

# BARRIERS TO ADOPTION AND GUARDIANSHIP IN NEBRASKA

A Research Study

by

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While many Nebraska children move in and out of foster care rapidly, there are a group of children who remain in foster care too long, without either returning home or moving on to adoption or guardianship. Children who have been in out-of-home care for over two years are unlikely to return home, and many move from foster home to foster home, never obtaining any stability in their lives. Quite a few appear to have physical, mental, and/or behavioral impairments.

## Process of Adoption

Most Nebraska children who are adopted come into care in one of two ways. Infants generally are relinquished by their biological parents to another family or to a private agency which quickly places them for adoption in waiting families. If the relinquished infant happens to be handicapped, the child may be placed in foster care until an evaluation can be completed. Unless the handicap is very serious, however, these infants are generally placed for adoption without problems. A child with a serious handicap may remain in foster care much longer while an adoptive home is sought. Since private agencies have limited resources to meet the medical and foster care needs of seriously handicapped infants, it is common practice for these infants to be made wards of the Nebraska Department of Social Services (NDSS).

Other children enter the foster care system because of abuse or neglect. Generally they are reported to Child Protective Services. A petition must then be filed by the county attorney, and, in a fact finding hearing, the court finds the child to be abused or neglected under Section 43-247(1) of the Nebraska Code. The child is then placed under the supervision of NDSS who place the child in foster care and make an attempt to rehabilitate the family and return the child home. In cases where reunification is not possible, efforts need to be made to create an alternative permanent placement of the child through adoption or guardianship. As soon as it is decided that the child can not return home, the child's plan should be changed to adoption, and efforts begun to terminate parental rights and arrange for a foster parent adoption or find a new family to adopt the child. Frequently that does not occur. The plan remains reunification even when reunification is impossible.

It is at this stage that serious barriers to adoption may begin to appear:

\* With some children, the plan may not change from "return home" to "adoption" and the child remains in foster care with few efforts made toward adoption.

\* Or the worker may think the child is "unadoptable" because of mental retardation or other handicaps and change the plan to "long term foster care" rather than "adoption" and not make efforts towards achieving an adoption for the child.

\* Workers may not have been documenting continued abuse or neglect by parents and preserving the evidence, making termination of parental rights difficult.

\* In other cases, even if there are grounds, the county attorney may not file a petition to terminate parental rights because of the time and resources such a case takes.

\* The worker may not believe that the child will be freed for adoption, or if the child were free that "anyone would want to adopt him/her."

\* The guardian ad litem may not aggressively pursue relinquishment or termination of parental rights.

\* In districts where only certain NDSS workers can do adoptions, the case may not be transferred to an adoption worker for months.

\* Requests for adoption subsidy may be delayed or turned down, preventing an adoption.

\* The worker may be reluctant to discuss with the foster parents their willingness to adopt, for fear it will disrupt the foster placement.

\* For a child who will not be adopted by its foster parents, the judge may be reluctant to terminate parental rights without the assurance that another family is available for the child, making it very difficult to recruit an adoptive family since the child may or may not become free for adoption.

\* Services near the potential adoptive family's home may be lacking, such as transportation, recreation, medical care, mental health, respite care, speech and language therapy, or physical and occupational therapy.

Dealing with the complexity of adoption takes a great deal of effort on the part of a number of people, and many things can go wrong. The result, however, is that unless adoption or permanent guardianship can be achieved, the child remains in foster care and drifts for years from foster home to foster home to group homes, costing the state thousands of dollars and becoming older and less adoptable each year.

### **Process of Guardianship**

Permanent subsidized guardianship is a relatively new mechanism for achieving stability for children in the custody of NDSS. In the past, if a foster parent was named the child's guardian, all financial support for the child's care ceased. However, for the past three years Nebraska has had a mechanism for continuing medical and financial support to the child through subsidized guardianship. Many times the foster parents who become guardians are relatives of the child, and the average age of the children tends to be greater than those being adopted. Generally, there is no termination of parental rights.

### **Method of Study**

In the summer of 1989 a study was done which involved gathering data describing children in out-of-home care from case files and surveying the attitudes of various professionals involved in child welfare. The purpose of the study was to identify the

barriers which may trap Nebraska children for years in temporary out-of-home arrangements, rather than placing them in adoptive homes or in guardianship arrangements when it was not possible for them to return to their biological families.

Cases for the study were selected from files of active cases in the central office of the State Foster Care Review Board and consisted of children who were wards of NDSS and who had been reviewed within the previous 2-3 months by a local foster care review board. All children in out-of-home care who had an official case plan of "adoption," "guardianship," "permanency," or "long term foster care," all children whose mothers' parental rights had been terminated and 91 children who had been in care over two years (when return home is unlikely) were selected for the sample of 256 children.

