
ARTICLE

Improving the Court Process for Alaska's Children in Need of Aid*

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This Article examines how well the Alaska Court System meets the needs of abused and neglected children, their troubled families and society more generally. The Article provides an overview of state and federal laws that govern Child in Need of Aid ("CINA") cases in Alaska as well as the procedural steps of a CINA adjudication. It then discusses the data and findings of the Alaska Judicial Council's assessment of the CINA process, highlighting how the court system handles each of the stages in a CINA case, including reasonable efforts findings, delay issues and adequacy of notice and party representation. This Article concludes by offering recommendations for improving the court process for Alaska's children in need of aid.

I. INTRODUCTION

On September 19, 1996, the Anchorage Daily News reported on its front page "an alarming increase in the incidence of child abuse and neglect in this country" ¹ The number of these child abuse cases doubled from an estimated 1.4 million cases in 1986 to an estimated 2.8 million in 1993. ² Alaska has by no means escaped this crisis. The Alaska Division of Family and Youth Services reported a 67% increase in reports of harm to children from 1989 to 1993, ³ and a 99.4% increase from 1989 to 1995. ⁴

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1. Barbara Vobejda, *Child Abuse Doubles*, ANCHORAGE DAILY NEWS, Sept. 19, 1996, at A1.

2. *See id.*

3. *See* DIVISION OF FAMILY AND YOUTH SERVICES, FISCAL YEAR 1993

The court's role in child welfare cases has evolved and become more complex over the last two decades. In the 1970's, the juvenile court was expected only to determine whether a child had been maltreated, and the focus was on the need to rescue the child from abusive or neglectful parents.⁵ In 1980, Congress responded to problems in the child welfare system by changing its policy toward child welfare.⁶ Now the courts are expected to help reform troubled families while at the same time protecting the children. If family preservation fails, the court is expected to ensure that each maltreated child receives a safe, permanent and stable home.⁷

These cases deeply affect the people directly involved. For the child who is the subject of a child in need of aid proceeding (a "CINA" case),⁸ being separated from the parents is a highly traumatic event. Young children have different perceptions of time than do adults. From the child's perspective, ninety days (the length of time between court review hearings for children taken out of the home) is an entire summer or a third of the school year. As an experienced juvenile court judge has noted, even children who have been abused or neglected often miss their parents and long to be reunited with them.⁹

CINA cases also affect society in general. Caring for children in foster care is expensive. Caring for children with serious behavioral and emotional problems is more expensive still, and some say that the population of foster children suffers increasingly from these problems. Successful interventions might help foster children grow up to become productive citizens, while unsuccessful interventions will not break the cycles of abuse and dysfunction.¹⁰

ANNUAL REPORT 8 (1994) [hereinafter DFYS FY 1993 ANNUAL REPORT].

4. See DIVISION OF FAMILY AND YOUTH SERVICES, FISCAL YEARS 1994 AND 1995 ANNUAL REPORT 12 tbl. 1 (1996) [hereinafter DFYS FY 1994 & 1995 ANNUAL REPORT].

5. See MARK HARDIN, JUDICIAL IMPLEMENTATION OF PERMANENCY PLANNING REFORM: ONE COURT THAT WORKS 1 (1993).

6. Congress changed its policy by passing the Adoption Assistance and Child Welfare Act of 1980, 42 U.S.C. §§ 670-677 (1994). The legal requirements of the Act are discussed in more detail in Part II.

7. See ALAN WATAHARA & TERRI LOBDELL, THE CHILDREN NOBODY KNOWS: CALIFORNIA'S FOSTER CARE-DEPENDENCY SYSTEM 7 (1990).

8. A court can assume jurisdiction over a minor child if it finds the child to be a child in need of aid as a result of parental neglect or abuse. See ALASKA STAT. § 47.10.010(a) (Michie 1996).

9. See Leonard Edwards, *Preface*, in WATAHARA & LOBDELL, THE CHILDREN NOBODY KNOWS, *supra* note 7, at 2.

10. Several studies have noted connections between abuse or neglect of a child and later development of violent and delinquent behavior. See TERENCE P. THORNBERRY, URBAN DELINQUENCY AND SUBSTANCE ABUSE, INITIAL FINDINGS: RESEARCH SUMMARY (1994); CATHY SPATZ WIDOM, THE CYCLE OF VIOLENCE

CINA cases are among the most difficult cases for the courts. Aside from the practical difficulty of deciding what is best for someone else's children, these cases present a very real potential for conflict among the rights of children, parents, tribes and institutional players such as the court system, the Department of Law, the Public Defender and the Department of Health and Social Services.¹¹ For example, a troubled parent has the right to have enough time to work through a case plan; yet children need certainty and prompt decisions. The parties look to judges to hold people accountable, yet many judges feel they lack the expertise or the authority to manage cases actively.

In 1993, Congress approved grants to state court systems to improve their handling of child maltreatment cases. Courts were to assess how they handle abuse, neglect, foster care and adoption litigation (using methodical observation and collection of data), then develop a plan to improve the administration of justice in foster care and adoption cases and implement the plan.¹² The legislation anticipated examining issues such as completeness and depth of hearings (emphasizing effective compliance with state and federal mandates), sufficient and timely notice to parties, quality of parties' legal representation, efficient and timely decision-making, adequacy of funding and quality of treatment of parties. The legislation also encouraged courts to assess the selection and training of judicial officers, judicial time to prepare for and conduct hearings, role and training of court staff, case flow management to avoid delays, selection and training of attorneys and guardians ad litem ("GAL") and the use of technology in order to plan fully for improved court roles in foster care.¹³ The Alaska Court System contracted with the Alaska Judicial Council to carry out the assessment.

This Article provides an overview of the Alaska Judicial Council's assessment. Part II reviews the intent and major provisions of the federal and state laws governing CINA cases in Alaska, as well as their interpretation by Alaska courts. Part III discusses the data and findings from the assessment, including information about the scope of child abuse and neglect cases in Alaska and the court system's role in each legal stage of the CINA process. Part IV offers recommendations for improving the court

(1992).

11. Within the Department of Health and Social Services, the Division of Family and Youth Services ("DFYS") handles child abuse and neglect matters in Alaska.

12. See MARK HARDIN, IMPROVING STATE COURT'S PERFORMANCE IN CHILD PROTECTION CASES: USER'S MANUAL FOR CONDUCTING YOUR COURT ASSESSMENT 1 (1995).

13. See *id.* at 4.

process for Alaska's children in need of aid. Part V concludes with a brief comment on the importance of improving Alaska's foster care system. Each of these will be discussed in turn.

II. THE LAW GOVERNING CINA CASES IN ALASKA

Child in Need of Aid cases are governed by a combination of laws, primarily the federal Adoption Assistance and Child Welfare Act of 1980,¹⁴ Alaska Statutes section 47.10¹⁵ and the Alaska Supreme Court Child in Need of Aid Rules ("CINA Rules").¹⁶

A. Federal Adoption Assistance and Child Welfare Act of 1980

In 1980, Congress found that foster care systems across the country were failing to provide maltreated children with stable and permanent homes.¹⁷ It found that children were being needlessly removed from their homes and placed into foster care, were repeatedly moved from foster home to foster home and were left in foster care indefinitely without finding permanent placements. To address these problems, and to ensure the overall quality and safety of foster care placements, Congress created a comprehensive set of requirements and fiscal incentives to improve state foster care practice.¹⁸

The Adoption Assistance and Child Welfare Act broadened the role of state courts in cases involving abused and neglected children. Before 1980, state court judges addressed two basic questions in such cases: whether the child had been abused and neglected, and whether the child should be removed from the home.¹⁹ Now, the Adoption Assistance Act requires more from state courts. First, before removing the child from the home or moving to terminate parental rights, the court must determine whether the child welfare agency has made "reasonable efforts" to provide so-

14. 42 U.S.C. §§ 670-677 (1994).

15. ALASKA STAT. § 47.10 (Michie 1996).

16. ALASKA R. CINA P. Child in Need of Aid cases involving Indian children are also governed by the Indian Child Welfare Act of 1980 ("ICWA"), 25 U.S.C. §§ 1901-1923 (1994). ICWA requires courts to recognize the critical role of the child's tribe in determining the future of the child. For this reason, ICWA often sets stricter standards than do Alaska Statutes section 47.10 and the Alaska CINA Rules to be applied when adjudicating an Indian child as a child in need of aid. These differences in the law will be noted where appropriate throughout this Article.

17. See MARK HARDIN, AMERICAN BAR ASSOCIATION, TEN YEARS LATER: IMPLEMENTATION OF P.L. 96-272 BY THE COURTS (1990). Public Law 96-272 is codified at 42 U.S.C. §§ 670-677 (1994).

