



State of Nebraska Foster Care Review Office

ANNUAL REPORT 2018-2019

Issued September 1, 2019

Pursuant to Neb. Rev. Stat. 43-1303(4)

LB1078 (2018) effective July 19, 2018
changed the due date of the FCRO annual
report from December 1 to September 1
of each year.

advocate for the best interest of the individual child. Simultaneously, the data collected from every case file review is used to provide a system-wide view of changes, successes, and challenges of the complicated worlds of child welfare and juvenile justice.

Our role is to push those systems to best meet the needs of all children, and to ensure that children are better off when they leave out-of-home care than when they entered. The recommendations in this report are based on the careful analysis of the FCRO data that follows.

From the required yearly analysis and over 4,000 reviews of children's cases, **the FCRO finds that many problems in child welfare and juvenile justice remain to be addressed and some new issues have arisen.** In summary,

- Nebraska families continue to struggle with substance use, domestic violence, and access to mental health treatment.
- Child welfare has not yet made significant improvements to several persistent issues. This includes, but is not limited to, too many caseworker changes, children with multiple removals from their homes, adjudication delays, courts inconsistently holding required exception hearings, **courts often not making required federal SFA findings**, and older children infrequently attending court hearings that will impact their future.
- Juvenile Probation continues to have challenges across the state providing community-based services needed to prevent removals from the home, and creating transition plans for youth returning to their communities.
- For the second year in a row there was a decrease in the number of state wards, mainly due to more families being served via in-home, non-court services. However, it is unclear if those families are faring better because the FCRO does not have authority to provide oversight to the front-end of the child welfare system, there is no court involvement, and there is no other independent oversight to that part of the system.
- FCRO strongly encourages stakeholders to act upon the FCRO's recommendations from fiscal year 2017-18, most of which were not addressed this past year. Until needed improvements are made it is unlikely that Nebraska will see significant positive changes in outcome measures for children in its custody or care.

The FCRO will continue to tenaciously make recommendations, and to repeat unaddressed recommendations as applicable, until Nebraska's child welfare and juvenile justice systems have a stable, well-supported workforce that is strongly encouraged to utilize best practices and has access to a broad range of proven, effective services in all areas of the state.

We look forward to the opportunity to work with our system partners to improve the lives of Nebraska's most vulnerable citizens.

- **About one-fourth** of children's parents court-ordered to have visitation were not consistently visiting their children (*page 30*).

The Child Welfare System

- The FCRO was unable to determine if **5.9%** of children reviewed were safe in their current placement (*page 25*). This was frequently due to a lack of critical documentation about the placement, often due to a lack of a completed home study.
- Nearly **17%** of children reviewed changed placements within the prior six months (*page 26*). Most concerning, **27.7% of placement moves were due to provider request**, up from 24.4% in the prior fiscal year. Additionally, **5.4% of placement changes were due to allegations of abuse/neglect in the foster home**.
- Children in a trial home visit at the time of review were less likely than children placed out-of-home to have safety measures in their case plan (**89.6% and 94.4%, respectively**). Given that children in a trial home visit are returning to a setting that was at one point deemed unsafe and that trial home visits are less likely to be monitored by outside contractors for safety, it is especially critical that safety measures are well-thought out and documented for this population (*page 32*).
- **For over half of the children in out-of-home care reviewed, cases were stagnating and permanency is still far away** (*pages 34-35*). For **27.4%** of children out-of-home, there was no progress toward the primary permanency goal, and for an additional **25.2%** progress was minimal. Furthermore, **5.7% of 14 to 18 year olds with a permanency objective of reunification did not want to return home** (*page 34*).
- ICWA cultural plans had been developed for only **56.0%** of ICWA qualified children reviewed during the fiscal year (*page 40*).
- In FY 2018-19, **143 youth left the child welfare system on the day they reached legal adulthood having never reached permanency** (*page 5 and page 52*). Improvement is needed in preparing older children for adult lives, given that **29.8%** of those required to have a completed independent living assessment did not, **only 45.8%** of older youth identified their required transition team, and a significant number of older children were either not obtaining skills for adulthood (**16.0%**) or the FCRO could not determine if they were (**23.6%**).
- Approximately **1 in 4** children reviewed had a court-ordered concurrent permanency objective. And, in over **50%** of cases in which there was a concurrent objective, either partial or no progress was being made (*pages 35-36*).

