

## Legal Parties Taskforce of the Nebraska Children’s Commission

### Juvenile Law Survey Practice Survey Results Executive Summary

This survey was created for the purposes of capturing the views and experiences of attorneys who practice juvenile law in Nebraska to inform the work of the Legal Parties Task Force surrounding Neb. Rev. Stat. §43-247 and was administered to attorneys with the help of the Nebraska Bar Association, the Attorney Services Division of the Nebraska Supreme Court, Nebraska Appleseed, DHHS Legal Services Division, and the County Attorneys Association. The survey received 70 responses from defense attorneys, child attorneys, Guardians ad litem, intervenor attorneys and county attorneys from both the Separate Juvenile Courts and County Courts sitting as Juvenile Courts. The information contained below represents the responses to the survey in aggregate, and not the recommendations of the Taskforce, or the views of any individual Taskforce member or staff.

#### Major Themes of the Survey Results

- **§43-247(3) (a) Fault and no-fault petitions.** Though most attorneys believe that fault and no fault petitions are used appropriately, there are wide variations in how filing decisions are made, and whether the filing type is indicated on the petition.
- **§43-247(5).** Attorneys are unclear about the Juvenile Court’s authority to order parental compliance with services and case plans, and to enforce those orders.
- **Neb. Rev. Stat. §43-247(3) (c) Mentally ill and dangerous youth.** This provision is not used in all areas of the state. Although it can connect families to services, there still may be difficulty accessing services in the community or continuing services once the emergency is over. Additionally, attorneys express confusion about the statutory language and timeframes.
- **Availability of services.** Some areas of the state, especially areas in which County Courts sit as Juvenile Courts, attorneys report a lacking of services that would improve outcomes for children and families.
- **Access to judicial time.** Attorneys practicing in counties with Separate Juvenile Courts report that access to judicial time and docket availability negatively impact the practice of juvenile law.

#### Fault and No-Fault Petitions in Cases where the Primary Safety Concern is Domestic Violence as to the Victim

Attorneys were asked to indicate their agreement with the following statement “*Domestic violence involved cases where domestic violence is the primary safety concern are usually filed as fault as to the victim.*” The responses from attorneys suggest that practice differs across jurisdictions:

- 8% indicated they did not know or had no experience; 36% strongly disagreed or disagreed; 14% were neutral; 42% agreed or strongly agreed.

Attorneys were asked to indicate which filing type they believed to be more appropriate and what factors should be considered when determining the filing type. Ten attorneys indicated that the filing type should always be no-fault. Thirty six attorneys listed a variety of considerations that should impact the filing type.

### **Filing Considerations**

- **Presence of complex factors.** Domestic violence is often not the only issue the family is struggling with, and the petition will need to address substance abuse or mental health issues.
- **Identifying the victim.** Domestic violence may be mutual, or the victim in one instance may be the perpetrator in others.
- **History and frequency of violence.** The domestic violence may have been a first time event, the perpetrator may have a pattern of violence in the home, or the victim may have a pattern of bringing violent partners into the home.
- **Exposure of child to violence/harm.** Consider whether the violence is committed in the presence of the children, or if the violence harms or injures the children.
- **Prior system intervention.** Consider whether the family has had law prior interventions from law enforcement or DHHS and whether the victim cooperated with previous interventions.
- **Best interest and safety of child.** The petition type should support the best interest and safety of the child.
- **Parent capability or willingness to remedy the issue.** Determine if the parent has taken steps in the past to protect the children from harm, and if the parent is willing to access the available supports and resources to protect the child from harm following intervention.

### **Fault and No-fault Petitions in Domestic Violence Involved Cases as to the Perpetrator**

Attorneys were asked to indicate their agreement with the following statement “*Domestic violence involved cases where domestic violence is the primary safety concern are usually filed as fault as to the perpetrator.*” The responses suggest that the general practice is to file fault petitions against domestic violence perpetrators:

- 8% indicated they did not know or had no experience; 4% strongly disagreed or disagreed; 12% were neutral; 76% agreed or strongly agreed

Attorneys were asked to indicate whether fault or no fault petitions were more appropriate and what factors should be considered when determining the filing type. Eighteen attorneys indicated that the filing type should always be fault. Twenty-eight attorneys listed a variety of considerations that should impact the filing type, though most indicated that fault filings are usually the most appropriate.