18. See *id.*

19. See, e.g., *In re C.L.T.*, 597 P.2d 518 (Alaska 1979).

cial services and parent education to the family.²⁰ Second, a case plan must be developed for each child in foster care, and must be reviewed at least once every six months for progress toward returning home or being placed for adoption.²¹ Third, the court must hold a hearing within eighteen months to determine a permanent placement for the child.²² Finally, courts must implement procedural safeguards for parents when children are removed from the home or when there are changes in placement or visitation.²³

The Adoption Assistance Act also reorganized federal funding for foster care to give states greater incentive to find children permanent homes. It created a new funding source for social services to assist parents and prevent removal from the home and provided maintenance funds and AFDC eligibility for foster parents.²⁴ While Congress repealed some of the Act's financial incentives to states in 1994,²⁵ the procedural protections and emphasis on permanency planning remain. Most of the Adoption Assistance Act's requirements have been incorporated into Alaska law (Alaska Statutes section 47.10) and the Alaska CINA Rules. The federal courts have issued few rulings interpreting the Act.²⁶

B. Alaska Statutes Section 47.10

Alaska Statutes section 47.10 governs CINA cases and foster care.²⁷ Key provisions permit the state to take emergency custody of a neglected or abused child, seek placement out of the home and petition for termination of parental rights. The statute incorporates many of the requirements of the federal Adoption Assistance Act, and protects the confidentiality of children's proceedings.²⁸ The statute addresses four main issues: jurisdiction of the

20. See 42 U.S.C. § 671(a)(15) (1994).

21. See *id.* § 671(a)(16).

22. See *id.* § 675(5)(C). Alaska Statutes section 47.10.080(l) also calls for the court to review the case 18 months after the child is removed from the home. Until recently, Alaska courts held permanency planning hearings only sporadically.

23. See 42 U.S.C. § 675(5)(C).

24. See *id.*

25. See Pub. L. No. 103-432 (codified as amended at 42 U.S.C. § 671(b) (1994)).

26. The only question thoroughly addressed by the federal courts is whether parents and children have a private right of action to sue the state government for damages for violations of the Adoption Assistance Act, such as failure to comply with a case review plan or failure to use reasonable efforts. In *Suter v. Artist M.*, 503 U.S. 347 (1992), the United States Supreme Court determined that the Act did not create a private right to sue the state for damages.

27. ALASKA STAT. § 47.10 (Michie 1996).

28. See 42 U.S.C. §§ 670-677 (1994); ALASKA STAT. § 47.10.090; see also 25 U.S.C. § 1912(c) (1994); ALASKA R. CINA P. 22.

court, emergency custody and temporary placement, adjudication and disposition, and termination of parental rights.

Alaska Statutes section 47.10.010(a)(2) sets out the six situations that create CINA jurisdiction in the court:

(A) the child is habitually absent from home or refuses to accept available care; or the child has no one caring or willing to provide care, including abandonment by the parent;²⁹

(B) the child needs substantial medical care or mental health care that the parent has knowingly failed to provide;

(C) the child has suffered or is likely to suffer substantial physical harm caused by the parent or by the parent's failure to supervise the child;

(D) the child has been or is likely to be sexually abused;

(E) the child is committing delinquent acts as a result of the parent's pressure or approval;

(F) the child has suffered substantial physical abuse or neglect as a result of conditions created by the parent³⁰

Few of these provisions have engendered much litigation. One exception, however, has been the language in subsection A: "having no parent, guardian, custodian, or relative caring or willing to provide care."³¹ In one case, the trial court cited subsection A when it terminated the parental rights of a mother who was willing but unable to care for her children (the mother could not meet the children's significant needs for structure and nurturing).³² The supreme court disagreed with the trial court's reading of the statute, holding that the rights of a willing parent could not be terminated for that reason. It interpreted subsection A to cover only situations where a child refuses the parent's care or where the child has been abandoned by the parent, situations of equal seriousness to the conditions described in subsections B-F. It held that inability to care must arise under one of those sections, not just a generalized inability to meet a child's needs.³³ In another case, the supreme court held that adjudication is inappropriate if a relative of

29. "Parent" here refers to parents, guardians, or custodians. For purposes of subsection (A), the court also will consider whether a suitable relative is caring or willing to provide care for the child. *See In re J.L.F.*, 912 P.2d 1255, 1260-61 (Alaska 1996).

30. *See* ALASKA STAT. § 47.10.010(a)(2).

31. "Caring" is defined as providing for the physical, emotional, mental, and social needs of the child. ALASKA STAT. § 47.10.990(1).

32. *See In re S.A.*, 912 P.2d 1235, 1239, 1242 (Alaska 1996).

33. The court overruled contrary language or holdings in three of its previous cases. *See id.* at 1242. This ruling provoked a strongly worded dissent, arguing that subsection (A) is concerned with performance, not with the good intentions or willingness of a parent already shown to be incapable. *See id.* at 1243.

ordinary parenting ability is willing to care for the children.³⁴

Alaska Statutes section 47.10.020 allows a state social worker who investigates and substantiates a report of harm to a child to file a petition for emergency custody.³⁵ The Alaska Division of Family and Youth Services ("DFYS") can take emergency custody of a minor under circumstances indicating the need for immediate removal from the home, such as abandonment, gross neglect threatening the child's life or health, child abuse or neglect³⁶ or sexual abuse.³⁷ DFYS commences court proceedings by filing a petition for temporary custody or a petition for adjudication, alleging that the child is in need of aid under Alaska Statutes section 47.10.010(a).³⁸ At this hearing, the court determines whether there is probable cause to believe the minor is a child in need of aid and that the child's welfare requires immediate assumption of custody.³⁹ In addition to the probable cause finding, the court also decides if DFYS made reasonable efforts to offer services to the family to prevent removal from the home.⁴⁰ The possible outcomes of the temporary custody hearing are determined by statute and applied in the court rules.⁴¹ If the court finds probable cause to believe that the child is a child in need of aid, it can return the child to the parents subject to the supervision of DFYS, or it can approve removal from the home, committing the child to DFYS for temporary placement, usually in foster care.⁴² If the court does

34. See *In re J.L.F.*, 912 P.2d at 1260-61.

35. See ALASKA STAT. § 47.10.020 (Michie 1996); ALASKA R. CINA P. 6(b).

36. Alaska Statutes section 47.17.290 defines "child abuse or neglect" as "physical injury or neglect, mental injury, sexual abuse, sexual exploitation, or maltreatment of a child under the age of 18 by a person under circumstances that indicate the child's health or welfare is harmed or threatened thereby."

37. See ALASKA STAT. § 47.10.142 (a). Emergency removal under ICWA requires a showing of "imminent physical damage or harm." 25 U.S.C. § 1922 (1994).

38. See ALASKA R. CINA P. 7(a). Special notice provisions apply for Indian tribes. See *id.* (applying 25 U.S.C. § 1912).

39. See *id.* 6(b)(3); ALASKA STAT. § 47.10.142. In the case of an Indian child, the court may not order removal unless necessary to prevent imminent physical harm to the child. See ALASKA R. CINA P. 6(b)(3) (applying 25 U.S.C. § 1922 (1994)). Many CINA workers refer to this hearing as a probable cause hearing.

40. See ALASKA R. CINA P. 10(c)(4), 15(g) (applying 42 U.S.C. § 671(a)(15) (1994)). The "reasonable efforts" requirement can be fulfilled by counseling, supervision, parenting classes, or other services to strengthen the family and help the parent. In cases involving Indian children, DFYS must satisfy the court that it made "active efforts" to provide services to prevent the breakup of the Indian family and that these efforts were unsuccessful. See 25 U.S.C. § 1912(d) (1994).

41. See ALASKA STAT. § 47.10.030(c); ALASKA R. CINA P. 10(c); E.A. v. State, 623 P.2d 1210, 1213 (Alaska 1981).

42. See ALASKA STAT. § 47.10.142(e); ALASKA R. CINA P. 10(c)(2)-(4).

not find probable cause to believe that the child is in need of aid, it dismisses the petition⁴³ and returns the child to the parents.⁴⁴

For adjudication to occur, Alaska Statutes sections 47.10.020(a)(1)(B) and (a)(2) require DFYS to petition the court to adjudicate the child a child in need of aid.⁴⁵ To make its adjudicatory findings, the court hears evidence or reviews stipulations, then makes findings of fact as to whether the child is a child in need of aid.⁴⁶ DFYS has the burden of proving by a preponderance of the evidence that the child is a child in need of aid.⁴⁷ If it finds the child to be in need of aid, the court orders a disposition.⁴⁸ At the disposition hearing, the court decides the placement for the child, and addresses the case plan for the parents.⁴⁹ The court has four choices in determining the placement of the child. First, if the court finds the child in need of aid, it may order the child committed to DFYS for placement in an appropriate setting.⁵⁰ Second, if the court finds the child in need of aid, it may order the child released to the parents or other suitable person, with or without the supervision of DFYS.⁵¹ Third, if clear and convincing evidence shows that the child is in need of aid as a result of parental conduct that is likely to continue, the court may terminate the rights of one or both of the parents and commit the child to DFYS or to a legal guardian.⁵² DFYS may also consent to the child's adoption at this

43. See ALASKA R. CINA P. 10(c)(1). The court may dismiss any petition at any point based on good cause and return the child to the parent. See *id.* 7(f).