Courts

- For approximately **1 in 3 children (30.7%)** reviewed, adjudication occurred more than 3 months after removal (*page 38*).
- Exception hearings should be held for all children in care 15 of the past 22 months, but for **28.2% of those children reviewed the exception hearing had not occurred**.

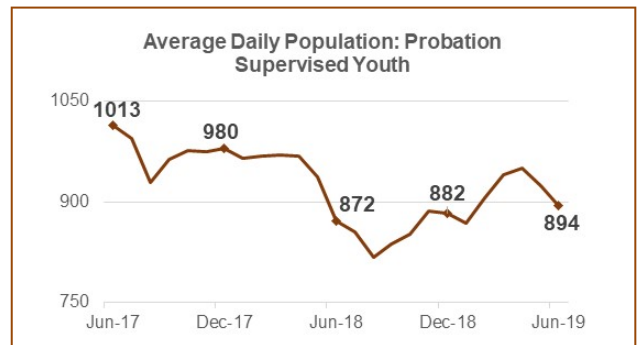
(page 39). The FCRO was unable to determine if the exception hearing had occurred for an additional **17.1%** of children.

- The FCRO is adamant that children's voices need to be heard throughout the entirety of a case, especially older children. **Yet, during FY 2018-19 just 14.6% of children aged 10-18 attended court hearings (page 40).** Furthermore, the court is to inquire if children 14-18 were involved in developing the case plan, however the FCRO could confirm this occurred in **only 42.7% of cases**, which was a significant increase from the 14.6% the previous year.
- **Only 1/3 of court orders contained the required Strengthening Families Act (SFA) findings (pages 40-41).**

Youth in Out-of-Home Care Supervised by the Office of Probation Administration

Increase in the population of Probation supervised youth in out-of-home care

From June 2017 to June 2018, the population of Probation supervised youth in out-of-home care has increased by **2.5%** (page 6). This slight increase in the population occurred after a significant decrease (**-14.4%**) in the previous fiscal year. Last year's population decrease was driven by large decreases in the use of out-of-home care in Lancaster and Douglas counties. During FY2018-19, Lancaster county's out-of-home population was stable throughout the year and Douglas county's out-of-home population increased (page 7). The peak average daily population of youth in out-of-home care occurred in April 2019 (**950**), and steadily decreased in the last two months of the fiscal year.



- Districts 1, 6, 7, and 10 have seen decreases in the number of youth in out-of-home care throughout FY2018-19.
- In addition to District 4J (Douglas county), Districts 2, 5, 8, 9, 11, and 12 have seen increases in the number of youth in out-of-home care throughout FY2018-19.

Probation Supervised Youth in Out-of-Home Care

- Racial disproportionality in the juvenile justice population continues to be a concern (pages 56-57). Youth who are Non-Hispanic Black or African American make up 5.6% of Nebraska's population, but **24.2%** of the Probation supervised youth in out-of-home care. Non-Hispanic American Indian youth are 1.1% of Nebraska's youth population, but **5.6%** of the out-of-home population.
- The majority (**59.8%**) of Probation supervised youth in out-of-home care are in a non-treatment congregate (group) care facility (page 57). Considering **89.8%** of reviewed

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ICWA. ICWA is the federal Indian Child Welfare Act, put in place to ensure that children of American Indian heritage were not unnecessarily removed from their extended family.⁵⁵

- The FCRO found that ICWA applied to 182 state wards reviewed.
 - For the 182 children, **102 (56.0%)** had a cultural plan written by NDHHS to preserve the child's cultural bonds as required under ICWA.