## Filing Considerations

- **Presence of complex factors.** There may be cases where the perpetrating parent's mental illness or intellectual disability mitigates parental fault.
- **Identifying the victim.** Determine whether the violence at issue was committed in self-defense or if the perpetrator was the aggressor.
- **Exposure of child to violence.** Many responses indicate that if the acts were committed in the presence of the child or in the proximity of the child, the case should be filed as fault.
- **Prior or concurrent system intervention.** Consider previous contacts with law enforcement, prior interventions, and pending criminal charges.
- **Best interest and safety of child.** Determine which filing type will support the best interest of the child. Consider whether the actions of the perpetrator creates a risk to the child.
- **Procedural considerations.** Fault filing should be considered when there are criminal charges based on the domestic violence, if the perpetrator should be placed on the central registry, and whether the court will need to order the perpetrator's compliance or enforce those orders.

## Fault and No-fault Petitions where the Primary Safety Concern is Parental Substance Abuse

Attorneys were asked to indicate their agreement with the following statement "*Cases in which the primary safety concern is parental substance abuse are usually filed as fault petitions.*" The responses suggest that it is fairly standard practice to file cases involving parental substance abuse as fault petitions.

- 2% indicated they did not know or had no experience; 0% strongly disagreed or disagreed; 6% were neutral; 92% agreed or strongly agreed.

Attorneys were asked to indicate which filing type they believed to be more appropriate and what factors should be considered when determining the filing type. Fourteen attorneys indicated that fault is the most appropriate filing type and did not list any considerations. Three indicated that the filing type should always be no-fault and did not list considerations. 29 attorneys listed a variety of considerations that should impact the filing type, though most indicated that fault filings are usually the most appropriate.

## Filing Considerations.

- **Presence of complex factors.** The petition may also have to address the mental health and intellectual disability issues presented by the parent and which may impact the parent's ability to make appropriate choices.
- **History/frequency/type of substance abuse.** Consider whether this is the first time that substance abuse issues have arisen, whether it the substance is abused frequently, if it is a long term pattern of use. Also consider the nature of the substance,

whether it is illegal, or if the parent was placed on prescription medicine legally and become addicted.

- **Nature of maltreatment allegations.** This factor considers the degree of injury to the child, whether the harm is the inability to care for the child due to substance abuse or abuse to the child.
- **Exposure of child to substances/substance use.** This factor considers the harm of exposing a child to the substance itself, the parent's use of the substance, other substance users and dealers, or the child testing positive for the substance.
- **Prior system intervention.** This considers whether the parent has already had intervention and whether they were successful with the services provided.
- **Best interest and safety of child.** These responses indicated that fault was the most appropriate petition to keep children safe in these situations.
- **Parent capability or willingness to address the issue.** This factor looks at whether the parent will accept treatment.
- **Procedural considerations.** The parent may be more willing to plead to a no-fault, but this can lead to a lack of consequences for the parent, and inability to terminate parental rights or order treatment for the parent.

### **Fault and No-fault Petitions where the Primary Safety Concern is Parental Mental Illness**

Attorneys were asked to indicate their agreement with the following statement "*Cases in which the primary safety concern is parental mental illness are usually filed as fault petitions.*" The responses suggest that the filing decisions for parental mental illness vary across juvenile practice or according to the facts of the case.

- 8.3% indicated they did not know or had no experience; 33.33% strongly disagreed or disagreed; 14.58% were neutral; 43.75% agreed or strongly agreed.

Attorneys were asked to indicate which filing type they believed to be more appropriate and what factors should be considered when determining the filing type. Thirteen attorneys indicated that no-fault is the most appropriate filing type and did not list any considerations. 32 did list considerations for determining the most appropriate type of filing.