44. See ALASKA STAT. § 47.10.080(e).

45. See *id.* § 47.10.020(a)(1)(B), (a)(2).

46. See ALASKA R. CINA P. 15(d).

47. See ALASKA R. CINA P. 15(c).

48. Before the disposition hearing, DFYS prepares a report detailing family behavior, previous efforts to work with the family, reasons why the child can not be protected in the home, and a description of any harm that might result to the child from removal. See ALASKA STAT. § 47.10.081(b); ALASKA R. CINA P. 16(a). The guardian ad litem ("GAL") also writes and files a report summarizing the child's status and recommending to the court things the parents and DFYS should do to promote the child's best interests. (The GAL's report is not required by court rule or state law.) Disposition for an Indian child requires additional efforts to place the child in an Indian home, in accord with the placement preferences of ICWA. See ALASKA R. CINA P. 16(a) (applying 25 U.S.C. § 1915 (1994)).

49. CINA Rule 17(a) defines the purpose of a disposition hearing as "to determine the appropriate disposition of a child who has been adjudicated a child in need of aid."

50. See ALASKA STAT. § 47.10.080(c)(1). The placement, which may last for two years or until the minor's 19th birthday, may not be extended without proof that the child continues to be in need of aid. See *id.* § 47.10.083.

51. See *id.* § 47.10.080(c)(2).

52. See *id.* § 47.10.080(c)(3).

point.⁵³ Finally, if the court does not find the child in need of aid, it must order the child released to the parent's custody and dismiss the case.⁵⁴

Finally, Alaska Statutes section 47.10.080(c)(3) allows for termination of parental rights.⁵⁵ The court will terminate parental rights and responsibilities only after DFYS proves that the child should be adjudicated a child in need of aid,⁵⁶ that the parental conduct caused the child's neglect or abuse,⁵⁷ and that the conduct is likely to continue.⁵⁸ DFYS is required to show this conduct by clear and convincing evidence.⁵⁹

The court can terminate parental rights in cases of physical abandonment of the child.⁶⁰ To terminate on this ground, the court must find that the parent has shown a conscious disregard for parental obligations that led to destruction of the parent-child relationship.⁶¹ The acts of the parent must be willful and not caused by circumstances beyond the parent's control.⁶² For this reason, the Alaska Supreme Court has held that long-term incarceration and mental illness are not sufficient to justify termination of parental rights under the statute.⁶³ In 1996, the Alaska legislature amended Alaska Statutes section 47.10.080 to let the court consider incarceration as a factor if the sentence length is significant considering the child's age and need for supervision, and if the parent has failed to make adequate provision for the child's care while the parent is in prison.⁶⁴

The Alaska Supreme Court has interpreted various provisions of this statute as attempting to balance the potentially competing rights of parents to the custody and control of their children

53. *See id.* § 47.10.080(d).

54. *See id.* § 47.10.080(e).

55. *See id.* § 47.10.080(c)(3).

56. *See* ALASKA R. CINA P. 15(c).

57. *See id.*

58. *See In re T.W.R.*, 887 P.2d 941, 946 (Alaska 1994); *R.C. v. State*, 760 P.2d 501, 505 (Alaska 1988); ALASKA R. CINA P. 18(c)(1) (applying ALASKA STAT. § 47.10.080 (Michie 1996) and ALASKA STAT. § 25.23.180 (Michie 1996)).

59. *See* ALASKA STAT. § 47.10.080(c)(3); ALASKA R. CINA P. 15(c), 18(c)(1). Different standards apply for Indian children. *See* 25 U.S.C. §§ 1912(f), 1913 (1994).

60. *See* ALASKA STAT. § 47.10.080(c)(3).

61. *See A.M. v. State*, 891 P.2d 815, 820 (Alaska 1995).

62. *Id.* at 822; *see also In re R.K.*, 851 P.2d 62, 66 (Alaska 1993).

63. *See A.M. v. State*, 891 P.2d at 820-24; *Nada A. v. State*, 660 P.2d 436, 439-440 (Alaska 1983).

64. *See* 1996 Alaska Sess. Laws 89.32 (adding new Section (o) to ALASKA STAT. § 47.10.080).

against the interest of a child in an adequate home.⁶⁵ In an early case, the court acknowledged the "serious and substantial" nature of parental rights, while noting that "in recent years the courts have become increasingly aware of the rights of children."⁶⁶

Taken as a whole, however, the Alaska Supreme Court's CINA decisions seem to resolve the tension between parents' and children's rights in favor of parents, at least in the context of adoption or termination of parental rights proceedings. For example, the court recently noted that "[t]he private interest of a parent whose parental rights may be terminated via an adoption petition is of the highest magnitude."⁶⁷ In an earlier case, the court said that the statute was designed to help reintegrate children into the family and to allow the resumption of parental control.⁶⁸ In another decision, the court overturned a trial judge's CINA adjudication because the judge had considered the best interests of the child as part of its CINA decision.⁶⁹ The court's strong statements about parental rights are consistent with the assessment's general findings, discussed later, that the children's interests in CINA cases often take second or third place to parents' rights and other parties' institutional needs, resulting mainly in delayed permanency for Alaska's children in need of aid.

C. The Child in Need of Aid Rules

The Alaska Supreme Court has the constitutional authority to adopt rules governing procedural matters in CINA and other cases.⁷⁰ The court's CINA Rules were designed to promote fairness, accurate fact-finding, quick determination, the best interests of the child and the preservation of family life.⁷¹ The rules, which

65. See *In re C.L.T.*, 597 P.2d 518, 526 (Alaska 1979); *In re D.C.*, 596 P.2d 22, 23 (Alaska 1979) (citing *In re S.D., Jr.*, 549 P.2d 1190, 1201 (Alaska 1976)).

66. *D.M. v. State*, 515 P.2d 1234, 1237 (Alaska 1973) (footnote omitted).

67. *In re K.L.J.*, 813 P.2d 276, 279 (Alaska 1991) (quoting several U.S. Supreme Court cases and Alaska cases affirming parents' rights). The court subsequently reaffirmed that statement in another termination case, *In re J.L.F.*, 828 P.2d 166, 170 (Alaska 1992) (overruled on other grounds).

68. See *L.A.M. v. State*, 547 P.2d 827, 835 (Alaska 1976).

69. See *Nada A. v. State*, 660 P.2d 436, 439-40 (Alaska 1983). The supreme court instructed the trial court not to consider the child's best interests until after the adjudication (in other words, not until disposition). See *id.* The court rejected the state's argument, based on language in Alaska Statutes section 47.10.082 that the child's best interests should be a significant, but not dispositive, consideration at each step in determining whether to terminate parental rights. See *id.*

70. See ALASKA R. CINA P. 1(d). The Judicial Council's director, William T. Cotton, was the court rules attorney and reporter of the committee that completely redrafted the CINA Rules in 1987.

71. See ALASKA R. CINA P. 1(c).

detail the steps courts must follow from the beginning to end of a CINA case, incorporate most of the requirements of the federal and state statutes.⁷² They set out the required court procedures and findings in chronological order for each stage of the proceedings.

III. DATA ANALYSIS AND FINDINGS

This section presents specific findings about how the court system handles each of the stages in a Child in Need of Aid case, from the state's investigation into reports of harm to children through adjudication, disposition and post-disposition reviews. The findings are based on data collected from five major sources: (1) a detailed study of case files in four courts;⁷³ (2) interviews with attorneys, judges, GALs, tribal representatives and others in each of the four communities and interviews with other persons; (3) observations of actual hearings in three courts;⁷⁴ (4) analyses of the laws, court rules and cases governing CINA cases; and (5) input from the public, the Advisory Committee for the project and special interest organizations. Contained within these findings are discussions of some of the different procedures found in each of the four court locations studied.

A. Demographics

In fiscal year 1993, the DFYS received 14,617 reports of harm involving 10,521 children.⁷⁵ Of these reports, DFYS investigated 9,323 and substantiated neglect or abuse in 4,316 cases, removing children from their homes in 6% of the investigations.⁷⁶ In 1995,

72. One hearing required by the Adoption Assistance Act and state statute is missing from the CINA Rules. 42 U.S.C. section 675(5)(C) (1994) and Alaska Statutes section 47.10.080(l) call for a permanency planning hearing 18 months after a child is removed from home. This hearing requires findings similar to those required by Rule 19(d), the annual review hearing, but also requires the court to decide whether the child should return home, remain in out-of-home care for a specified period of time or be adopted. Rule 19(d) only requires the court to find whether the case plan establishes a permanent plan. The court's CINA Rules committee currently is considering an amendment to include the permanency planning hearing.

73. The four courts were the superior courts of Anchorage, Bethel, Fairbanks and Juneau.

74. Staff observed hearings in Anchorage, Bethel and Fairbanks, but not in Sitka.

75. See DFYS FY 1993 ANNUAL REPORT, *supra* note 3, at 8 (reporting that this represented an increase of 18% over FY92, and an increase of 67% since 1989).

76. Types of harm reported in FY93 include 33 reports of abandonment, 316 of mental injury, 2,249 of sexual abuse, 4,817 of physical abuse, and 7,202 of ne-

reports of harm increased to a total of 15,706 for the state.⁷⁷ Of these, 10,945 were referred, 6,584 were investigated and 3,513 were substantiated.⁷⁸

Children involved in the 1995 substantiated investigations were almost equally divided between girls and boys.⁷⁹ However, Alaska Natives and African-Americans were over-represented compared to their numbers in the general population. Forty-six per cent of the children involved in substantiated investigations were Alaska Native or American Indian, 39% were Caucasian, 6% were African-American, 2% were Hispanic, 2% were Asian/Pacific-Islander or other and 5% were unknown.⁸⁰ Alaska Natives constitute approximately 16% of the general population in Alaska and African-Americans constitute about 4%.

