

CHAPTER 8-000

COURT AND LEGAL ISSUES

For Child Welfare Cases

The court and legal system is one element of the larger child welfare service system. At times the court and legal system will be used to achieve positive action on child welfare cases. Use of the court is not viewed as a last resort, but as a purposefully initiated constructive action on the behalf of the child and family, accomplishing specific outcomes. Court is not used as a punitive action against parents or a child.

Workers are social workers and not attorneys. The Department has separate legal representatives to offer support and consultation and to represent the position of the Department.

At times, children and families may find themselves involved in the legal system. The worker has the legal responsibility to the child, the family and the agency. Staff responsibilities are described in the following sections. Consultation and confirmation of decisions made by the worker regarding situations involving the court and legal system are encouraged when unique situations exist or the worker is in need of such support. The relevant legal policies and issues for child welfare cases are in 390 NAC 8-001, 8-002, 8-003, 8-004, and 8-005.

Hearing Processes for Juvenile Offenders

In the case of a juvenile offender adjudicated as a delinquent (43-247 Subdivision 1, 2, 4), the court may place the youth with HHS-OJS for an evaluation before the disposition hearing to gather information to be used in determining the disposition. The court at disposition, may commit the juvenile offender to the care and custody of HHS-OJS. An evaluation is required before a juvenile offender may be committed to HHS-OJS. The court maintains jurisdiction over the juvenile offender until discharge from the custody of HHS-OJS. See 390 NAC 8-001.11 Disposition for Juvenile Offenders.

An administrative hearing process will be used to provide due process for juvenile offenders when they have committed acts which would constitute a violation of their conditions of liberty, or result in a restriction in liberty. The Behavioral Accountability meeting may be used for all juvenile offenders regardless of the level of restrictiveness the court orders at disposition. The Preliminary Hearing and Revocation Hearing may only be used with juvenile offenders conditionally released to the community from the YRTC. The court may also request a review hearing but it would be separate from these procedures.

If a child violates a condition of liberty, and a new delinquency offense is alleged, the county attorney may be encouraged to process a new delinquency proceeding. All children in the custody of HHS-OJS will be given due process of the law on new allegations.

The hearing processes conducted by administration are as follows:

- The Behavioral Accountability Meeting,
- The Preliminary Hearing, and
- The Revocation Hearing.

The administrative hearing processes are in 390 NAC 8-006, 8-007, and 8-008. Other relevant policies are in 390 NAC 8-002 and 8-003. The process for the administrative hearings are in the Court and Legal for Juvenile Offenders Guidebooks.

8-001 COURT AND LEGAL PROCESS FOR CHILD WELFARE CASES

Children are placed in the care and custody of the Department through one of four ways:

1. Law enforcement pickup for temporary custody;
2. Court intervention;
3. Voluntary relinquishment;
4. Voluntary placement agreement. (See 390 NAC 7-003.)

This section focuses on children who are placed with the Department through law enforcement, the court or the parents' voluntary relinquishment.

8-001.01 LAW ENFORCEMENT PICKUP FOR TEMPORARY CUSTODY (48 HOURS)

According to Nebraska law, a law enforcement officer may assume temporary custody of a child and place that child in temporary custody of the Department without court order if:

- A child is seriously endangered in his/her surrounding and immediate removal appears necessary for the child's protection, or
- When the officer believes the juvenile to be mentally ill and dangerous.

Statutory reference: Neb. Rev. Stat. 43-248 and 250 Sub 4.

8-001.02 WORKER ACTIVITY FOR CHILD WELFARE CASES

- Secure a temporary placement for the child in the least restrictive setting, consistent with the child's best interest as determined by the worker; the worker will involve the family to the extent possible. (See Out-of-Home Payment and Placement Guidebook, Emergency Custody Placement.)
- Supervise the temporary placement of the child;
- Consent to any necessary emergency medical, psychological or psychiatric treatment for the child;
- Refer case to intake process for screening; and
- Follow up with law enforcement, county attorney or court to determine if a court order for temporary custody will be issued. NOTE: If the child is not a resident of Nebraska and the situation does not involve the child's parents in Nebraska, law enforcement is mandated to attempt to notify the child's parents or relatives.

The Department has NO OTHER AUTHORITY in the case until a court order is received placing the child in the custody of the Department.

IMPORTANT NOTE: Without a court order or warrant, only a law enforcement officer may take temporary custody of a child who is in immediate danger. If a law enforcement officer does not take action, and the worker believes a child is in danger, the worker will seek emergency court action by contacting the county attorney. (See 390 NAC 8-001.03, Request for Temporary Custody.)