### **Filing Considerations**

- **Presence of complex factors.** This element considers whether the parent's mental illness is the result of parental substance abuse and if there is concurrent substance abuse by the mentally ill parent.
- **Severity/duration/nature of mental illness.** This considers whether the mental illness is diagnosed, long term, or severe, and whether the nature of the mental illness impacts the parent's ability to provide proper care or to acquire the skills necessary to provide proper care.
- **Nature of maltreatment allegations.** This considers whether the maltreatment to the child is neglect due to the parent's inability to care for themselves and the child,

or if it is abuse by the parent. Responses indicated that neglect was more likely to benefit from a no-fault filing, while abuse was more appropriate for a fault filing.

- **Procedural considerations.** If the parent is willing to accept services voluntarily, a no-fault petition may be more appropriate, but attorneys also struggle with the ability to file a TPR if needed when the petition is no-fault.
- **Prior system intervention.** This considers whether previous intervention have been offered or have been successful.
- **Best interest and safety of the child.** This considers whether the filing type supports the safety of the child.
- **Capability of parent to remedy issue.** This considers whether parent can manage their mental illness or is willing to follow through with a course of treatment once services are accessed.

### **Fault and No-fault Petitions where the Primary Safety Concern is Child's Mental Illness**

Attorneys were asked to indicate which filing type they believed to be more appropriate and what factors should be considered when determining the filing type.

- Fifteen attorneys indicated that no-fault is the most appropriate filing type and did not list any considerations. Ten attorneys indicated that it should be considered on a case by case basis and did not list any considerations. One attorney had no experience. 20 did list considerations for determining the most appropriate type of filing.

#### **Filing Considerations**

- **Severity/nature/duration of mental illness.** This factor considers what the child's diagnosis is, whether the child's needs are extraordinary, whether the cause of the mental illness is an action of the parent (trauma), or if the cost of treatment is prohibitive.
- **Nature of maltreatment allegations.** This considers if the allegations are abuse or that the parent is unable to manage the mental health needs of the child, or that the mental illness is the result of the acts of the parent.
- **Procedural considerations.** This considers whether the mental illness is known at the time of filing, or the attorney's ability to file a Neb. Rev. Stat. §43-247(3) (c) filing is more appropriate.
- **Capability of willingness of parent to remedy issue.** A parent who is taking steps to access appropriate treatment or is willing to access treatment once it is available is more appropriate for a no-fault filing than a parent who is unwilling to access or follow a course of treatment

### **Parental Compliance in Cases Adjudicated as No Parental Fault**

Attorneys were asked to indicate their agreement with the following statement *"In my experience, most Judges order parents to comply with case plans or participate in services in a no-fault case."*

- 2% indicated they did not know or had no experience; 2% disagreed; 10% were neutral; 86% agreed or strongly agreed.

Attorneys were asked to respond in narrative form to the questions “Thinking about cases that have been adjudicated as no parental fault, can these parents be court ordered to comply with a case plan and/or participate in services? What types of services can be ordered?”

Responses were grouped by the below themes:

- **Parents adjudicated under a no-fault petition can be ordered to comply with a case plan and participate in services the same as in a fault case.**
- **The court ordered action must be related to the adjudicated issue or the issue that initially brought the family before the court.**
- **The court may order any service that is needed by the family, not just specifically related to adjudication or initial reason for intervention.**
- **The court may order any service that is related to the best interest and safety of the child.**
- **The court may order compliance for specific issues.** Attorneys listed services that address parental mental illness or substance abuse, removing barriers to reunification, family support, and appointments for children, or visitation.
- **The court can order compliance but may encounter enforcement issues.** One attorney suggested that if parents do not comply, a fault petition should be filed on the basis on parental non-compliance. Other attorneys noted that there may not be a mechanism for compliance in no-fault cases.
- **The court cannot order corrective action.**
- **Whether or not the court may order corrective action is dependent on the case.**