In order to further identify problems in the system, a questionnaire was mailed to county attorneys, members of the local foster care review boards, NDSS caseworkers and supervisors, and a systematic sample of attorneys who had served as a guardian ad litem (hereinafter referred to as GALs) for a child in out-of-home care during the previous year. The survey was also administered to County Court judges attending their annual meeting in June of 1989.

### **Findings from the Survey of Professionals**

- \* The majority of the respondents felt that county attorneys need to put more time into preparing for parental rights termination cases.
- \* The social services respondents and citizen foster care reviewers felt the GALs could be stronger advocates for permanent homes for their young clients. And there was general agreement that there is often confusion about the appropriate role of the guardian ad litem in cases of children in out-of-home care.
- \* Most respondents reported that caseworkers had not been adequately informed about what information county attorneys would need from them in parental rights termination cases, and that they did not have an adequate understanding of the rules of evidence.
- \* There was very strong agreement that courts could impose greater consequences on parents who do not comply with court orders, and that courts often give parents too much time to cooperate with court orders before being supportive of efforts to terminate parental rights.
- \* There was general agreement that there is inadequate communication between tribal and county courts in cases involving Indian children.
- \* High NDSS caseloads were seen as a barrier to adoption since caseworkers don't have enough time to adequately develop and implement plans that will lead to adoption or guardianship for their clients.
- \* Most non-NDSS respondents felt NDSS did not formulate clear plans for children in out-of-home care that would lead to their return home or to their adoption.
- \* The majority of each group agreed that often adoption is not the official plan for a child in out-of-home care when it ought to be. And all

respondent groups except the GALs agreed that NDSS caseworkers often make continued futile attempts to reunite parents and children, even when such efforts are not warranted.

### Findings from the Study of Case Files

\* When children were legally free and their case plan had been "adoption" for at least a year, NDFSS was generally able to find families for them regardless of their mental or physical disabilities. Only 12 of these children (19%) were not in an adoptive family.

\* For children over 13, the likelihood of adoption was less than for the younger children. Age was not a barrier to guardianship, however.

\* Children already placed in adoptive homes came into care much younger (49 months old) compared to those in guardianship (113 months) or other types of placements (93 months).

\* The most important factor in predicting whether a child would be in an adoptive home was whether the foster parent wanted to adopt the child. Other important factors were: whether the child was served by a worker who could complete an "adoption," whether the plan had been adoption for a year or longer, and whether the plan for this child was "adoption."

*Case Example: Five year old "Yolanda" and her 11 year old brother, "Charles," have been in the same foster home since coming into care due to neglect three years previously. In that time, they have had three workers. When it became evident that reunification efforts were not going to be successful, the plan was changed to "adoption" in April of 1988, and termination of the parental rights of both birth parents occurred four months later. The termination rulings are under appeal by the Nebraska Supreme Court, and the case has been transferred to an adoption worker. The foster family has expressed interest in adopting Yolanda and Charles, but no adoption summary nor home study has been done, and there was no indication that subsidy had been explained to the foster parents. \**

\* While many (36%) of the "waiting" children were developmentally disabled, they were as likely to be placed for adoption as the other children. However, they had spent longer in out-of-home care and had had more workers than the non-handicapped children.

\* Handicapped children were as likely as their non-handicapped counterparts to be in adoptive homes, despite 90% of the professionals believing there was a lack of families willing to adopt them. Many foster parents wanted to adopt these children.

\* However, mentally retarded children were more likely than non-retarded children to have "long term foster care" as their plan, even if they were legally free for adoption.

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\* In this study and throughout this Annual Report, children's names and some identifying features have been changed to observe confidentiality.

*Case Example: "Chuck", age 14, came into foster care as a seven year old. Although he has had four placements, he has been in his current foster home for almost six years. Chuck attends special education classes because of his mild mental retardation and slight hearing loss. Chuck has been free for adoption for two years. His plan is "long term foster care."*

\* Having a plan of "adoption" is important, since 81% of the legally free children whose plan had been "adoption" for more than one year were in adoptive placements, while only 17% of legally free children with another plan were placed for adoption.

\* Twenty four children had "independent living" as their plan, even though six were legally free for adoption. Eight of those 24 children were developmentally disabled, two with mental retardation.

\* Behaviorally impaired children (who were more likely to have been sexually abused than other children, 41% vs 25%), were more difficult to plan for adoption. Nine of the 12 legally free children with a plan of "adoption" that were not yet in adoptive homes were behaviorally impaired.

*Case Example: "Tommy," age 8, and his brother, "Timmy", age 9, have had 14 foster families in their 5 1/2 years in foster care. Both were sexually abused as young children and are receiving counseling to try to control their acting out behavior. Although they are legally free for adoption and that has been the plan for 15 months, they are not in an adoptive home, and the latest foster family does not want to adopt them.*

\* Major barriers to adoption and guardianship appeared to be in the legal and social services system, especially in the area of termination of parental rights.