A court order of temporary custody MUST be issued within 48 hours after the initial temporary custody, if the child is to remain in placement. This time period includes weekends and holidays and is mandated by state law. The law enforcement officer is to make a full written report to the county attorney and the Department within 24 hours of taking the child into temporary custody.

If a court order placing the child in the temporary custody is not issued within 48 hours of taking the child into custody, the temporary custody of the Department terminates. If no court order is issued, the child will be returned to the custody of his/her parent or relative. If the 48 hours has expired and the Department cannot provide transportation for the child, alternative arrangements for returning the child must be made.

Statutory Reference: Neb. Rev. Stat. 43-250(4) .

8-001.03 COURT INTERVENTION REQUESTED BY THE DEPARTMENT FOR CHILD ABUSE AND NEGLECT SITUATIONS

Once risk of abuse or neglect has been determined by the Initial Assessment, and voluntary services will not provide for the child's safety or reduce risk, there are two Department responses:

1. Request for Temporary Custody
2. Request for Petition

8-001.04 REQUEST FOR TEMPORARY CUSTODY FOR CHILD ABUSE AND NEGLECT SITUATIONS

If an emergency exists and the worker has pertinent information, this information will be immediately shared with the county attorney and law enforcement and will include a request for immediate court action. This information may be orally shared pending a written document.

If the county attorney or law enforcement decline to take action, the worker may refer the case to legal staff for review.

NOTE: For additional information regarding the decision to make this request, refer to 390 NAC 2-001 and 2-002.

8-001.05 REQUEST FOR PETITION IN CHILD ABUSE AND NEGLECT SITUATIONS

When court intervention is needed, the following will be forwarded to the county attorney. This request will include:

- General information on each family member residing in the home and any absent biological and legal parent (name, address, date of birth, etc.);
- Description of the presenting problem that meets the statutory requirements for the population served including the history and time frames of problem;
- A factual basis to support specific allegations and establish the need for court involvement;
- Names and addresses of any people with first-hand knowledge of and could provide testimony directly related to the allegations specified.

If the court takes jurisdiction of the case, the following describes court-ordered involvement.

8-001.06 COURT-ORDERED INVOLVEMENT FOR ALL CASES

Any court order for service by the Department will be reviewed to insure appropriate, adequate service delivery to children and families. (See 390 NAC 8-002, Review of Court Order.) More detailed information regarding the court process and statutory mandated timeframes associated with court procedures is in Court and Legal Issues Guidebook for Child Welfare and Court and Legal for Juvenile Offenders Guidebook.

8-001.07 PRE-ADJUDICATION STATUS

At this point in a child abuse, neglect, dependency or status offense case, the worker will:

- Provide information about the child and family to the county attorney.
- If the court has placed the child in the temporary custody of the Department, a written report addressing the location and needs of the child will be filed with the court within 30 days of the custody date. No other information about the facts of the case will be included in the report so as not to compromise the due process rights of the parents.
- Inform the court and all interested parties (including tribal authorities in cases of Native American children) of any significant decisions regarding the child's placement.

8-001.08 ADJUDICATION OF CHILD WELFARE CASES

At adjudication the worker will:

- Be present at the adjudication hearing and provide testimony as required or requested by the parties involved.

8-001.09 PRE-DISPOSITIONAL STATUS FOR CHILD WELFARE CASES

After adjudication, the worker or supervisory staff will:

- Conduct the appropriate assessment to determine family service needs.
- Review the case to determine if it has been adequately adjudicated to allow for appropriate service delivery (see 390 NAC 8-002.02, Inadequate Adjudication).
- Prepare a written case plan and court report for the court and all other interested parties concerning the circumstances of the child and family using the Department designated format. A specific request for child support will be included in the case plan if the child is in out-of-home placement.* The case plan and court report will be submitted at least three days before the first dispositional hearing to assist the court in arriving at an appropriate plan for rehabilitation.**

*Child support is an important element in maintaining parental responsibility for children in out-of-home placement. A worker will incorporate, under this premise, a specific request for child support in each report offered to the court. For further information refer to Court and Legal Issues Guidebook.

**See Court and Legal Issues Guidebook, Forms Section for Department's designated format.

8-001.10 DISPOSITION
FOR CHILD WELFARE CASES

At the Dispositional hearing worker or supervisory staff will:

- Prior to the hearing, ask the county attorney to recommend that the court find that reasonable efforts have been made, adopt the elements of the case plan, and order child support, if the child is in out-of-home placement.
- Attend the hearing and provide testimony as requested and provide oral recommendations if necessary.
- Request a review of the court's order by the Juvenile Review Panel within the ten days allowed in Statute, if the court does not incorporate elements of the case plan or find reasonable efforts, does not order child support if requested and applicable, or orders a placement contrary to the recommendations of the Department.