Child Involved in Case Planning. There is a federal expectation regarding child involvement in their case plan. DHHS is to start seeking the child's input at age 10. Courts are to inquire at disposition and review hearings if the child was involved in the plan for all children who have reached their 14th birthday. The court's inquiry should be documented.

- **42.7%** of cases of child age 14-18 had documentation the court inquired if the child was involved in the plan. **This is a significant improvement from the 14.5% in the last fiscal year, but clearly there is room for improvement.**

Children Attending Court Hearings. It can be very important for older children and youth to feel heard by the court that is making decisions about their future.

- Yet, in 1,731 FCRO reviews of children aged 10-18 during FY2018-19, **only 14.6% were documented as having attended their court hearings.**

Required SFA Findings Made by the Court. The federal Strengthening Families Act has a requirement for certain findings to be made by the courts. As of July 2017, Courts are required under the Nebraska Strengthening Families Act (SFA) at every dispositional, review, or permanency planning hearing:

1. To make a determination regarding steps DHHS is taking to ensure the reasonable and prudent parenting standard.
2. To make a determination regarding whether the child has regular opportunities to engage in developmentally appropriate activities.
3. To consult with the child in an age/developmentally appropriate manner about such activities.
4. Make a finding on whether any youth age 14 and older were involved in the case plan, and make a finding as to the appropriateness of programs and services designed to help the youth transition to successful adulthood.
5. Make a finding for youth 16 and older (regardless of permanency plan) as to whether the youth has received documents as required in 43-1311.03(9), and if not whether the DHHS plan for the provision of such documents is adequate.
6. Make a determination for youth 16 and older with a plan of APPLA that it is in the best interests of the youth and list the compelling reasons that other permanency objectives are not possible for that youth.

⁵⁵ Children under tribal court jurisdiction are not tracked or reviewed by the Foster Care Review Office. The numbers quoted here are for State Wards with ICWA qualification.

During FY2018-19:

- **For the second year in a row, less than one-third of the court orders reviewed contained the required findings, so clearly there is a need for improvement in this area.**

TERMINATION OF PARENTAL RIGHTS

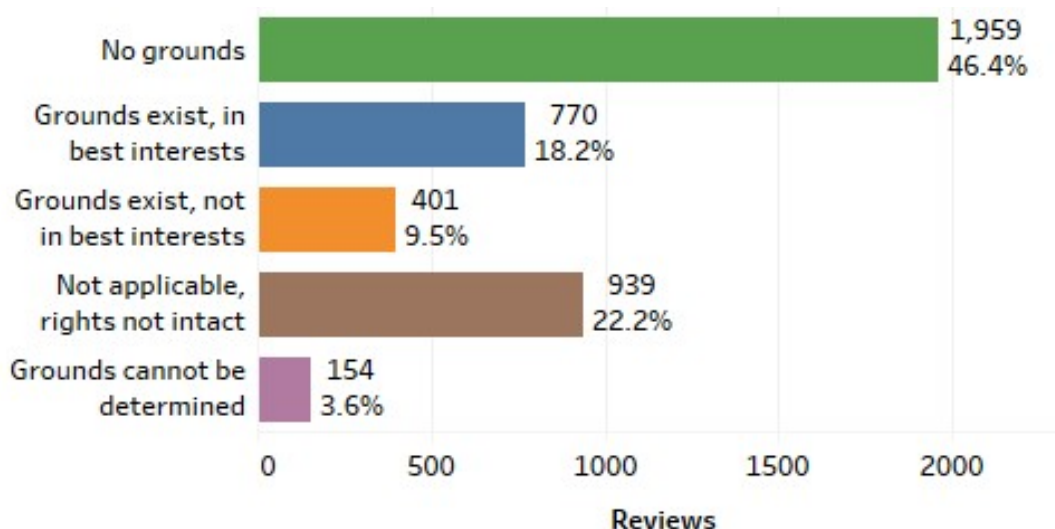
Parents have a fundamental right to the care, custody, and control of their children – but that right must be balanced with children’s critical need for safety, stability, and permanency.