#### **Neb. Rev. Stat. §43-247(3) (c) – Youth who are Mentally Ill and Dangerous**

Attorneys were asked to respond in narrative form to the question “*In your experience, is Neb. Rev. Stat. §43-247(3) (c) the most effective way of providing treatment to mentally ill and dangerous youth? And why?*” Responses were categorized as below:

- **Neb. Rev. Stat. §43-247(3) (c) is not used or is rarely used by attorney or the county in which attorney practices.**
- **Neb. Rev. Stat. §43-247(3) (c) is the most effective way of providing treatment to mentally ill and dangerous youth because it allows families to access services.**
- **Neb. Rev. Stat. §43-247(3) (c) is the not the most effective way of providing treatment to mentally ill and dangerous youth because of a lack of services in the area.**
- **Neb. Rev. Stat. §43-247(3) (c) is not the most effective way of providing treatment to mentally ill and dangerous youth because of procedural or statutory concerns.**
- **Neb. Rev. Stat. §43-247 is the most effective way or providing treatment to mentally ill and dangerous youth because of procedural or statutory considerations.**

Attorneys were asked to respond in narrative form to the questions “*What are some limitations of Neb. Rev. Stat. §43-247(3) (c) that impact the provision of mental health services to youth?*”

- **Services.** There are many areas in Nebraska where services are limited or unavailable, which creates difficulty in ensuring that children and families access the services that they need.
- **Statutory language and timeframes.** The statutory timelines and requirement that youth be designated as “mentally ill and dangerous” by a mental health professional and be an immediate threat can be barriers to service provision under this section.
- **Statue unused.** As indicated above, some attorneys and counties do not use this section.
- **Court orders.** There are some questions about the court’s ability to enter orders if the parties do not agree.

#### **Neb. Rev. Stat. §43-247(5)**

Attorneys were asked to respond in narrative form to the statement “*Please describe your understanding of the purpose and application of Neb. Rev. Stat. §43-247(5), and what changes to the statute, if any, would improve juvenile practice.*”

- **Purpose.** Most attorneys indicated that the purpose was to give courts the jurisdiction over parents in juvenile court.
- **Changes for improvement.** Many responses noted that clarity in the specific purpose and extent of the court’s authority to take jurisdiction over a parent or order parental compliance would improve juvenile practice.

#### **Juvenile Court Practice Improvement**

Attorneys were asked to indicate in their role what challenges they experience related to Neb. Rev. Stat. §43-247. The responses are categorized into the themes below:

- **Legal party/practice issues.** A number of different issues were raised under this category, including the need for attorneys to receive more training, difficulty obtaining court time, parents who continue to make progress but do not obtain a case closure, fathers not identified at the outset of a case, courts unwilling to order parents compliance in some cases, case progression and the failure of county attorneys and GALs to file TPRs.
- **Statutory concerns.** This item included a lack of definition and distinction between fault and no-fault cases, and confusion over when parents can be the subject of court orders.
- **Agency concerns.** Attorneys noted that there is not clarity between DHHS and Probation over who is responsible for services, and the difference between DHHS’s investigation and assessment process and the County Attorney’s need for admissible evidence.

- **Funding.** Attorneys noted concerns about keeping costs down as a court appointed attorney that conflicts with the client’s need for zealous legal advocacy, and that the requirement for a hearing 48 hours after removal can be cost prohibitive.

Attorneys were asked to respond in narrative form to the question “*What changes to Neb. Rev. Stat. §43-247 would allow you to perform your duties more effectively?*” The responses are categorized by theme as below:

- **Legal party/practice issues.** Improvements included increased attorney and judge education, increased attorney advocacy, and increased use of Neb. Rev. Stat. §43-247(3) (c).
- **Statutory concerns.** Improvements included defining Neb. Rev. Stat. §43-247(3)(b), outlining what jurisdiction means in relation to sections (1), (2), and (3), changing burden of proof in YRTC commitments to “clear and convincing,” clarifying no fault petitions, and requiring court to accept a custody complaint or modification.
- **Agency related.** Improvements included increased collaboration and cooperation between DHHS and Probation.
- **Funding.** Improvements included that funding should be shared or mixed between child welfare and juvenile justice, increased payment for juvenile court appointments, and ensuring that DHHS is adequately funded to pay for the services it is court ordered to provide.
- **Services.** More services in communities and in rural areas.