Children involved in reports of harm in 1995 resembled the group involved in substantiated reports, except that Natives constituted a smaller percentage of children involved in reports of harm as compared to substantiated reports of harm. In terms of ethnicity, forty-three percent were Caucasian, 35% were Alaska Native, 6% were African-American, 2% were Hispanic, 1% were Asian/Pacific Islander, 1% were other and 12% were unknown.⁸¹ Along gender lines, the children were closely divided between boys and girls.⁸² In addition, about 60% of the children involved in re-

glect. *Id.* at 9, 10.

77. See Oct.1, 1995, Fiscal Year 1995 Prober Data Tables from DFYS.

78. See *id.* DFYS reported slightly lower numbers of 15,465 reports of harm and 10,402 investigations. See DFYS FY 1994 & 1995 ANNUAL REPORT, *supra* note 4, at 49. Of those, 9,529 resulted in completed investigations and 4,137 were substantiated investigations. See *id.* The report cited a figure of 3,575 abused and neglected children (substantiated reports). See *id.* at 4. The report also noted that reports of harm increased nearly 100% between 1989 and 1995, and added that while reports of harm increased slightly between FY94 and FY95, the number of children involved decreased slightly. See *id.* at 12-13.

79. Forty-eight per cent were male and 51% were female. An exception was the Southeast Regional Office, where only 43% were male and 56% were female. In the other two offices, the numbers split about 50/50. See *id.*

80. Note that these percentages were somewhat different from the FY92 figures, with more Natives and fewer Caucasians, others and unknowns. The database may have been slightly different, or the differences could reflect more accurate descriptions of ethnicity in FY95. By region, the primary ethnicities were the following: Northern Region, 71% Alaskan Native/American Indian, 5% African-American, 21% Caucasian; Southcentral Region, 32% Alaskan Native/American Indian, 8% African-American, 47% Caucasian; and Southeast Region, 44% Alaskan Native/American Indian, 1% African-American, 43% Caucasian, and 8% unknown. Each region also had small percentages of Hispanic, Asian and other ethnicities.

81. See DFYS FY 1994 & 1995 ANNUAL REPORT, *supra* note 4, at 53.

82. Fifty-two percent were female and 48% were male. See *id.* at 49, 53.

ports of harm were school age.⁸³

B. State Investigation into Reports of Harm

Case files from 1989 through 1995 showed that a case typically opened when DFYS received a report of harm to a child. The social worker taking the call decided when the report should be investigated, using a form that helped determine the immediacy and severity of the danger to the child. For example, workers designated as Priority One those cases presenting the greatest danger to the child and requiring an emergency response; intake workers responded to Priority One cases within twenty-four hours.

The purpose of an investigation is to assess the validity of the report of harm. If the worker's investigation validated the report of harm, the worker then decided whether the child was a child in need of aid as that term is defined in the statute.⁸⁴ Upon deciding that a child was in need of aid, federal law requires the worker also to consider whether services could reasonably be offered to the family that would avoid removing the child from the home.⁸⁵ The social worker alternatively could intervene by taking emergency custody or by taking some other action to ensure the child's safety.⁸⁶

In some instances, a child was alleged to have suffered what could be characterized as criminal neglect or abuse.⁸⁷ In approximately 20% of the cases statewide, one or both parents had been charged with a crime against the child or a crime for which the parent was incarcerated leaving the child without an adequate le-

83. Twenty-nine percent were six to 10 years old, 21% were 11 to 14 years old, and 10% were 15 to 17 years old. *See id.* at 49, 53. Nationwide, 39% of abused or neglected children are ages six to 12, as compared to 37% of the overall population of children. Only 21% of the abused or neglected children are ages 13 and older, as compared to 30% of the overall population. *See* CHILD WELFARE LEAGUE OF AMERICA, CHILD ABUSE AND NEGLECT: A LOOK AT THE STATES 16 fig. 1.6 (1995). The child abuse and neglect rate is 36.6 children per 1,000 children in the population. The median rate is 14.3 children per 1,000 children in the population. *See id.*

84. *See* ALASKA STAT. § 47.10.010(a)(2) (Michie 1996).

85. *See* 42 U.S.C. § 671(a)(15) (1994).

86. According to DFYS policy, the worker should base the decision to take emergency custody on the "assessment that there is risk or potential for further risk to the child if left in the home without immediate action by the worker to protect the child." *DFYS Policy 2.0*, § 2.3 (Intake).

87. Occasionally, the child was alleged to have perpetrated a crime, but in investigating, DFYS decided that the child's home environment would lead to a finding of Child in Need of Aid as well as a finding of delinquency on the part of the child.

gal care giver.⁸⁸ The data did not indicate what percentage of CINA cases could have been charged and handled by the criminal justice system instead.

Interviews with several respondents suggested that social workers' responses to reports of harm varied somewhat by location.⁸⁹ For example, in the past two years, social workers in Bethel have emphasized early, informal interventions that did not involve taking custody (for example, sending the child to stay with a relative or working out a "Care and Safety" plan with the parents), while those in Anchorage may have taken custody in similar situations. The social worker's decision either to take custody or intervene in some other way affected the court system directly, since the court opens cases only if the state assumes custody of a child.

When the worker decided to take custody, the most common reason was abuse; 30% of case records cited abuse as the reason for removal of the children. Other reasons included abandonment (15%), neglect (14%) and parental intoxication (13%).⁹⁰ If the worker took emergency custody but could not talk to the parents, he or she might leave a short brochure describing how DFYS had taken the child, how to reach them, and what would happen next.

Sometimes, the social worker later brought the child back to the parents or took emergency custody but let the child stay with the parents.⁹¹ More often, the social worker either took the child to a temporary group home or notified foster parents that a child needed care and then took the child directly to that home.⁹²

88. This percentage varied somewhat among locations. For example, in Bethel, 31% of the cases involved criminal charges against the father, compared to 15% of cases in Sitka and Fairbanks. Cases involving criminal charges against the mother were much less frequent, constituting only about 3% of cases statewide.

89. DFYS policies on emergency custody (section 2.3) and emergency custody/decision making (section 2.3.1) apply to all offices statewide. However, the policies seem to leave legitimate room for interpretation and worker discretion.

90. Although data revealed that the reason given varied by community, further review of DFYS files would be necessary to show whether the differences were related to actual differences in the types of parental problems in each area, or simply to differences in the ways that the social workers reported the reasons.

91. When DFYS assumes emergency custody, DFYS "through the social worker will exercise authority in decisions concerning the child's welfare until the matter may be presented to the court, regardless of whether there is also placement." *DFYS Policy 2.3 (Emergency Custody)*.

92. Often children were separated from siblings, at least temporarily, and had little or nothing of their own—not their clothes, toys, books or accustomed foods, nor friends, neighbors, school or opportunity to speak with relatives or family.

C. The Temporary Custody Hearing⁹³

At the temporary custody hearing, which is required by state statute and CINA Rule 10, the court determines whether probable cause exists to believe that the child is a child in need of aid as defined by Alaska Statutes section 47.10.010(a). If DFYS has removed the child from the home, the court also determines whether DFYS made reasonable efforts under the circumstances to prevent or eliminate the need for removal and to make it possible for the child to return home.⁹⁴ The temporary custody hearing must occur within forty-eight hours of taking emergency custody.⁹⁵

Court rules require the state to serve notice of the petition and hearing on all parties, including the parents and the GAL within a reasonable time before the hearing.⁹⁶ CINA Rule 10 also requires the state to make diligent efforts to locate the parties and give them actual, prior notice of the time and place of the initial hearing. Interview and court observation data suggested that in some instances (for example, when the hearing was continued to another day) the state did not send formal notice to these parties. One assistant attorney general ("AG") explained that the rules did not require notice of the date and time of the next hearing because, technically, the next hearing was merely a continuation of the earlier hearing. However, several respondents pointed out that this practice made it difficult for them to participate in the case. Insufficient efforts by the state to locate and notify absent, uninvolved or putative fathers at this early hearing may have set the tone for efforts later in the case, too. Interviews revealed that failure to locate parents early caused serious and damaging delays later on in several cases. For example, in 1995, the Citizens' Foster Care Review Panel located and notified seven fathers who had been unaware of their child's whereabouts. Two of them had been

93. Depending on the community and the circumstances of the case, this first hearing may be referred to as a temporary custody hearing, an emergency hearing, or a probable cause hearing. (CINA Rule 10, and this report, refer to it as a temporary custody hearing.) If a magistrate or district court judge held a temporary custody hearing, another hearing would be set before a superior court judge at the earliest opportunity.

94. If DFYS has removed an Indian child from the home, the court must make findings about DFYS's efforts to comply with ICWA placement preferences. See ALASKA R. CINA P. 10(c)(4)(B).

95. National guidelines call for the hearing to occur within 72 hours. See NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES, RESOURCE GUIDELINES: IMPROVING COURT PRACTICE IN CHILD ABUSE & NEGLECT CASES 30 (1995) [hereinafter RESOURCE GUIDELINES].