\* Children were more likely to be in adoptive homes or in guardianship if they didn't come from Douglas, Sarpy, or Lancaster County and were placed in families outside those urban counties.

\* Children who were in adoptive or guardianship placements had fewer workers and fewer placements than those in the non-permanent placements. Multiple moves can cause behavior problems and the discontinuity of workers may make the complicated planning needed to complete an adoption impossible.

\* Even when they were not legally free, if the plan was "adoption" sixty percent of the children were in pre-adoptive homes. All were waiting for legal action to terminate parental rights so that the adoption could be finalized.

*Case Example: "Lionel," age 7, came into foster care at the age of four months due to severe neglect. He was placed in the "Smith" foster home where he has remained for over six years. In that time he has had three different workers. Mrs. Smith wants to legally adopt Lionel, so he will feel that he truly belongs to her and her family. Finally, after six years a petition was filed by the county attorney to terminate the parental rights of Lionel's*

*birth mother. As yet, no petition has been filed to terminate the parental rights of the birth father. Lionel waits.*

\* Case records revealed that 56 foster families had expressed interest to their caseworkers about having the child supported under the subsidized adoption or subsidized guardianship program. Twenty-seven had applied but NDSS had acted on and approved only five.

*Case Example: "Jennie," age 15, came into the foster care system at age 9 due to sexual abuse and neglect. She suffers from severe behavioral impairment and an attention deficit disorder which require special education and mental health services. She has had four foster placements in 5 1/2 years, but finally was placed with a foster family that wants to adopt her. She is legally free for adoption and all the paperwork has been done by her foster family to request subsidy to meet Jennie's special needs. Although 11 months have gone by since they applied for the subsidy, it had not been approved at the time the data were collected. Jennie continues to wait, since the adoption can not be finalized before the subsidy is approved.*

## **Recommendations**

1. Filing a petition to terminate parental rights and then aggressively moving the case to conclusion are the pivotal steps in freeing children for adoptive placements. Under Nebraska law, primary responsibility for filing petitions to terminate parental rights rests with the county attorney. A child's guardian ad litem may also file petitions on behalf of the child in juvenile court. Both the county attorney and the guardian ad litem should aggressively pursue termination of parental rights in appropriate cases.
2. If the primary responsibility for filing petitions for termination of parental rights is changed, there are several alternatives. Some states have full time attorneys on staff in department of social services to represent the interests of the state in abuse, neglect, dependency and termination of parental rights cases. Another option would be to expand the duties of the Child Protection Division of the Attorney General's office created by LB 1246, to include the filing and litigation of parental rights termination cases. Or a statewide District Attorney system, employing full-time attorneys, might be another approach.
3. Attorneys must have more training and more time to spend on these cases and prepare caseworkers to testify in court. If more adequate legal support is not provided to NDSS caseworkers in these cases, then caseworkers need to be trained in the rules of evidence and court procedures. Caseworkers must be trained to document incidents from the first time a child enters care (not just when the plan becomes adoption) and learn to testify in court. The judge can only terminate parental rights on the basis of evidence, not the judgement of the professionals involved. Therefore, the gathering and preservation of evidence is an important caseworker skill.
4. Changing the plan to "adoption" as soon as it is evident that a child will not be returning home seems to be an important step toward achieving adoptive placements for children.
5. The assignment of a child needing adoption services to a worker that can do adoptions was an important predictor of success in placing the child for adoption. In the rural areas this did not appear to be a large problem, but in the urban areas where only

certain workers are allowed to do adoptions, transferring the case quickly to an adoption worker will reduce yet another barrier to adoption.

6. One of the largest barriers to the adoption of children with special needs is financial. Medical care, special equipment, help in the home all require more resources than most families can afford. Nebraska is fortunate to have good subsidized adoption and subsidized guardianship legislation. However, it appears from the data, that these programs are not being used as intended. Agency policies and practices which encourage rather than hinder subsidies should increase the number of children in permanent placements.

7. Since most adoptions in Nebraska are foster parent adoptions, it is essential that children who are not able to return home be placed in foster homes that are willing and able to adopt. Recruitment of "fos-adopt" homes (foster families willing to adopt if the child becomes eligible) for special needs children, is one way the agency can increase the likelihood that a child will be adopted.

8. Many of the professionals surveyed believed that adoptive families were very difficult to find for handicapped children. The case data showed something quite different. Information must be shared with all professionals about the adoptability of developmentally disabled children. Negative attitudes can be a barrier to the plan of "adoption" and the amount of effort put into freeing certain children for adoption or recruiting families who will adopt them if they become free decrease if workers and others think the child in "unadoptable."