

OMAHA MODEL COURT EXPANDED PROTECTIVE CUSTODY HEARINGS

**WORKING TOGETHER TO
IMPROVE THE LIVES OF
CHILDREN AND FAMILIES**

USERS GUIDE*

Separate Juvenile Court of Douglas County

Start Date: July 28, 2004

We express our deep gratitude for the Pima County Juvenile Court for its Users Manual as the template for our Users Guide, and to the National Council of Juvenile and Family Court Judges as these principles are based on *Resource Guidelines Improving Court Practice in Child Abuse & Neglect Cases*, Spring, 1995; and *Adoption and Permanency Guidelines Improving Court Practice in Child Abuse and Neglect Cases*, Fall, 2000.

OVERVIEW OF THE EXPANDED PROTECTIVE CUSTODY HEARING

The first hearing in an abuse/neglect case is called the Protective Custody Hearing (PCH) or detention hearing. This hearing will occur on the next Wednesday from the filing of the petition and is the initial hearing/temporary custody hearing where children have been removed from home. Time has been blocked on all five Judges' calendars on Wednesdays from 9:00 a.m. to Noon. This time may be expanded earlier if necessary. The total time for this first hearing is sixty minutes. The old system allowed for fifteen to thirty minutes for the PCH. The courtrooms are provided as a work space. The PCH has two components: the pre-hearing conference and the protective custody hearing.

WHAT ARE THE STEPS IN DOUGLAS COUNTY THAT PRECEDE THE PROTECTIVE CUSTODY HEARING?

1. Child Protective Services receives the referral from the central intake unit, law enforcement, or other source.
2. CPS intake worker investigates the allegations.
3. The CPS intake worker makes the decision to remove and/or request that an abuse/neglect petition be filed within forty-eight hours of removal.
4. The Deputy County Attorney takes steps so that the parent is served with notice of PCH and petition.
5. Deputy County Attorney contacts Juvenile Court Administration regarding new case.
6. Juvenile Court Administration/court staff assigns the court, date and attorneys to the case.
7. As soon as the petition is filed, copies are made available to the CASA director, the assigned attorneys, and the CPS unit.
8. The expanded PCH is scheduled for the next Wednesday after removal and filing of the petition.
9. The hearing date is confirmed with the family through the following ways:
 - Juvenile Court Administration will mail a confirmation letter.
 - CPS case worker will provide information in writing to the family.
 - The assigned defense attorney will confirm information with their clients.
10. Defense attorneys must meet with their clients prior to PCH, if possible. Parents are to appear fifteen minutes in advance of hearing.
11. Guardian ad Litem for the child must meet with the child and the placement, if possible.
12. CPS intake worker will confirm parents' appearance at the PCH, and will transport if necessary.
13. CPS intake worker will provide the initial report and case plan to the court reporter by noon of the day prior to the hearing.
14. Attorneys will contact the court reporter and obtain a copy of the initial report and case plan.
15. Parents are given supervised visitation with the child prior to the PCH if safety of the child can be maintained.
16. The intake and ongoing CPS workers appear at the expanded PCH.

WHAT HAPPENS AT THE PRE-HEARING CONFERENCE?

1. Parties are asked to appear at the court approximately fifteen minutes before the conference to discuss issues.
2. The pre-hearing conference is convened for approximately thirty to forty-five minutes.
3. The conference is held in the courtroom.
4. Concord Center mediator provides a brief overview of the Omaha Model Court PCH.
5. Parties are directed to discuss issues surrounding placement, visitation, services, paternity, ICWA and the allegations (if appropriate).
6. Parties are reminded that they are to consider the "safety and best interests of the child".
7. Concord Center mediator begins the conference with introductions of all participants.
8. The case plan is reviewed.
9. Parties discuss concerns and identify points of agreement.
10. Issues are negotiated with parents actively participating.
11. Upon completion of the conference, the judge's bailiff is notified.
12. Any agreements will be presented to the judge for acceptance.
13. The judge will rule upon issues that are not resolved.
14. Concord Center staff is responsible for facilitating the conference.
15. Intake and on-going CPS workers are present for the hearing.
16. If no agreements are reached, then a temporary custody hearing is held. If there is insufficient time or inability to proceed, notice will be given on the record of the hearing date.

WHO PARTICIPATES IN THE PRE-HEARING CONFERENCE?

- Attorneys
- Parents
- Extended family members and friends, if appropriate
- CPS Intake and on-going case workers
- Treatment providers, if appropriate
- Guardian ad Litem, CASAs, mediator, foster parents, if appropriate, children if appropriate

WHAT ARE THE GOALS OF THE PRE-HEARING CONFERENCE?

1. To focus on the safety and best interest of the child(ren).
2. To reach agreement on visitation, placement, expedited Family Group Conference referral for relative placement, paternity, ICWA, services available to the family.
3. To gather input from extended family members and friends, if appropriate.
4. To discuss possible amendments to the petition for adjudication.
5. To move the parties and the process from adversarial to cooperative roles.
6. To provide the family with information about the abuse/neglect process.
7. To reach agreement on the case plan process.
8. To identify possible relative and kinship placements early in the case.
9. To identify all family resources and needs early in the case.

WHAT HAPPENS AT THE COURT HEARING?

1. The Protective Custody Hearing occurs immediately following the pre-hearing conference and is set for fifteen minutes. The participants in the conference remain in the Courtroom.
2. Upon agreement of the parties, the judge reviews the case report, the proposed case plan and any other relevant information that has been provided.
3. The judge asks the Deputy County Attorney and the other attorneys to report on the agreements reached in the pre-hearing conference.
4. Key decisions for the Court:
 - Should the child be returned home immediately or be kept in care prior to the adjudication?
 - What services will allow the child to remain safely at home?
 - Will the parties voluntarily agree to participate in such services?
 - Has NDHHS made reasonable efforts to avoid protective placement of the child?
 - Are responsible relatives or other responsible adults available to care for the child?
 - Is the placement proposed by the NDHHS the least disruptive and the most family-like setting that meets the needs of the child?
 - Will the implementation of the service plan and the child's continued well-being be monitored on an on-going basis by a GAL, Protection and Safety Worker, CASA?
 - Are restraining orders or other orders expelling any allegedly abusive parent from the home appropriate?
 - Are orders needed for examinations, evaluations, or immediate services?
 - Order expedited Family Group Conferencing?
 - Identify the terms and conditions for parental visitation
 - Refer the matter to Child Support Enforcement
5. The Court sets other hearings, including pretrial and/or settlement conferences within ten to fifteen days of the PCH. Notice of the next hearing date is given on the record.
6. The Court provides an order for the parties following the hearing, if possible, or the next day, if possible.
7. All Omaha Model Court PCH are set on specific date and time on each Wednesday from 9:00 to Noon. Some Courts may set hearings beginning at 8:00 a.m. if further time slots are needed.

OTHER ISSUES TO BE ADDRESSED IN COURT:

1. Set other hearings.
2. Provide orders to all parties. Attempt to identify the whereabouts of non-custodial parents.
3. Make inquiries as to the identity of any father, and have affidavit of paternity executed.
4. If the parents were not married at the time of the child(ren)'s birth, inquire whether paternity has been established. If the parents were married at the time of the child(ren)'s birth, and both parents agree on the issue of paternity, order that the paperwork for paternity be prepared and direct who shall prepare that paperwork. The paternity action can be consolidated with the abuse/neglect action.