. Prepare the case plan and court report. The case plan and court report must meet the HHS requirements for format and processing and include a recommendation regarding the permanency goal and time frame for achievement of the goal.

In the case plan/court report the worker will provide the court with adequate information on which to base its findings, including information regarding efforts made by the Department and progress to date.

The worker will make a determination of whether HHS has made reasonable efforts (or active efforts-see below) toward reaching the permanency objective approved by the court at the last hearing. If so, the worker will include the following statement under the "Recommendations" section in the court report: "Reasonable efforts have been made to reach the permanency objective previously ordered by the Court."

(If this is an Indian Child Welfare case, the worker must use the term "active efforts." See below) Under the statement, the worker will give a brief listing of those services. These efforts might include, but are not limited to, any treatment that has been provided, formal and informal supports, family team meetings, family group conferences, transportation, and visitation. (Note: the recommendation for a finding that reasonable efforts or active efforts have been made is NOT based on the results of the efforts, or whether the permanency objective was met. Rather, it is based on EFFORTS MADE by the Department.) For Indian Child Welfare cases, the standard is defined as "active efforts" rather than "reasonable efforts" which is a higher standard. For information see 390 NAC 5-004.02D and Program Memo # 7-2005.

SUPERVISOR RESPONSIBILITY

The Supervisor is responsible for the following in any type of Permanency hearing:

1. Make all reasonable efforts to assure that hearings are held as required in statute.

These efforts might include discussions with the county attorney or court, or request for assistance from the Protection and Safety Legal Team.

2. Review information to be provided to the court to assure that the documentation would support a finding of "reasonable efforts" or "active efforts in the case of the Indian Child Welfare Act;
3. Assist the worker in meeting HHS requirements for format and processing of case plans/court reports; and
4. Review orders to assure that the court has made appropriate findings. If appropriate findings do not exist, the supervisor will consult with the Protection and Safety Legal Team.

TERMINATION OF PARENTAL RIGHTS

Grounds for Termination: Neb. Rev. Stat § 43-292 establishes the following grounds for a termination of parental rights action. By statute these include any of the following:

1. The parents have abandoned the child for six months or more immediately prior to the filing of the petition;
2. The parents have substantially and continuously or repeatedly neglected the child and refused to give the child or a sibling of the child necessary parental care and protection;
3. The parent(s), being financially able, have willfully neglected to provide the child with the necessary subsistence, education, or other care necessary for his/her health, morals, or welfare or have neglected to pay for such subsistence, education or other care when legal custody of the juvenile is lodged with others and such payment is ordered by the court;
4. The parent(s) are unfit by reason of debauchery, habitual use of intoxicating liquor or narcotic drugs, or repeated debauchery, habitual use of intoxicating liquor or narcotic drugs, or repeated lewd and lascivious behavior, which conduct is found by the court to be seriously detrimental to the health, morals or well-being of the child;
5. The parent(s) are unable to perform their parental responsibilities because of mental illness or mental deficiency, and there are reasonable grounds to believe that this condition will continue for a prolonged, indeterminate period;
6. Following a determination that the juvenile is one as described in Neb. Rev. Stat § 43-247 (3) (a), reasonable efforts to preserve and reunify the family if required under Neb. Rev. Stat § 43-283.01, under the direction of the court, have failed to correct the conditions leading to the determination;
7. The child has been in out-of-home care for 15 or more months of the most recent 22 months;
8. The parent has inflicted upon the child, by other than accidental means, serious bodily injury;
9. The parent has subjected the child to aggravated circumstances, including but not limited to, abandonment, torture, chronic abuse, or sexual abuse; or
10. The parent has done any of the following acts:
 1. Committed murder of another child of the parent;
 2. Committed voluntary manslaughter of another child of the parent;
 3. Aided or abetted, attempted, conspired, or solicited to commit murder, or aided or abetted voluntary

- manslaughter of the child or another child of the parent;
or
- 4. Committed a felony assault that resulted in serious bodily injury to the child or another minor child of the parent.

Acts Requiring a Filing for Termination of Parental Rights

Neb. Rev. Stat §§ 43-292.02 and 43-292.03 and The Adoption and Safe Families Act require filing for termination of parental rights when:

1. A child is in out-of-home care under the responsibility of the state for 15 or more of the most recent 22 months; or
2. A court of competent jurisdiction has determined:
 - a. The child to be an abandoned infant;
 - b. That the parent has committed murder of another child of the parent;
 - c. That the parent has committed voluntary manslaughter of another child of the parent;
 - d. That the parent has aided or abetted or attempted, conspired, or solicited to commit murder,
 - e. That the parent has aided or abetted voluntary manslaughter of the child or another child of the parent; or
 - f. That the parent has committed a felony assault that has resulted in serious bodily injury to the juvenile or another minor child of the parent.

When any one of the above court findings exists, unless the court has made a finding that a filing is not required, the Protection and Safety worker must take appropriate steps to request the filing of a petition for termination of parental rights.

The Department may consider recommending termination of parental rights action at any time the assessment shows:

1. The parent is unwilling or unable to make changes to provide safety for the child;
2. Adoption is the recommended permanency objective for the child; and
3. Severing parental ties is in the child's best interest.

INVOLVEMENT OF HHSS PROTECTION AND SAFETY LEGAL TEAM IN TERMINATION OF PARENTAL RIGHTS

The Protection and Safety Supervisor must contact HHSS Protection and Safety Legal Team for consultation and assistance if the Protection and Safety worker has requested that the county attorney file a termination of parental rights, and the county attorney has not filed the termination within 30 days of the request.