96. See ALASKA R. CINA P. 7(b) and (c). Notice must also be served on the Indian tribe if the case involves an Indian child. See *id.*

regularly paying child support through the Alaska Child Support Enforcement Division.⁹⁷ Failure to locate and notify parents prevented reunification efforts, left children in foster homes when they could have been with a parent and delayed termination proceedings as to the newly found parent.

At the temporary custody hearing, the social worker, represented by an assistant AG specializing in children's cases, appeared in court before a judge or master. Depending on the community, the parents might have appeared at this hearing, sometimes without attorneys. In Anchorage, attorneys for the parents typically attended the hearing, as did the GAL.⁹⁸ The child rarely appeared.⁹⁹

A common feature of these and other CINA hearings was that they often did not start on time. Waiting for one or more of the parties to arrive in the courtroom or trouble reaching a party by phone delayed many hearings.

At the temporary custody hearing, the judge usually appointed a GAL to represent the child's interests,¹⁰⁰ appointed attorneys for the parents¹⁰¹ and set a time for the next hearing. Court observations revealed that the judges rarely addressed the parents directly in this or any other hearing. Most temporary custody hearings were short, uncontested proceedings.¹⁰² A respondent from southeast Alaska explained that few parents objected to

97. See CITIZENS' REVIEW PANEL FOR PERMANENCY PLANNING, 1996 ANNUAL REPORT 18 (1996) [hereinafter CRP 1996 ANNUAL REPORT]. The CRP does not review cases until they are at least six months old.

98. Anchorage was unique in appointing GALs before the temporary custody hearing. Other communities appointed the GAL at or after the temporary custody hearing.

99. Numerous respondents said they thought a child's presence at CINA hearings was destructive to the parent-child relationship.

100. CINA Rule 11(a) mandates the appointment of a GAL in every case. GALs were appointed in most, but not all, cases. See ALASKA R. CINA P. 11(a).

101. Typically, each parent had an attorney, rather than one attorney representing the interests of both parents. The study did not collect data about how often the judge actually appointed an attorney. A parent's attorney may not have appeared in court if the case was brief.

102. In Alaska, most temporary custody hearings lasted between five and 15 minutes. National guidelines recommend that the court allot a minimum of 60 minutes for each emergency custody hearing. See RESOURCE GUIDELINES, *supra* note 95, at 42. The Guidelines also recommend that the court make the emergency custody hearing "as thorough and meaningful as possible." *Id.* at 30. By thoroughly exploring all issues at the emergency custody hearing, the court can "resolve and dismiss some cases on the spot, move quickly on some pretrial issues ... , encourage early settlement of the case, encourage prompt delivery of services to the family, and monitor agency casework at a critical stage of the case." *Id.* at 31.

DFYS having custody of the child for ninety days longer, and the parents were permitted to state any objections to the petition on the record. A Fairbanks respondent said that parents in that community often consented to continued state custody without admitting the allegations in the petition. At the temporary custody hearing, the parent's attorney might agree to a probable cause finding but ask the judge to place the child in the home, with state supervision, instead of in foster care. Some Anchorage temporary custody hearings took from two to five months to complete.¹⁰³ Interview data suggested that these were contested temporary custody hearings.¹⁰⁴ Several factors seemed to cause contested hearings to take longer to complete. One cause was unavailability of court time, since the Anchorage children's court calendar was not structured to allow time for many long hearings.¹⁰⁵ A second cause was large caseloads which made it difficult for attorneys to prepare. A third cause, at least in Anchorage, was unavailability of discovery information about the case.

In all locations, judges typically found probable cause to believe that the child was a child in need of aid. In some cases, the judges also made specific findings that DFYS had made "reasonable efforts" under the circumstances to keep the child in the home; however, the frequency with which judges made the "reasonable efforts" findings varied somewhat by community. A Fairbanks respondent reported that some judges in that community did not make reasonable efforts findings at the temporary custody hearing, or only did so if the case was contested. A Bethel respondent said that the court normally did not inquire into reasonable efforts at the temporary custody hearing because they already were laid out in the petition. When contesting a temporary custody petition, a parent's attorney might argue that the child was not a child in need of aid as defined in the statute. GALs or par-

103. In January of 1996, the Anchorage children's court implemented new procedures for calendaring and review of CINA proceedings designed, among other things, to reduce the number of times contested probable cause hearings must be continued.

104. Interviewees' estimates for the time it took to complete the typical contested probable cause hearing included two weeks, six weeks and one month after removal.

105. Interviewees generally agreed that scheduling a hearing longer than an hour was very difficult. One respondent noted that the masters at the Anchorage children's court sometimes worked through the lunch hour to give the parties the time they needed. A Fairbanks respondent noted a similar lack of court calendar time for contested hearings, but said that those scheduling problems prevented her from contesting emergency hearings that she otherwise might. If the child were likely to return home within a week or so, there was little point in calendaring a contested hearing three to five days hence.

ents' attorneys (particularly those in Anchorage) also might argue at this hearing that DFYS did not do enough to keep the children in the home.¹⁰⁶

D. Pre-Adjudication Review Hearings

Court rules require the court to hold a hearing to review an order for temporary custody or supervision not more than ninety days after the initial custody hearing, and every ninety days thereafter.¹⁰⁷ The rule does not explain the purpose of the hearing, nor does it require the judge to make any findings or take any action. The ninety-day court reviews probably were intended to resemble status hearings for the case. As a matter of practice, however, these review hearings were the most frequent events in most cases that this project reviewed. A typical CINA court case contained an order for temporary custody, log notes from multiple ninety-day review hearings, and a dismissal, with no record of adjudication or disposition.¹⁰⁸ Thus, the temporary custody and ninety-day review hearings were, for most cases, the only times that the judge saw the case.

According to survey data, custodial parents received notice of review hearings most of the time, but not always. Non-custodial parents received notice less frequently. Foster parents and children received notice least frequently.¹⁰⁹

For cases that were dismissed before adjudication (the majority of cases), multiple ninety-day review hearings often occurred between the temporary custody hearing and dismissal. Similarly, cases that went to adjudication also progressed through multiple ninety-day review hearings before adjudication. An exception was Sitka, where respondents said the judge expected the parties to be prepared at the first ninety-day review hearing either to stipulate to adjudication or to request an adjudication hearing. Many respondents believed that the Anchorage court held too many short, routine review hearings. They complained that even short court

106. Parties refer to this as pursuing a "no reasonable efforts" finding. A judicial finding that DFYS did not make reasonable efforts in a case could lead to a federal denial of funds for that child's foster care, but would not deprive the court of jurisdiction.

107. See ALASKA R. CINA P. 10(d)(1).

108. Fairbanks cases seldom contained orders of dismissal or any other indication that a case had closed. Typically, the case contained an expired temporary custody order.

109. In cases involving an Indian child, attorneys and GALs thought that tribes received notice more often than non-custodial parents, but less often than custodial parents. DFYS workers believed that tribes received notice much more of the time than the attorneys and GALs believed that the tribes received notice.

hearings consumed at least an hour of the parties' time, since hearings often started about thirty minutes late.¹¹⁰

Case file data showed that court review hearings typically ran for about five to ten minutes on the record, while respondents to a written survey questionnaire estimated that they lasted significantly longer.¹¹¹ The two findings are not inconsistent, however, because the court probably was on the record for less time than parties and participants actually were waiting or were in the courtroom.¹¹²

Court observations suggested that in a typical review hearing the AG gave the status of the case, followed by the GAL, tribe (if any) and parents or parents' attorneys. The parties sometimes used these reviews to raise matters that they had not been able to resolve, such as visitation, discovery, parental signing of releases and scheduling of future hearings. However, observations tended to confirm that parties seldom used these review hearings to discuss larger issues of case planning. A respondent in Anchorage felt that few of the court review hearings were meaningful.

A second type of pre-adjudication review, the Interim Case Conference ("ICC"), occurs only in Anchorage. The Anchorage children's court requires parties to meet outside the courtroom thirty days after probable cause to believe that the child is in need of aid has been established. The purpose of the review is to bring the parties together to discuss the case status and plan for the future. At least two respondents complained about the ICC requirement. A social worker thought that repeated ICCs consume a lot of time (one and a half to two hours each). An assistant AG complained about the time required to attend the meeting and then fill out the court form.

E. Adjudication Hearings

The adjudication hearing is a trial to the court at which DFYS must show by a preponderance of the evidence that the child is a child in need of aid.¹¹³ If DFYS has removed the child from the home, it also must show that under the circumstances of the case reasonable efforts were made to prevent or eliminate the need for removal and to make it possible for the child to return home.¹¹⁴ In

110. An Anchorage GAL estimated that she spent four days a week in court and, on average, two to three hours a week waiting for hearings.

111. Attorneys thought that, on average, hearings lasted about 15 minutes, DFYS workers estimated 22 minutes, and GALs thought 25 minutes.

112. In Anchorage, parties are required by the court to arrive 30 minutes before the hearing.

113. See ALASKA R. CINA P. 15(c).

114. See *id.* 10(c)(4).

other words, adjudication provides the legal or jurisdictional basis for state intervention into a family.¹¹⁵ The adjudication outcome controls whether the state may continue to intervene over the objections of the parents.¹¹⁶

This assessment analyzed the number of CINA cases that progressed to adjudication, the length of time that elapsed before the adjudication hearings and the conduct of the adjudication hearings. Although the data revealed significant differences among communities on all these variables, they showed that less than half of the CINA cases filed statewide ever progressed to adjudication. Moreover, if a case did progress to adjudication, months often elapsed between the temporary custody hearing and the adjudication hearing.