Termination of parental rights (TPR) is the most extreme remedy for parental deficiencies. With a TPR, parents have lost all rights, privileges, and duties regarding their children and children’s legal ties to the parent are permanently severed. Severing parental ties can be extremely hard on children, who in effect become legal orphans; therefore, in addition to proving parental unfitness, Neb. Rev. Stat. §43-292 requires proof that the action is in children’s best interests.

Grounds for TPR and Best Interest of the Child. The FCRO is required by Neb. Rev. Stat. §43-1308 to make findings regarding termination of parental rights for each child reviewed: 1) if grounds appear to exist, 2) if a return to parents is likely, and 3) if a return to parents is unlikely what should be the permanency goal.

Figure 35 illustrates the findings, starting with the status of apparent grounds for termination of parental rights. In about **18.2%** (770 of 4,223) of children’s cases, **grounds for a termination of rights, including best interests, appears to exist.**

Figure 35: Existence of TPR Grounds and Best Interests, n=4,223



Alternative Permanency if Return to Parent Unlikely. For **1,877 children**, at the time of their review, it was either likely they would return home to their parents or they had already returned home, under court and NDHHS supervision, through a trial home visit. For the

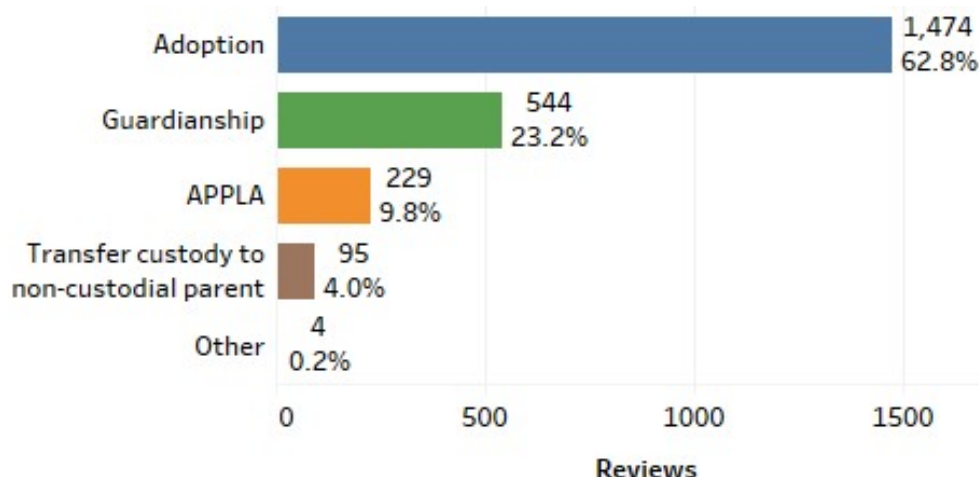
Child Welfare

remaining **2,346 children**, the board found that returning to the home from which they were removed was unlikely. As shown in **Figure 36**, when children are unlikely to return home, local review boards most frequently recommend a permanent family through adoption.

In some cases, such as where children do not want to completely sever ties to the parents, guardianship may be the best option. The “APPLA” category could include preparing for adult living for youth age 16 or older that are near adulthood and will exit the system without a permanent family in place (either via reunification, adoption, or guardianship).

Whether or not return to the parents is likely, the FCRO works to ensure that children do not linger unnecessarily in out-of-home care.

**Figure 36: Alternative Permanency Objective
if Return to Parents Unlikely, n=2,346**



PERMANENCY PLANS OF ADOPTION

Children Free for Adoption. Adoption cannot be finalized until the rights of both parents have been addressed. This can happen if the parents voluntarily relinquish their rights, if their rights are terminated by a court, if it is proven the parent is deceased, or through a procedure for advising an absent parent of the pending termination court action via publication.

- During FY2018-19, the FCRO reviewed the cases of **775 children whose primary plan was adoption**; **495 (63.9%)** of them were free for adoption regarding both parents.

Children Placed in Pre-Adoptive Homes. The FCRO also considers some facts about the potential pre-adoptive homes:

- **553 (71.4%)** of the 775 children were in a pre-adoptive home.