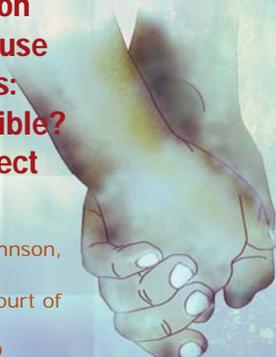


**Case Progression  
Timelines in Abuse  
& Neglect Cases:  
Who's Responsible?  
How Does It Affect  
Permanency?**

Judge Douglas F. Johnson,  
President NCJFCJ  
Separate Juvenile Court of  
Douglas County, NE  
September 11, 2009




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**Through the Eyes of  
the Child Project**

**RESOURCE  
GUIDELINES**  
Improving  
Court Practice  
in Child Abuse  
& Neglect Cases  
NATIONAL COUNCIL OF JUVENILE  
AND FAMILY COURT JUDGES

**ADOPTION AND  
PERMANENCY  
GUIDELINES**  
Improving  
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Sources of Timelines

- 1. Nebraska Supreme Court Rule
- 2. Nebraska Statutes
- 3. Nebraska and other Case Law
- 4. Federal: Adoption and Safe Families Act and regulations

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We will consider some time deadlines and progression requirements in abuse & neglect cases.

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The Nebraska Juvenile Code

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**Petition**

Whenever a juvenile is detained or placed under N.R.S. 43-250 or 43-253 (Reissue 2008), the juvenile shall be released unconditionally within **48 hours**, excluding nonjudicial days, unless:

1. a Petition has been filed alleging violation of a juvenile court order,
2. a Petition has been filed under N.R.S. 43-274, e.g. 43-247 (1), (2), (3) or (4), or
3. a Criminal Complaint has been filed in a court of competent jurisdiction. N.R.S. 43-255

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**Protective Custody**

Abuse & Neglect Cases:  
Protective Custody aka "Detention" Hearing delay of **14 days** between entry of ex parte order and hearing brought procedures to **brink of unreasonableness**.

In re Interest of R.G., 238 Neb. 405, 470 N.W.2d 780 (1991)

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**ASFA**

When a child is removed from his or her home, a **judicial determination as to whether reasonable efforts were made, or were not required, to prevent removal must be made no later than 60 days from the date the child is removed from his home. If this determination is not made, the child is not eligible for Title IV-E foster care payments for the duration of that stay in foster care. 45 C.F.R. §1356.21(b)(1).**

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**Adjudication**

All cases filed under 43-247 (3)(a) shall have an adjudication hearing not more than **90 days** after the Petition was filed. Directory not mandatory. Continuance on good cause.  
N.R.S. 43-278 (Reissue 2008)

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**Disposition Hearing**

If a Petition under N.R.S. 43-247 (3)(a) is found true, then a Dispositional Hearing shall occur in a **reasonable time**.  
N.R.S.43-279.01 (4) (Reissue 2008)

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**Review Hearing**

The court shall review every case adjudicated (found true) under 43-247 (3)(a) and (b) not less than once every **six months**.  
N.R.S. 43-278 (Reissue 2008) & ASFA

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**Statute, ASFA, Regs**

No later than **12 months** after the date a child enters foster care, each child shall have a permanency hearing by the court. The court shall decide the permanency plan and whether/when the child will be:

- a. Returned to the parent
- b. Referred to the state for filing a petition for termination of parental rights
- c. Placed for adoption
- d. Referred for guardianship, or in cases where HHS has documented a compelling reason not in bic to return home, refer for TPR, place for adoption, or place with a guardian. N.R.S. 43-1312 (Reissue 2008)

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**Statute/ASFA**

If reasonable efforts to preserve & reunify the family are not required because of a court decision, the court shall hold a permanency hearing within **30 days** as provided in N.R.S 43-1312 & 43-283.01 (5) (Reissue 2008)

This is required anytime the finding is made—even day one at the Protective Custody Hearing.