1. *Frequency of Adjudication Hearings.* With the exception of Bethel cases, the temporary custody hearing was the last significant step in most of the CINA cases reviewed. An average of 54% of CINA cases filed statewide involved children who never were adjudicated children in need of aid. The National Council of Juvenile and Family Court Judges' Resource Guidelines explain why early and accurate adjudicatory findings of abuse and neglect are important: "[They] should be the benchmark against which later case progress is measured. Adjudicatory findings are the basis for the case plan and later are equally important to case review. The case plan should address the real dangers or abuse or neglect which necessitated court intervention."¹¹⁷ The case file data showed that only Bethel approached the Guideline's recommendation of making adjudicatory findings of abuse or neglect in each CINA case.¹¹⁸ This shortcoming could have affected the quality of case review and the quality of the case plan in the other three communities.

115. See RESOURCE GUIDELINES, *supra* note 95, at 46.

116. See *id.*

117. *Id.* at 47.

118. In many instances, the case files did not contain a distinct order of adjudication. The adjudication finding sometimes took the form of a stipulation, appeared in the disposition order, appeared in the interim disposition order or was noted in an order terminating parental rights. Because the differing practices made it difficult to analyze the data meaningfully, the staff created a new variable. The new variable examined each case to see whether the case had at least one order titled "adjudication," "interim disposition," "disposition" or "termination of parental rights." If the case had at least one of these orders, it was categorized for this analysis as a case in which formal adjudication had occurred. The assistant AG or DFYS worker may have filed a petition for adjudication in more cases, but the analysis included only cases that had a signed order of adjudication, interim disposition, disposition or termination of parental rights.

This assessment sought to understand the factors associated with adjudication. One factor affecting likelihood of adjudication was case length. Cases that stayed open longer tended to have more adjudications than cases that were closed quickly. Nevertheless, a significant number of cases statewide (particularly in Anchorage) lasted a year or more without ever progressing to adjudication. Thirty-nine per cent (N=9) of the Anchorage cases that were closed in twelve to eighteen months did not have either an adjudication or disposition, and 25% (N=2) of the Anchorage cases that were closed in eighteen to twenty-four months never had an adjudication of CINA or a disposition order.

Whether a case progressed to adjudication also depended to a large degree on where the case was filed. Excluding Bethel cases from the equation, only 38% of CINA cases filed in Anchorage, Sitka and Fairbanks involved children who were formally adjudicated children in need of aid. In contrast, 78% of the CINA cases filed in Bethel were formally adjudicated. Although no respondents interviewed for this study offered strong explanations for this disparity between Bethel and the three other communities, they suggested several theories. Some said that the neglect and abuse allegations underlying Bethel CINA petitions were either "worse" or easier to prove in court than those underlying Anchorage petitions. Others thought that a difference in social worker response explained the disparity. During the past two years, social workers in Bethel focused on informal, preventative work with troubled parents, tending to take custody only after previous, documented attempts to help had failed. Under this theory, cases coming before the Bethel judge involved parents who already had a track record of failure, as opposed to cases from Anchorage or the other communities, where parents had not received similar services. Attorneys and social workers in Bethel thus might have been more willing to take cases to adjudication, and parents' attorneys might have had fewer arguments with which to oppose them than in other locations.¹¹⁹ However, many of the Bethel cases reviewed had opened between 1989 and 1994, and the hypothesis does not explain the disparity in those cases.

Respondents also pointed to the Bethel court's policy of scheduling cases for adjudication within sixty to ninety days of the temporary custody hearing and its habit of devoting one day a week to CINA cases. These practices encouraged the parties to move the cases along. Yet none of these theories seems to explain such a large disparity.¹²⁰

119. This theory does not necessarily explain adjudication rates in Sitka or Fairbanks.

120. The Sitka court adjudicated most (70%) of its cases within four months, as

2. *Timing of Adjudication Hearings.* Neither Alaska law nor Alaska court rules set a deadline for when adjudication should occur. The National Guidelines suggest that “[c]ourt rules or guidelines need to specify a time limit within which the adjudication must be completed.”¹²¹ The Guidelines recommend, based on experience in many jurisdictions, that the adjudication occur within sixty days after removal of the child.¹²²

Perhaps because state law sets no deadline, months often elapsed before a case progressed to adjudication. The data reveal that all but five (83%) of the adjudication or disposition orders entered in Sitka’s cases were entered within the first six months of the case, while in Anchorage only 41% were entered within that time. In Fairbanks, 58% of the cases containing an adjudication or disposition had progressed to that point within 180 days, compared to 64% in Bethel.

A more detailed analysis of the data again indicates significant differences among court locations in the amount of time cases took to progress to adjudication. For example, the bulk of Anchorage cases containing an adjudication took between six and twelve months, while 30% of Sitka’s cases took less than sixty days and 70% took four months or less. In Bethel, only 3% of the cases progressed to adjudication in less than sixty days while more than 60% took between two and six months. Fairbanks data are very similar, with 5% of the cases reaching adjudication in less than sixty days and the bulk of the cases taking between two and twelve months. The data suggest that only Sitka approached the National Resource Guidelines’ goal of adjudication within sixty days after removal of the child, as no court except Sitka adjudicated more than a handful of cases within sixty days.

Local practice and expectation significantly affected the timing of adjudication hearings. For example, in Sitka the judge expected DFYS to be ready to adjudicate ninety days after taking custody, and in southeast Alaska, judges set the adjudication for two to four weeks from the date of the first ninety-day review

compared to 29% for Bethel. If setting cases early explained the high rate of adjudication in Bethel, then Sitka should have had more adjudications than Bethel. The Bethel adjudication disparity certainly was at least partly related to the finding that ICWA cases were significantly more likely than non-ICWA cases to contain adjudications, because Bethel was unique in having a caseload composed almost completely of ICWA cases (only two of Bethel’s 98 cases were non-ICWA, as compared to the other three communities whose caseloads were about 70% non-ICWA).

121. RESOURCE GUIDELINES, *supra* note 95, at 47.

122. *See id.* The Guidelines recommend against exceptions except in cases involving newly discovered evidence, unavoidable delays in the notification of parties and unforeseen personal emergencies. *See id.*

hearing.¹²³ In Anchorage, on the other hand, attorneys and social workers estimated that adjudication typically took ten to twelve months (occasionally because the preceding stage of probable cause had so often stretched to four or five months). Although the Anchorage court recently initiated changes designed to move cases more quickly, the court still anticipates 180 days before adjudication. In Fairbanks, DFYS routinely asked for short periods of custody (sixty to ninety days). During that time, one or more review hearings but no adjudication occurred.¹²⁴ In Bethel, the judge normally set cases for adjudication thirty to sixty days after the initial custody hearing, far earlier than other communities; however, hearings often were continued, with the result that very few were adjudicated within sixty days. In some communities, DFYS routinely asked for six months of temporary custody, and took about that long before going to the adjudication hearing.

Many respondents reported frustration with slow progress to adjudication and recommended shorter time frames. In Anchorage, respondents (but not parents' attorneys) recommended that adjudication occur within thirty or forty-five days after the temporary custody hearing. Judges recommended forty-five to ninety days; social workers, an experienced foster parent and a number of attorneys (not parents' attorneys) suggested thirty days. A Fairbanks respondent thought that adjudications should be treated less like "scheduling problems," since children were being kept out of their homes.

3. *Reasons for Delayed Hearings.* In cases for which adjudication was delayed, interview data suggested that the main causes were untimely notification of absent parents, attempts to get parents into treatment or better situations, attorneys' efforts to obtain information about the case or administrative delays (for example, transfer between social workers). A Fairbanks respondent mentioned scheduling difficulties as a factor delaying adjudication hearings, and a Bethel respondent thought that as many as half of the cases set for adjudication were continued because the attorneys had been unable to contact their clients. Another important factor affecting the timing of adjudication hearings was whether they were contested. About a third of the

123. Sitka cases moved to adjudication far more quickly than cases in any of the other communities studied.

124. Several Fairbanks respondents were skeptical that adjudication could or should occur any sooner than 90 days after removal. They cited the usual reasons that DFYS could not be ready any sooner: that parents would not have time to engage in the case plan, that attorneys' schedules were too complicated and that it might set up an adversarial system that would unnecessarily prevent stipulations.

attorneys surveyed said that contested adjudication hearings “often” or “usually” had to be rescheduled for another day.