FOR JUVENILE SERVICES CASES

For Youth Adjudicated as Juvenile Offenders and Committed to HHS-OJS at a disposition hearing:

The court may commit to the care and custody of HHS-OJS, a youth adjudicated under 43-247 subdivision (1), (2) or (4). The court may order the "initial level of treatment" in conjunction with the commitment but may not order the specific placement or program. The "level of treatment" is defined as the type of supervision, care, confinement and rehabilitation services for the juvenile offender. This relates to the restrictiveness of setting and the degree of structure intended by the court in its commitment of a juvenile offender to HHS-OJS." "Levels of treatment" for juvenile offenders will correspond with "levels of placement" described in the following paragraph.

Statutory Reference: Neb. Rev. Stat. 43-408.

There are three levels of placement for a juvenile offender identified by the Department:

* Home (least restrictive):

the child is placed in the home of a parent or legal guardian;

* Out-Of-Home Placement in the Community:

the child may be placed in one of the following settings- relative foster home, foster family home, Agency Based Foster Care, Group Home, Emergency Shelter Care, treatment foster home, treatment group home, residential treatment center or in-patient treatment setting; and

* Self-contained, Staff Secure Residential Facility (most restrictive):

Youth Rehabilitation and Treatment Center or similar setting identified by HHS-OJS.

Upon receiving a court order committing a juvenile offender to the custody of HHS-OJS, the supervisor will conduct a search to determine if the juvenile has other involvement with the HHS system. The supervisor will assign the case. Guidelines for case assignment are in the Case Assignment and Case Process Guidebook.

8-001.11

DISPOSITIONAL COURT REVIEWS
FOR CHILD WELFARE ADJUDICATIONS

At least every six months after the first dispositional hearing, the worker will prepare a written case plan and court report for the court and all other interested parties concerning the family and child using the Department's designated format.**

Between dispositional reviews, Department staff will notify the court and all interested parties, including tribal authorities if appropriate, of all significant decisions made regarding the child's placement, including:

- Any change in placement, including return home or removal from a parental home;

NOTE: Written notice will be sent to all interested parties at least seven days before the placement is changed for what a court had previously determined was an appropriate placement. The Department will make immediate changes in placement without court approval only if the child is in a harmful or dangerous situation OR when the foster parents request removal. Court approval will be sought within 24 hours of an emergency change in placement to comply with statute.

Statutory Reference: Neb. Rev. Stat. 43-285.

- Approval for the child's marriage or entrance into the armed forces;
- Department's plan to discharge a youth;
- Removal from a foster home as a result of alleged or substantiated abuse or neglect or licensing action;
- Any change in the case plan affecting the parents; and
- Any other significant change in the plan for the child.

** See Court and Legal Issues Guidebook, Forms Section.

FOR CHILDREN WITH JUVENILE OFFENDER ADJUDICATIONS

In cases of a juvenile adjudicated as a delinquent (43-247 Subdivision 1, 2, 4) and placed in the custody of HHS-OJS at a disposition hearing, the following court processes will apply:

- Court reviews will be held for any juvenile offender committed to HHS-OJS when in an out-of-home setting, other than a YRTC, every six months or at the request of the juvenile offender.
- When HHS-OJS proposes to change the placement of a juvenile offender who has not been conditionally released from the YRTC to a more restrictive setting as described in 8-001.10 and 7-004.01B. See 390 NAC 8-001.12.

8-001.12 PLACEMENT CHANGE HEARINGS FOR JUVENILE OFFENDERS

For Juvenile Offenders committed to HHS-OJS at disposition, for a level of placement (treatment) other than the YRTC:

- a. The move of such juvenile offenders to a more restrictive setting is subject to court approval. The court and involved parties must be notified in writing 15 days in advance of an anticipated placement change and a court hearing must be held before the placement change is made. The involved parties include: the juvenile, the judge, county attorney, guardian ad litem, parent, parent's attorney- if involved and the youth's attorney- if involved.

The Department has the authority to make an immediate temporary change without prior approval of the committing court only if the juvenile offender is:

- in a harmful or dangerous situation,
- suffering a medical situation,
- exhibiting behavior which warrants temporary removal, or
- placed in a non-state-owned facility and such facility has requested that the juvenile be removed.

Approval of the committing court will be sought within 15 days of making an immediate temporary change if the youth is to remain at the temporary setting or if the youth will be moved to a setting which is more restrictive than the previous setting.

