

# BENCH CARD: Exception Hearings



**Neb. Rev. Stat. § 43-292.02** requires that the state file a petition for TPR if a juvenile has been in foster care 15 out of the most recent 22 months or it is determined the juvenile is an abandoned infant or the parent has killed another child of the parent or seriously injured the juvenile or another child of the parent, unless an exception is found.

## **Exceptions to a termination of parental rights include:**

1. The child is being cared for by a relative;
2. The Department of Health and Human Services has documented in the case plan or permanency plan a compelling reason for determining that such a filing is not in the child's best interests; or
3. The family has not had a reasonable opportunity to avail themselves of the services deemed necessary.

## PROCEDURE

- » Within 30 days of after a child has been in care for 15 of the most recent 22 months, the Court shall hold a hearing on the record to determine whether the state is required to file a termination of parental rights petition or an exception exists. *See* Neb. Rev. Stat. § 43-292.03

## TERMINOLOGY

Except in proceedings under the Nebraska Indian Child Welfare Act, **relative** means father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, nephew, or niece;

*Neb. Rev. Stat. Ann. § 43-245(21)*

## Sample Court Order Language

The Court finds that an exception to the filing of a petition for a termination of parental rights exists in that

- a. The child is being cared for by a relative, the child's

\_\_\_\_\_

\_\_\_\_\_

- b. The Department of Health and Human Services has documented in the case plan or permanency plan, a compelling reason for determining that filing such a petition would not be in the best interests of the juvenile and that reason is

\_\_\_\_\_

\_\_\_\_\_

- c. The family of the juvenile has not had a reasonable opportunity to avail themselves of the services deemed necessary in the case plan or permanency plan, which include

\_\_\_\_\_

\_\_\_\_\_

**Therefore, a termination of parental rights petition is not required.**

OR

**The Court finds that no exception to the filing of a termination of parental rights petition exists.**

# BENCH CARD: Exception Hearings Relevant Statutes



(1) A petition shall be filed on behalf of the state to terminate the parental rights of the juvenile's parents or, if such a petition has been filed by another party, the state shall join as a party to the petition, and the state shall concurrently identify, recruit, process, and approve a qualified family for an adoption of the juvenile, if:

(a) A juvenile has been in foster care under the responsibility of the state for fifteen or more months of the most recent twenty-two months; or

(b) A court of competent jurisdiction has determined the juvenile to be an abandoned infant or has made a determination that the parent has committed murder of another child of the parent, committed voluntary manslaughter of another child of the parent, aided or abetted, attempted, conspired, or solicited to commit murder, or aided or abetted voluntary manslaughter of the juvenile or another child of the parent, or committed a felony assault that has resulted in serious bodily injury to the juvenile or another minor child of the parent. For purposes of this subdivision, infant means a child eighteen months of age or younger.

...

(3) The petition is not required to be filed on behalf of the state or if a petition is filed the state shall not be required to join in a petition to terminate parental rights or to concurrently find a qualified family to adopt the juvenile under this section if:

(a) The child is being cared for by a relative;

(b) The Department of Health and Human Services has documented in the case plan or permanency plan, which shall be available for court review, a compelling reason for determining that filing such a petition would not be in the best interests of the juvenile; or

(c) The family of the juvenile has not had a reasonable opportunity to avail themselves of the services deemed necessary in the case plan or permanency plan approved by the court if reasonable efforts to preserve and reunify the family are required under section 43-283.01.

*Neb. Rev. Stat. Ann. § 43-292.02*

*AND*

The court may terminate all parental rights between the parents or the mother of a juvenile born out of wedlock and such juvenile when the court finds such action to be in the best interests of the juvenile and it appears by the evidence that one or more of the following conditions exist:

(1) The parents have abandoned the juvenile for six months or more immediately prior to the filing of the petition;

(2) The parents have substantially and continuously or repeatedly neglected and refused to give the juvenile or a sibling of the juvenile necessary parental care and protection;

(3) The parents, being financially able, have willfully neglected to provide the juvenile with the necessary subsistence, education, or other care necessary for his or her health, morals, or welfare or have neglected to pay for such subsistence, education, or other care when legal custody of the juvenile is lodged with others and such payment ordered by the court;

(4) The parents are unfit by reason of debauchery, habitual use of intoxicating liquor or narcotic drugs, or repeated lewd and lascivious behavior, which conduct is found by the court to be seriously detrimental to the health, morals, or well-being of the juvenile;

(5) The parents are unable to discharge parental responsibilities because of mental illness or mental deficiency and there are reasonable grounds to believe that such condition will continue for a prolonged indeterminate period;

(6) Following a determination that the juvenile is one as described in subdivision (3) (a) of section 43-247, reasonable efforts to preserve and reunify the family if required under section 43-283.01, under the direction of the court, have failed to correct the conditions leading to the determination;

(7) The juvenile has been in an out-of-home placement for fifteen or more months of the most recent twenty-two months;

(8) The parent has inflicted upon the juvenile, by other than accidental means, serious bodily injury;

(9) The parent of the juvenile has subjected the juvenile or another minor child to aggravated circumstances, including, but not limited to, abandonment, torture, chronic abuse, or sexual abuse;

(10) The parent has (a) committed murder of another child of the parent, (b) committed voluntary manslaughter of another child of the parent, (c) aided or abetted, attempted, conspired, or solicited to commit murder, or aided or abetted voluntary manslaughter of the juvenile or another child of the parent, or (d) committed a felony assault that resulted in serious bodily injury to the juvenile or another minor child of the parent; or

(11) One parent has been convicted of felony sexual assault of the other parent under section 28-319.01 or 28-320.01 or a comparable crime in another state.

*Neb. Rev. Stat. Ann. § 43-292.0*