Attorneys were asked to respond in narrative form to the question “*What changes to Neb. Rev. Stat, §43-247 would support improved outcomes for children and families?*” The responses are categorized by theme below:

- **Legal party/practice improvement.** Responses included additional judges in Douglas County, increased training and education, as well as discontinuing the practice of allowing parents to plead to a no-fault petition when the parent is at fault.
- **Statutory improvements.** Improvements included outlining the court’s jurisdiction over parents in each section, training attorneys and judges, an ability to terminate parental rights in less than fifteen months when parents are repeatedly non-compliant, and a family court similar to drug court.
- **Agency related.** Increased collaboration and cooperation between DHHS and Probation, and focus on the best interests of the child.
- **Funding.** Define service provider payment responsibility as between DHHS and Probation, ensure that DHHS is adequately funded to pay for the services it is court ordered to provide.
- **Services.** More services and access to services for a longer period of time for families.

### **County Attorney Specific Question Regarding Fault and No Fault Petitions**

County Attorneys were asked to respond in narrative form to the following question “*What factors do you consider when determining if a case filed under Neb. Rev. Stat. §43-247(3) (a) will be filed as fault or no fault? How do you weigh these factors?*” County attorney responses were categorized by theme and a summary is included below:



- **Procedural considerations.** Some attorneys indicated that they consider the ability to obtain a plea to a no-fault case, and if the filing type will make an impact on the life of the case.
- **Nature of maltreatment.** Attorneys look at how the choices of the parent impact the situation that brought the case to the court’s attention, whether the harm in abuse or neglect, and what proof of fault the county attorney will be able to show the court.
- **Ability of filing type to remedy family issue.** Attorneys note that the primary purpose is to help the family and the individual factors of the case should be weighed in that light.
- **Severity of issue.** County attorney looked at severe abuse or neglect with increased scrutiny to determine filing type.
- **Prior intervention.** Consider the parents’ history with DHHS and the court system.

### Access to Judicial Time and Docket Availability

County attorneys practicing in counties that do not have a separate juvenile court were asked to indicate if they experience timing conflicts between the juvenile docket and other dockets, and if so, how it impacts the practice of juvenile law. Responses are categorized below and suggest that County Courts sitting as Juvenile Courts do not experience significant barriers to docket availability:

- **Attorney has experienced a conflict, but it does not affect juvenile law practice.** Two attorneys note that conflicts can happen, but the courts are able to hear cases when it is necessary.
- **Attorney has experienced no conflict.** Five attorneys responded that they have not experienced any conflict between the juvenile docket and other dockets.

Attorneys were asked to respond in narrative form to the question “*Does access to judicial time and docket availability impact the practice of law? If so, how?*” The answers show that a lack of docket availability in the Separate Juvenile Courts has a negative impact on the practice of juvenile law, while in areas that have County Courts sitting as Juvenile Court, many counties do not have any issues with docket availability, while some do.

- **Yes, access to judicial time impacts the practice of juvenile law.** Mostly attorneys from the Separate Juvenile Courts note that there is a significant wait for a hearing date, and if a matter is contested, the Court often does not have the time to hear the case. Attorneys practicing in County Courts sitting as Juvenile Courts note that there is a negative impact when the courts are only in session one or two times a month.
- **No, access to judicial time does not impact the practice of juvenile law.** Ten attorneys responded that there was no problem with access to judicial time, two attorneys practiced primarily in the Separate Juvenile Courts, and eight practiced primarily in County Courts sitting as Juvenile Courts.