If a youth who is moved to a lateral or less restrictive setting requests an administrative hearing within 15 days of the date of the notice, the Department will determine whether it is in the best interest of the juvenile offender for the proposed change to occur with due consideration being given to public safety. The designated person in the Service Area will determine whether the proposed change is in the youth's best interest with due consideration of community safety. The administrative hearing decision is subject to appeal by the juvenile to the committing court. See Court and Legal Guidebook for Juvenile Offenders for details on the process.

- b. The juvenile offender may be moved to a placement within the same category or to a less restrictive setting without a court hearing. Written notice must be given to the court and the involved parties as listed above 15 days before the proposed change. The youth may request an administrative hearing within 15 days of the notice. (See 390 NAC 8-001.01 for Dispositions of Juvenile Offenders and the Court and Legal Guidebook for Juvenile Offenders for details.)

8-001.12A Reports to the Court For Juvenile Offenders

A. For Court Reviews of Out-Of-Home Placement

When the juvenile offender committed to HHS-OJS for community placement has been in out-of-home care for six months, the court will review the case. The Department's case plan and court report, prepared on the Department's designated format, will be sent to the court before the hearing reviewing the child's out of home placement. The report will address whether the out-of-home placement remains in the child's best interest with due consideration of community safety. The child's permanency plan will also be identified in the case plan and court report. The report will be sent seven days before the hearing or as required by local court protocol.

B. For Transfer Hearings

If the Department proposes to move the juvenile offender to a more restrictive setting, the report to the court will describe the following:

- a. the plan outlining the proposed change, and
- b. the reasons for the proposed change, including provision for community safety.

8-002

REVIEW OF ALL COURT ORDERS

A systematic review of all court orders for juvenile and status offenders, and child abuse, neglect, and dependency cases will occur to ensure:

- Due process;
- Compliance with the law ensuring least intrusive service provision;
- The order contains the necessary language for the Department to receive federal funding;
- That the child and family fall within the eligibility criteria for services through the Department.

From the date of the court order, the Department has 30 days to appeal the order and ten days to request a review by the Juvenile Review Panel. Juvenile offender cases do not qualify for the Juvenile Review Panel. If an order is received after the ten and 30 day timeframes, orders will still be reviewed and addressed if problematic.

(See 390 NAC 1-006, Population Served.)

8-002.01

STAFF RESPONSIBILITIES

Worker	Upon receipt of a written or oral order, refer order to supervisory staff for immediate review.
Supervisory Staff	Review all court orders and advise worker of any problems or questions. Mobilize legal support if required and make referral. Monitor progress and resolution of order.
Legal Staff	Review Problematic Order. Prepare legal response if required. Complete legal action if required. Advise worker and supervisory staff of progress. Resolution of problem.

NOTE: The Department will carry out an order unless the Department has filed an appeal and a stay of the court order has been issued, or the Department legal staff has advised otherwise, or an interim order has been entered.

8-002.02

INADEQUATE ADJUDICATIONS

Inadequate adjudications create barriers to providing services to families and are often discovered in cases that initially enter the Department via the court system or in existing court-involved cases as a result of plea bargaining.

An inadequate adjudication occurs when the adjudication will not allow for appropriate services to be provided. When an inadequate adjudication is identified, written information will be provided to the county attorney requesting an additional adjudication.

If the county attorney fails to respond to the information within the requested amount of time, duplicate information will be forwarded to the Department legal support for review and response. The worker staff may use the child's guardian ad litem as a resource to address the court. For further information regarding inadequate adjudications and examples, refer to Court and Legal Issues Guidebook.

8-003 **ADJUDICATIONS OF CHILD WELFARE STATUS OFFENSE
AND JUVENILE DELINQUENCY**

When a ward who has an adjudication as abused or neglected or dependent which is still in effect, and then is adjudicated as a delinquent, the Department will continue to provide services to the child and family, unless the court terminates the Department's custody. The Protective Service worker will consult with the Juvenile Services Officer on the juvenile delinquency adjudication and determine how to best serve the needs of the child and family. The workers will present to the County Attorney and Court a recommendation that addresses the ward and his/her delinquent behavior, in order for an appropriate disposition to be determined. The recommendation may be a commitment to probation or parole supervision (HHS-OJS). The worker may consult with the Department's legal representatives in these situations.

When a ward who has an adjudication of juvenile delinquency and is subsequently adjudicated as abused, neglected, or dependent, the Department will provide services to meet the needs of the child and family. The Juvenile Services Officer will consult with the Protective Service worker and determine how best to serve the child and family. A recommendation which addresses the family's and child's issues will be provided to the court.

Statutory Reference: Neb. Rev. Stat. 43-286 (1) (a).