4. *Parties.* The National Resource Guidelines suggest that all parties who have been located and served and their attorneys should attend the adjudication hearing, even if it is uncontested, so they can defend the stipulation and answer the judge’s questions.¹²⁵ Although adjudication hearings were relatively infrequent, the data revealed that the parents, their attorneys, the social worker, the assistant AG and the GAL all might attend the adjudication hearing.¹²⁶ In some cases, some or most of the parties spent a few minutes before the hearing discussing the case. In some instances, it may have been the only time that the attorneys talked to their clients. If other scheduled matters delayed the hearing, the participants may have had a few extra minutes in which to confer. In many courts, the meetings took place in the hallway or lobby near the courtroom.¹²⁷ Also, not every party participated in these meetings, particularly parties from outside the area, such as tribal representatives.¹²⁸

5. *Length of Hearings.* The Resource Guidelines recommend that the court allot a minimum of thirty minutes for each uncontested adjudication hearing.¹²⁹ The Guidelines allot ten minutes for testimony from the caseworker, parents and other witnesses in support of the stipulation, five minutes to discuss the service plan, five minutes for troubleshooting and negotiations between parties, and five minutes to issue orders and schedule subsequent hearings. Many adjudication hearings lasted only five or ten minutes.¹³⁰

125. See RESOURCE GUIDELINES, *supra* note 95, at 49.

126. In cases involving an Indian child, a tribal representative might also attend the adjudication hearing.

127. For example, such meetings took place in Fairbanks, Bethel and Anchorage. Some parties said that the waiting time in Fairbanks could not be spent productively because the hallways did not offer enough privacy to talk about cases.

128. In Bethel, the assistant AG sometimes spent a few minutes in the hallway between hearings conferring with the social worker, but not necessarily with the parents, their attorneys, the GAL or the tribal representative.

129. See RESOURCE GUIDELINES, *supra* note 95, at 51.

130. For example, in one case observed in Anchorage, the judge adjudicated a child CINA who had been in state custody over one year, and because the case lacked a permanent plan, ordered the social worker and AG supervisors to attend an interim case conference. This hearing lasted three minutes. In a ten-minute Fairbanks adjudication hearing, the attorney of a parent who had not come to the hearing requested a continuance but the judge adjudicated the child CINA after reviewing a written offer of proof from the AG.

6. *Content of Hearings.* Interviews suggested that most adjudications were stipulated. Only occasionally did attorneys ask witnesses to testify, present experts or challenge proposed agreements or actions. Also at the adjudication hearing, the judge might have inquired briefly about the “reasonable efforts” made to reunite the family.¹³¹ Data suggested, however, that the inquiry usually was not substantial. For example, only about one-third of the judges who responded to a written survey reported that when they made written reasonable efforts findings, they “often” or “usually” addressed services and help given to the family. Only 37% of these judges reported “often” or “usually” addressing the sufficiency and appropriateness of the services.

On the other hand, the adjudication hearings that were contested lasted for a few hours or up to a week. Another interviewee said contested hearings could span three days. Because they involved so many parties, contested hearings could consume significant state resources.¹³²

F. The Disposition

After a child has been adjudicated CINA, the court holds a disposition hearing. The purpose of the hearing is to determine the child’s longer-term placement. The court rules require that the disposition hearing occur either at the same time as the adjudication or “without unreasonable delay” after the adjudication.¹³³ In some communities, the court held the disposition hearing at the same time as the adjudication.¹³⁴ Often the parties agreed to a dis-

131. Court observations in Anchorage suggested that discussion of reasonable (or active) efforts consumed very little court time. The AG typically summarized services the family was receiving during the initial statement to the court, and the court then made verbal reasonable efforts findings as a matter of course. In the Fairbanks adjudication hearing discussed in the previous footnote, discussion of reasonable efforts consumed no more than one minute of court time. In Bethel, however, a respondent suggested that the parents’ attorney was more likely to contest the reasonable efforts finding at adjudication than at the initial custody hearing.

132. The state pays the salaries of the judge, court employees, social worker, assistant AG, GAL and usually an attorney for each parent as well. In one particularly complex case, the judge estimated that the total state resources (including the foster care payments, parents’ and children’s treatment and counseling, attorneys, social worker salaries, and so on) devoted to the case over a period of several years exceeded \$1 million.

133. See ALASKA R. CINA P. 17(a).

134. The adjudication and disposition hearings occurred together at the following rates: Fairbanks, 10%, or four of the 39 cases; Sitka, 33% or nine of the 30 cases; Anchorage, 42% or 31 of the 73 cases; and Bethel, 59% or 45 of the 76 cases. These figures again show how differently each community handles CINA

position ahead of time, and the court approved it at the end of the adjudication hearing. In communities that did not hold these hearings at the same time, however, months often elapsed between them. Respondents identified one source of disposition hearing delay as waiting for a psychological evaluation or other services. A Bethel respondent reported that the judge sets disposition hearings for sixty days after adjudication and that delays rarely occurred at that stage. However, when they did occur, delays often resulted from parents who could not be located or from changes in the case plan.¹³⁵

Court rules require DFYS to file a pre-disposition report ten days before the disposition hearing. The GAL also usually files a written pre-disposition report with the court, although the GAL's report is not required. Bethel and Fairbanks respondents said that in some cases reports were not timely filed and the parties did not see them until the day of the hearing. The parent and the parent's attorney then had to discuss the report in the courtroom before the hearing or ask to delay the hearing.

A number of disposition options were available to the court after adjudication.¹³⁶ If the child had not returned home by the time of disposition, the case plan often called for six to twelve months of treatment for the parent. If the treatment worked or the family became stable, DFYS sent the children back to the parents.

Other more permanent disposition options included termination of parental rights or voluntary relinquishment of rights. Termination eliminates parental rights to visit, communicate and obtain information about the child, as well as taking away the parents' legal rights to decide about the child's education and health. It deprives the child of the chance to return home and maintain contact with parents and extended family in exchange for finding a safe and permanent home.¹³⁷ Voluntary relinquishments have the same legal effect as terminations of parental rights, but are arrived at without a contested trial.

Although terminations and voluntary relinquishments were relatively uncommon dispositions, this report discusses them separately because they often were complex and consumed resources, and because they had important consequences for children and

cases, differences that cannot be attributed to any major factor other than local practices that have evolved over a period of years. These data do not include cases that involved a termination of parental rights.

135. This respondent cited the example of a case in which the original plan was reunification, but the parent subsequently was sentenced to an extended prison term, necessitating a new look at the case plan.

136. See ALASKA STAT. § 47.10.080 (Michie 1996).

137. See RESOURCE GUIDELINES, *supra* note 95, at 88.

parents. Only thirty-eight cases contained a termination of parental rights (or 19% of all cases containing an adjudication or disposition statewide). Parents voluntarily relinquished rights to their children in thirty-four cases statewide (or 17% of all cases containing an adjudication or disposition statewide). The Resource Guidelines explain that delaying or deferring termination of parental rights can create serious problems for children: "Time frames and continuances that seem reasonable to adults . . . are unacceptable when a child's right to permanence is at stake When termination decisions are deferred or delayed, a child's emotional problems may worsen and the child may become more difficult to place."¹³⁸

Data suggested that delays sometimes occurred before termination trials. Respondents told of cases in which the threat of imminent termination hearings pushed parents into treatment or otherwise into taking the actions that DFYS had required all along. Then the court authorized a further extension of custody to give the parents the chance to rehabilitate themselves and the family environment. If these efforts did not work, another several months had elapsed.

A second source of delay involved the need to notify absent parents¹³⁹ or to wait for pending (criminal) court cases to move to completion. Anchorage respondents especially complained of delays in termination cases. Respondents reported that these delays most often were caused by calendaring difficulties (one respondent said that calendar call dates for termination petitions are five months later), delays in adopting termination as a case plan, heavy caseloads and failure to notify absent parents.

Of particular concern were delays in termination trials caused by failure to locate and notify absent parents. While this problem did not occur with great frequency, when it did occur it created damaging and unnecessary delays for children. If the court and parties learned that one or more putative parents had not been notified after the case already had been set for termination, the termination would be delayed. An AG said that, absent significant

138. *Id.*

139. Sometimes, the termination trial date became the focus for parental notices that perhaps should have happened years earlier. In one case reviewed, a father who had been paying child support since his daughter was two, with no opportunity to see her, was notified when she was ten (and had been in and out of foster care for many of the intervening eight years) that the state wanted to terminate his parental rights. He had not known that she was in foster care, and said that he wanted to have her live with him. Had the state notified him years earlier, she might not have been in foster care, and might have grown up in a more stable environment.

progress by the parents toward changing the circumstances that caused removal, the parties should aim for earlier permanency planning by terminating parental rights within six months of removal.

G. Post-Disposition Reviews

Court rules and state and federal law require two court reviews: the annual review (to review the disposition order) and the eighteen-month permanency planning hearing (to review the placement plan, usually post-disposition).¹⁴⁰ Other than these required reviews, the court played little post-disposition role in the cases.

1. *Annual Review.* The annual review, required by state law and court rule, is normally a paper review at which the judge determines whether the child continues to be a child in need of aid and whether continued custody or supervision by DFYS is in the child's best interests.¹⁴¹ Court rule and state statute require the court to make certain further findings if the child is not returned home.¹⁴² Approaches to the annual review requirement varied somewhat by court location. In Sitka, DFYS requested annual review, which was combined with the eighteen-month permanency planning hearing.¹⁴³ A Sitka respondent estimated that annual reviews occurred about fourteen to sixteen months after the state had taken custody. In Anchorage, the children's court secretary wrote the case name and number on an index card and manually filed it to be "tickled" a year later. The court did not initiate the review, but sent a monthly list to DFYS. The master read the social worker's annual review report and scheduled hearings only for those cases in which the case plan had changed or no permanent plan was in place.¹⁴⁴ In Fairbanks, judges started to

140. See ALASKA R. CINA P. 19(a), (d); ALASKA STAT. § 47.10.080(f), (l) (Michie 1996).

141. See ALASKA R. CINA P. 19(a), (d); ALASKA STAT. § 47.10.080(f).

142. See ALASKA R. CINA P. 19(d) (applying ALASKA STAT. § 47.10.080(c), (f); 42 U.S.C. § 671(a)(15), (16) (1994)). The further findings concern whether reasonable efforts have been made to return the child to the home, what services the parents have used and what other services they need, what services a child reaching age sixteen needs for a transition to independent living, and whether there is a case plan in effect either to return the child home, place the child for adoption or guardianship or continue in foster care on a long-term basis. See *id.* 19(d).