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**15 months Foster Care**

Within **30 days** after the **15<sup>th</sup> month** a child has been in foster care, the court shall hold a hearing on the record and determine if there is an exception under N.R.S. 43-292.02(3) (Reissue 2008):

- 1. The child is being cared for by a relative (not an absolute defense)
- 2. Compelling reason
- 3. Family has not had a reasonable opportunity to avail themselves of services

(See: N.R.S. 43-292.03 (Reissue 2008))

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**Supreme Court. Rule**

6-103. Time for disposition of juvenile cases:  
A) Notwithstanding any federal or state law providing for a longer period, the juvenile shall not be held in detention for more than 48 hours without a probable cause hearing being conducted by the appropriate judicial authority.

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**Supreme Court Rule**

B) Adjudication hearings in dependent/neglect cases under Neb. Rev. Stat. § 43-247(3)(a) should be held within 90 days of filing of the petition, except in cases with exceptional complications, in which cases adjudication should be held within 180 days. Adjudication hearings in law violation cases should be held within 180 days of filing of the petition.  
(C) A disposition hearing should be held within 60 days from the date of the adjudication hearing, unless good cause is shown.  
(D) Review hearings for children in out-of-home placements should be held, on the record, every 6 months

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**Abuse & Neglect**

Nebraska Supreme Court Commission on Children in the Courts' recommendations—will be conveyed to Supreme Court

- I. Time between a child's removal and the first Temporary Custody hearing—10 days
- II. Time between the filing of a petition and the commencement of an adjudication hearing—60 days

Good cause exceptions recognize

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III. Time between Adjudication & Disposition: 45 Calendar days

IV. Time between Motion/Petition for TPR and the TPR Hearing—90 calendar days

V. From Submission of case to decision— \_\_\_ days

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A child was placed in HHS Protective Custody due to parental mental health/substance abuse and failure to provide proper parental care.

The matter comes on the a Protective Custody Hearing on the 7th day after removal from the parental home. The judge gave the D & R advisory, granted supervised visitation, and continued the hearing for two weeks to give the parties more time to prepare.

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Parent's defense attorney moves to dismiss for failure to have a timely Protective Custody Hearing and requests that the child be returned to the parent.

What is a reasonable time to have a Protective Custody Hearing?

What is the best practice timeframe to have the Protective Custody Hearing? Why?

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**Case Scenario**

What finding must you have made in the ex parte temporary custody & removal order?

Assume there was a Protective Custody Hearing. The child was ordered to remain in HHS foster care. Supervised visitation was granted. Adjudication was set 90 days from the date of placement into foster care.

Is there a deadline for any other findings prior to 90 days?

What is it?

What finding must be made?

What happens if the finding is not made?

Who is responsible for this?

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**Case Scenario**

A child has been in foster care for 15 months.

What hearing is supposed to happen under NE statute and ASFA? By when?

What is happening in your jurisdiction regarding children in foster care for 15 months?

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**Case Scenario**

A child has been in foster care for almost 12 months.

What hearing does the state and federal law require?

Who is responsible to have this hearing set?

What happens if the hearing does not occur?

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**Case Scenario**

After hearing evidence in a TPR cause of action, the parties rest. The judge takes the matter under advisement.

When must the judge decide the case?

Any case?

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**Case Scenario**

An infant has been in HHS foster care due to parental neglect in failing to provide for the infant's special medical needs. After 15 month Hearing, and a finding of no exception, a TRP is filed within 30days as required by statute and ASFA.

What is the deadline to start, complete the trial, & decide the TPR issue?

Who is responsible for this?

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What can you do to improve and ensure the law is followed?

If your grandchild was in foster care, would your view of timely hearings and decisions be different?

What gets in the way of timely hearings?

What can you do as a judge, attorney, CFSS, FCRB, CASA, to change this?

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**Best Practices**

Meaningful and Timely Hearings:  
Resource Guidelines & Adoption  
and Permanency Planning  
Guidelines

No Continuance Policy

Prompt Decision Making Based on  
the Law & Evidence

The Judge leads by example—and  
so does everyone else!

Ongoing Training & Collaboration

Treating these children and parents  
like your family cuts through a lot  
of non-sense and waste of time

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**Join the National  
Council of Juvenile &  
Family Court Judges!  
Non-judges are  
welcome too!!**

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