8-004 **VOLUNTARY RELINQUISHMENT**

The Department's relinquishment services consist of:

1. Relinquishment Counseling

The purpose of relinquishment counseling is not to obtain a relinquishment but rather to provide information to parent(s) to ensure that he/she is making an informed decision, keeping in mind the philosophy that, if possible, children belong with their parent(s). Counseling includes advising parent(s) of services that will help him/her to parent the child. The parent(s) may receive counseling from alternative sources, for example, adoption agencies.

2. Completing the relinquishment and processing the legal documents when a determination has been made that relinquishment is in the child's and family's best interest.

The Department will provide relinquishment of parental rights services in the following instances:

1. At parental request when the child and family are receiving child welfare services through the Department.
2. When a worker is considering action to terminate parental rights.

Relinquishment services can be provided either directly or through a referral to another agency. Both the child (consistent with age) and the family will receive appropriate counseling regarding the potential relinquishment.

Relinquishment of a child to the Department is effective upon written acceptance by the Department. Relinquishment to the Department is irrevocable and transfers guardianship and full parental rights to the Department. (See Special Circumstances on Relinquishing a Native American.)

8-004.01 SPECIAL CIRCUMSTANCES REGARDING A NATIVE AMERICAN CHILD

In the case of a Native American child, the relinquishment counseling will also include an explanation:

1. That the parents may withdraw their relinquishment for any reason at any time before the final adoption decree is entered;
2. That a relinquishment will not be taken unless the parents' intent is that it is final, in order to provide permanency to the child;
3. That the relinquishment must be executed before a judge of a court of competent jurisdiction; before the tribal court, if it has jurisdiction over the child, or district, county or juvenile court in cases;
4. That the judge of the court must sign a certificate that the terms and consequences of the relinquishment were fully explained, in detail, to each consenting party, and that each person understood the consequences of his/her signing;
5. That the court must also certify that each consenting party understood the explanation, and if that party's primary language is not English the details and consequences were interpreted into a language that person understands;
6. No consent for relinquishment can be given before or within ten days after the birth of a Native American Child.

8-004.01A WITHDRAWAL OF RELINQUISHMENT OF A NATIVE AMERICAN CHILD

If parents of a Native American child chooses to withdraw their relinquishment before a decree of adoption, the relinquishment becomes invalid. Following receipt of a written request to withdraw consent, the relinquishment is rescinded.

8-004.02 RELINQUISHMENT REQUIREMENTS FOR ALL CASES

Once counseling has been provided, a determination will be made whether a relinquishment is in the best interest of the child and family. The worker will also determine whether the Department is the best agency to accept the relinquishment.

Because of the critical nature of the decision here, supportive consultation will be provided to the worker through Department adoption staff or team. Consultation of this nature will best insure consistency and quality service to families and children.

8-004.03

RIGHTS OF FATHERS

For a child to be legally free for adoption, fathers who have legal rights must have their rights terminated either by voluntary relinquishment or court order. A man who claims to have legal rights to a child must meet one of the following conditions:

1. He is listed as father on the birth certificate;
2. He was married to the mother at the time of the child's birth or within ten months before the birth;
3. He has filed a claim of paternity with the Department during the pregnancy or within five days of the child's birth;
4. He has adopted the child legally;
5. He has been declared the father through judicial proceedings such as a divorce or paternity action; or
6. He has lived with the child or performed normal parental functions, for a legally significant period of time, holds himself out as the father, and otherwise acknowledges paternity.

8-004.04

CONDITIONS FOR COMPLETING A RELINQUISHMENT

1. A relinquishment must be given by:
 - a. Both parents.
 - b. Only one parent, if:
 - (1) The other parent is deceased and proof of the death is available for the case record; or
 - (2) The other parent's rights have been properly voluntarily relinquished or legally terminated, and a record of such is available for the case record; or
 - (3) There is a plan in progress to properly deal with the other parent's rights; or
 - (4) No legal paternity exists and the father has not lived with the child or performed parental functions, such as providing child support, and a "No Intent to Claim Paternity" certificate has been obtained to verify whether a claim has been made.
 - c. Parents who have not been under the influence of alcohol or drugs including illegal substances, prescription or non-prescription mind-altering drugs within the past 24 hours.
 - d. A person or agency vested with the right to relinquish the child for adoption.
 - e. A person believed to be mentally and emotionally able to understand his/her legal rights and the consequences of relinquishment. If a legal guardian for the parent has been appointed by the court, the guardian's involvement and signature on the relinquishment are required. If no court action has been taken and staff have reservations about a parent's competency, then a relinquishment Will not be taken until a report from a psychiatrist or psychologist is received that specifically indicates that the parent is competent to relinquish parental rights.

2. A relinquishment must be completed:
 - a. Without fraud. The worker discussing the relinquishment will fully inform the parents of the results of relinquishment and of signing the relinquishment form.
 - b. At the parents' choice. Relinquishments will not be taken if there is any reason to believe that pressure or threats have been applied to parents to relinquish their rights and that the decision to relinquish is not being made independently.
 - (1) If a termination petition has been filed, the pending termination may be viewed as duress. In these cases, no relinquishment will be taken without involvement of the parents' attorney to assure that the parents' rights are protected. If parents desire to relinquish their parental rights following the filing of a petition to terminate parental rights, the relinquishment will be secured during a court hearing so the relinquishment is part of a court record.
 - (2) No promises regarding the type of family, continued contact with child by parents or other family member, etc., will be made to parents in securing the relinquishment.
 - c. With full information regarding options. Prior to taking a relinquishment, the parents will receive:
 - (1) Information about possible programs, services and support systems that might enable them to parent the child.
 - (2) Information about options in the community to provide relinquishment services or other services indicated.
3. In the child's best interest:
 - a. Adoption must be the preferred plan for the child;
 - b. Relinquishment will not be done to evade judicial proceedings or child support orders.
4. No less than 48 hours after the birth of the child in the case of newborn, unless the child is a Native American child and then no less than ten days after the birth of the child. (See Special Circumstances regarding a Native American Child, this section.)

Note: A relinquishment by a minor parent is legally valid.

8-004.05

PROCESSING THE RELINQUISHMENT

Once counseling has been completed and the worker and parents determine that completing a voluntary relinquishment is in the best interest of the child and family, the worker and parents will fill out the required forms. If the case is involved with the juvenile or county court, the worker will consult with the involved legal counsel and consideration will be given to having the relinquishment taken in court. If the child involved is a Native American child, the worker will notify the county attorney of the need to set the matter for hearing before the appropriate court.

See Court and Legal Issues Guidebook, Forms Section.

8-004.06 NOTICE OF ACCEPTANCE OF RELINQUISHMENT

Within two working days of receipt of the relinquishment, an adoption staff will review the forms and circumstances of the relinquishment and:

1. If one parent has relinquished but the rights of another legal parent remain intact, the Department will usually not accept the relinquishment until action is taken regarding the other parent's rights.
2. Send a letter accepting the relinquishment to the worker and the parent(s), if their address is known;
3. If the relinquishment cannot be accepted, the adoption staff will send a letter of non-acceptance to the parents and the worker with a detailed explanation of why the relinquishment is not being accepted and a request that the parents immediately contact the worker about the plan for the child.

8-005 **TERMINATION OF PARENTAL RIGHTS**

The Department will consider recommending termination of parental rights action when:

- A child has been in out-of-home placement 18 or more consecutive months; and
- Parents have made no progress in meeting the goals of the case plan, or have made insufficient progress to adequately protect a child; or
- Adoption is the recommended plan of choice for a child; or
- Severing parental ties is in the child's best interest; or
- An assessment shows there may be grounds for termination of parental rights, even if the child has been in out-of-home care less than 18 consecutive months.

If the parents can be contacted, they will be advised of the decision. The possibility of a voluntary relinquishment by the parents will first be explored before court action is initiated.

8-005.01 SITUATIONS THAT WILL BE CONSIDERED FOR TERMINATION OF PARENTAL RIGHTS ACTION

Under Nebraska Statute, the following may result in a request for a filing to terminate parental rights:

1. The parents have abandoned the child for six months or more immediately before the filing of the petition;
2. The parents have substantially and continuously or repeatedly neglected the child and refused to give the child necessary parental care and protection;

3. The parents, being financially able, have failed to provide the child with the necessary subsistence, education, or other care necessary for the child's health, morals, or welfare or have neglected to pay for such subsistence, education, or other care when legal custody of the child is lodged with others and such payment has been ordered by the court;
4. The parents are unfit by reason of debauchery, habitual use of intoxicating liquor or narcotic drugs, or repeated lewd and lascivious behavior, and this conduct is found by the court to be seriously detrimental to the health, morals or well-being of the child;
5. The parents 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. Reasonable opportunities were provided to the parents, under the direction of the court, but the parents failed to correct the conditions leading to the dependency, neglect, or abuse of the child as previously determined by the court; or
7. The child has been in an out-of-home placement for 18 or more consecutive months; and the parents have not corrected the conditions leading to the child's out-of-home placement, in spite of reasonable efforts and services to the parents ordered by the court or offered by the Department or other designated agency.

Statutory Reference: Neb. Rev. Stat. 43-292.

8-005.02 SEEKING JUDICIAL TERMINATION OF PARENTAL RIGHTS

When the worker determines that permanency may best be attained for a child through judicial termination of parental rights, the worker will consult with the guardian ad litem and the case consultation team. After seeking the support of the guardian ad litem, the worker will request that the county attorney file a petition to terminate parental rights.

In cases of a Native American child, the worker will notify tribal authorities of the request.

Once a determination is made that termination of parental rights action should be pursued, a written request for this action will be sent to the county attorney. The request will include the relevant case information supporting the termination of parental rights action.

8-005.03 INVOLVEMENT OF HHS SYSTEM LEGAL STAFF

When the county attorney has not acted within 60 days of the written request for termination of parental rights action and following reasonable contacts by the protective service supervisory staff, the HHS System's legal representatives will be contacted to secure action on the termination of parental rights.

If at the outcome of the hearing the designated person believes the juvenile will not abide by the Conditions of Liberty Agreement, the matter may be referred for formal revocation proceedings. The goal is for the juvenile offender to change his/her behavior to be consistent with the Conditions of Liberty Agreement.

8-006.01 Behavioral Accountability Meeting Process

The Behavioral Accountability Meeting process is as follows:

The designated person serves as the hearing officer and conducts the hearing. The involved parties discuss and review the allegations of the violation conditions of liberty. The juvenile offender is given the opportunity to respond to the allegations. The designated person, after consulting with the Juvenile Services Officer, will decide the action which may include one or more of the following:

- Continue current Conditions of Liberty Agreement;
- Directives to juvenile offender, parent, or Juvenile Services Officer;
- Change Conditions of Liberty Agreement, services or both;
- Reclassify youth's supervision level;
- Change youth's placement;
- Restrict youth's liberty (house arrest); or
- Decision to file for revocation hearing.

If a youth is determined to be at risk of running, or threatening to harm him or herself or others, the worker may decide to take the youth into protective custody and place the youth in a more restrictive setting.

A report of the action of the Behavioral Accountability Meeting will be prepared by the person serving as the hearing officer.

8-007 PRELIMINARY HEARING FOR JUVENILE OFFENDERS

A Preliminary Hearing is an informal hearing conducted by a Hearing Officer to determine whether there is probable cause to believe the juvenile offender committed acts which violate his/her Conditions of Liberty Agreement and, if so, to determine whether the juvenile offender's detention is necessary pending the revocation hearing. The preliminary hearing will occur as soon as practicable and no later than within 72 hours from the time the juvenile is apprehended and detained.

Case Law Reference: Morrissey v. Brewer (408 US 471 {1972}).

Written notice will be provided to the youth and his/her parent at least 24 hours in advance of the Preliminary Hearing. The youth may waive the 24 hour interval. The notice includes the allegations of parole violation and the description of the preliminary hearing process, including where and when.

8-007.01 Preliminary Hearing Process

8-007.01A Juvenile Offender's Rights

The juvenile offender has the following rights for the Preliminary Hearing:

- Notice of the alleged violations at least 24 hours before the preliminary hearing;
- Receipt of an explanation of the purpose of the preliminary hearing;
- Request a continuance of the hearing;
- Request representation by counsel under certain circumstances;
- Call witnesses and cross-examine adverse witnesses, unless the Preliminary Hearing Officer finds good cause for not allowing confrontation; and
- Present evidence and documentation.

The Preliminary Hearing Officer decides if conditions exist for the juvenile offender to be represented by counsel. See Case Assignment and Case Process Guidebook for conditions. If the Preliminary Hearing Officer finds the juvenile offender may be represented by counsel, the juvenile offender may pay for one or an attorney may be appointed by the state. The youth may request one continuance. The request is decided by the Preliminary Hearing Officer.

8-007.01B Preliminary Hearing

The Preliminary Hearing is conducted by an impartial Preliminary Hearing Officer who is an HHS employee who has not been involved in the case. The Hearing Officer may be a supervisor or a Juvenile Services Officer not involved with the juvenile offender. S/he will have knowledge of juvenile law and Partnerships for Protecting Children and Communities policy and practice and be designated by the Service Area Administrator. The juvenile offender, parent, when possible, the Juvenile Services Officer, witnesses, when necessary and the Hearing Officer attend the hearing. The hearing occurs near the place of the alleged violation or arrest.

The Preliminary Hearing Officer reviews the process, reads the allegations of violations against the juvenile offender and advises the juvenile offender of his/her rights. The Juvenile Services Officer provides supporting documentation and calls witnesses when necessary. The youth is given the opportunity to respond to the allegations, present relevant information, question adverse witnesses and call witnesses. The rules of evidence will not apply at this hearing. The hearing officer may rely on any available information. The Preliminary Hearing Officer makes a finding within 48 hours of the conclusion of the hearing and advises all parties. A written summary of the decision is sent to the juvenile offender, his/her parent, and the Juvenile Services Officer after the hearing.

Statutory Reference: Neb. Rev. Stat. 43-419

8-007.01C

Possible Actions

The Preliminary Hearing Officer has two possible decisions: determine whether probable cause exists that the juvenile offender has violated a condition of his/her liberty (parole) and determine the level of restrictiveness required for the juvenile offender pending the revocation hearing. If cause is found, the juvenile offender may remain in the physical custody of HHS-OJS and be detained or the youth may return to (parole) supervision in the community pending a revocation hearing. Where probable cause is found, the hearing officer may also recommend a community sanction instead of revocation. (See Court and Legal for Juvenile Offenders Guidebook.) If cause is not found, the youth returns to community supervision.

8-008

REVOCATION HEARING FOR JUVENILE SERVICES CASES

The Revocation (Parole Violation) Hearing is a formal revocation procedure that will ensure due process rights and render a decision regarding a juvenile offender's status which is in the best interest of the juvenile offender and the community. This formal hearing is held within 14 days after the preliminary hearing, if the juvenile offender is being held pending the revocation hearing. Reasonable continuances may be granted by the hearing officer for the juvenile to prepare for the hearing.

8-008.01

Hearing Process

8-008.01A

Juvenile Offender's Rights

The juvenile offender has the same rights for this hearing as for the Preliminary Hearing. (See 390 NAC 8-007.01A).

The juvenile offender will be provided with notification of the Revocation Hearing at least 24 hours before a hearing on the allegations. This notice must contain a concise statement of the purpose of the hearing and the factual allegations upon which evidence will be offered.

The juvenile offender's parents will be notified of the hearing and allegations. The parents may attend the hearing.

The Department will provide representation by legal counsel for the juvenile offender for the Revocation Hearing unless legal counsel is available to the juvenile offender.

The juvenile offender may waive his or her right to a hearing and admit to the allegations after the juvenile:

- * receives notice of the revocation hearing,
- * is notified of the possible consequences,
- * is informed of his or her rights pertaining to the hearing, and
- * has had an opportunity to confer with his or her parents or recommitment custodian and legal counsel.

This waiver and admission will be in writing and submitted with a recommended disposition by the hearing officer to the Administrator of the Office of Juvenile Services or his or her designee.

Statutory References: Neb. Rev. Stat. 43-421 through 43-423.

8-008.01B Hearing Procedures

The Hearing Officer will be an attorney licensed to practice law in the state of Nebraska and may be an employee of the Department of Health and Human Services or may be an independent contractor. If the hearing officer is an employee of the Department, he or she will not be assigned to any duties requiring him or her to give ongoing legal advice to any person employed by or who is a contractor with the office. The Hearing Officer will have knowledge of the juvenile process and Partnerships for Protecting Children and Communities policy and practice.

Statutory Reference: Neb. Rev. Stat. 43-420

This administrative hearing is not open to the public or the media. The juvenile offender may object to non-involved people attending. The decision about who attends is made by the Hearing Officer. The hearing will be tape recorded. Strict rules of evidence do not apply.

The juvenile offender is advised of his or her rights. Evidence is presented and witnesses are examined and cross-examined on behalf of the youth and HHS-OJS. The Juvenile Services Officer makes a recommendation for action. The Hearing Officer is the decision maker.

8-008.01C Disposition of Administrative Revocation Hearing

The Hearing Officer decides, based on the preponderance of the evidence, whether the detention (return to YRTC) of the juvenile or other restrictions are necessary for the safety of the juvenile or for public safety. The decision is rendered within 48 hours or promptly upon the conclusion of the hearing with written notice to the parties after the hearing.

The Hearing Officer will determine whether the detention (return to YRTC) of the juvenile or other restrictions are necessary for the safety of the juvenile or for the public safety. The Hearing Officer will prepare a written recommended disposition to the Administrator of the Office of Juvenile Services or his or her designee. The written disposition will include the restrictions needed for the juvenile pending a final decision and administrative appeal. The Administrator or designee will promptly affirm, modify or reverse the recommended disposition.

If the decision is to revoke the youth's parole or liberty, the youth is returned to the YRTC.

If the juvenile offender is returned to parole status in the community, the youth will be placed in an adequate setting to meet his or her needs. Changes may be made to the Conditions of Liberty Agreement, the case plan or both.

8-008.01D Decision Appeal

The decision of the Administrator or his or her designee may be appealed pursuant to the Administrative Procedures Act. The Department will be deemed to have acted within its jurisdiction if its action is in the best interest of the juvenile with due consideration of public safety. The appeal will in all other respects be governed by the Administrative Procedures Act.

Statutory Reference: Neb. Rev. Stat. 43-423.