143. ALASKA STAT. § 47.10.080(f) permits the court to postpone the annual review until the time set for the permanency planning review if the two hearings would arise 90 days apart.

144. The master noted that previous attempts to hold hearings in every case at

hold annual review hearings in 1995. One judge who held hearings scheduled them for fifteen minutes unless the parties requested more time. One respondent described the hearings as "often perfunctory" and "often uncontested based on what the social worker wrote in the report." Another agreed that they were normally not contested. In Bethel, the court recently began to set annual reviews at the disposition hearing.

With respect to annual review reports, one judge reported that DFYS and GAL reports frequently were "never filed."¹⁴⁵ Another judge agreed but described lack of reports as an "irritation" that did not significantly affect case progress. A public defender said that the reports began coming in late a few years ago and were becoming less and less timely.

2. *Permanency Planning Review.* In an effort to promote the goal of permanence for abused and neglected children, state and federal law contain requirements that encourage social workers and other parties periodically to step back and make longer-term plans for children in CINA cases. The permanency planning hearing is one such requirement. Within eighteen months after the child is taken into emergency custody or adjudicated a child in need of aid, the court must hold a hearing to review the placement and services provided and to determine the child's future status.¹⁴⁶ The court's choices include returning the child to the parent, keeping the child out of the home for a specified period or on a permanent or long-term basis or letting DFYS place the child for adoption or legal guardianship.¹⁴⁷ The court must make written findings.¹⁴⁸ The federal Adoption Assistance Act schedules this hearing eighteen months after the child is first placed outside the home, while state law schedules it eighteen months after placement *or* after disposition or termination of parental rights.¹⁴⁹

Until recently, Alaska courts rarely scheduled permanency planning hearings, possibly because the CINA Rules do not mention them. As with other reviews, courts that did hold permanency planning hearings approached them in different ways. In Bethel, the judge began permanency planning hearings about two years

annual review time "overwhelmed" the system.

145. Social workers, but not GALs, are required to file annual review reports. See ALASKA R. CINA P. 19(a).

146. See ALASKA STAT. § 47.10.080(l) (applying 42 U.S.C. § 675(5)(C) (1994)).

147. See *id.* § 47.10.080(l)(1)-(4).

148. See *id.* § 47.10.080(l).

149. See *id.* § 47.10.080(l) (applying 42 U.S.C. § 675(5)(C) (1994)); *id.* § 47.10.142(h). Note that ALASKA STAT. § 47.10.080(l) is somewhat inconsistent with 42 U.S.C. § 675(5)(C) (1994) as to the timing of the permanency planning hearing.

ago. At these reviews, the Bethel judge identified a general permanency plan, although one respondent said that the judge did not set deadlines for carrying out the plan. In Fairbanks, most judges combined the eighteen-month review with the annual review.¹⁵⁰ One judge said that the reviews lasted an average of five minutes. In Sitka, social workers initiated the permanency planning review by filing the eighteen-month information along with annual review material. The court held a hearing on the record, after which all parties negotiated a permanency plan. The meetings took one to two hours. At least two respondents thought that more emphasis on permanency planning would benefit cases. One thought that court hearings would force DFYS to plan for permanency earlier. A judge remarked that generally judges "only sees pieces" of the permanency plan.

Another permanency review mechanism is the Citizen's Foster Care Review Panel ("CRP") which can not make decisions in a case—it is not even a party to the CINA cases it reviews—but its reviews are thorough and include notice to all parties. The legislature created CRPs in 1990. A local CRP exists in Anchorage but nowhere else; the legislature never funded any other local panels. The Anchorage panel began work in 1993 by reviewing all Anchorage DFYS cases filed six months earlier. The panel now reviews those same cases every six months; however, budget and staff cuts have prevented the panel from reviewing many new cases.¹⁵¹

The Anchorage CRP holds hearings to review its cases.¹⁵² State law requires notice to all interested parties (foster parents, parents, attorneys, social workers and tribes). Through its notice practices, the panel has successfully located fathers that DFYS had listed as "unknown." Some of the fathers were easily located since they were paying child support through the state child support system or were in prison. According to staff, DFYS has "a very poor record of looking for absent parents." The Anchorage CRP's staff mentioned months-long delays caused by social worker turnover, and DFYS's failures to initiate searches until late in the case. "Eleventh hour conversions" by parents who began treatment at the "last minute" also caused problems in some of the cases reviewed by the panel. According to panel staff, these parents could have benefited from a clear deadline with clear consequences de-

150. One Fairbanks judge interviewed for this assessment had never seen an 18 month review and had never heard of one being requested.

151. In 1995, the Anchorage panel held 104 reviews involving 76 families and 183 children. See CRP 1996 Annual Report, *supra* note 97, at 4.

152. The panel submits detailed, written reports to the people involved in the case, but typically does not submit reports to the court.

livered early in the case and from DFYS follow-up to help them comply.

Some parents' attorneys expressed concern about the citizen review process. First, they perceived it as duplicating other reviews without adding new information or otherwise improving case progress. They said that requiring workers to attend one more review consumed time that could better be spent delivering services. Second, they said because they often did not have time to attend the citizens' panel hearings, their clients' perspectives were not adequately represented, resulting in biased reports. Third, they did not think judges should receive a copy of the CRP report, because the attorneys were concerned about the reliability of the information received by the panel.¹⁵³

IV. RECOMMENDATIONS

This section provides recommendations to improve the way courts handle child abuse and neglect proceedings. Recommendations are based on the data and findings set out in Part III.

A. General Principles for Handling CINA Cases

This assessment has led to two preliminary yet vital conclusions. At first glance, these points may seem obvious and not particularly significant. However, the recommendations have far-reaching implications and will be extremely difficult to implement. First, the court system must ensure that CINA proceedings receive the emphasis that they deserve. Second, the court system must ensure that the primary focus of any CINA proceeding always is the child who is the subject of the proceeding.

In order to ensure that CINA cases receive proper emphasis, the court system should review directives, court rules and statutes that set priorities for appellate and trial courts' management of all types of cases. The court system should also specifically direct appellate and trial courts to devote sufficient resources to CINA proceedings. However, a number of factors make it difficult to give CINA cases the attention they deserve. The statutes, procedures and rules governing CINA cases appear in a variety of places, making it difficult for a person unfamiliar with the field to grasp them quickly. Local practices are complex, and vary so widely from court to court that attorneys and GALs familiar with practice in one community cannot easily go to another court. The cases involve so many parties that it is difficult to coordinate the schedules

153. In contrast, a majority of attorneys and GALs who responded to a written survey thought that sending the judge a copy of the CRP report would help the judge's decision-making.

of every person. Although the cases are important, CINA filings comprise a very small percentage of the court system's total civil and criminal filings, making it more likely that their importance will be overlooked. Because they are among the most difficult and unpleasant cases for judges to handle, few may volunteer to work with them. Finally, because CINA cases are confidential, people outside the system often do not know about them or how they are handled. Courts should recognize that, although CINA cases constitute a small percentage of total filings and require different case management techniques than other civil cases, their importance merits the extra effort. Every type of case appears to have priority for the courts, based on one directive or another. Simply adding CINA cases to this list will not materially increase the courts' ability to focus on these cases. Thus, the court system should comprehensively review the order of priorities that courts must apply.

In order to ensure that the primary focus of a CINA proceeding is on the child, courts should treat each CINA case, and indeed each hearing, as an emergency; from the child's perspective, it is exactly that. However, this too will be difficult to achieve. As discussed throughout this Article, CINA cases present frequent opportunities for conflict among parents' rights, tribes' interests, institutional interests, and the child's best interests. In a case that may involve six or more parties, the GAL is the only party who advocates exclusively for the child's best interest. (Although DFYS represents the state's interest in protecting children from harm, it also must work to rehabilitate parents and has its own institutional interests as well.) The judge is the one participant who can ensure that the child's interests remain paramount.

While this principle may at first seem obvious and non-controversial, it is often neither. While all parties stress the importance of the child's interest, in reality it often falls far down the list of priorities. The courts, DFYS and the AG's office may place their own schedules, priorities and needs ahead of the children's, often due to limited resources. All parties must keep the child's time frame in their perspective, as well as considering their own needs and those of their agencies.

Courts, including the supreme court, have at times focused narrowly on other parties' rights to the practical exclusion of the interests of the children.¹⁵⁴ This does not mean other parties' rights (such as the parents) should be ignored or minimized. However, courts should analyze them in the context of the interests of the children. Our law creates parental rights, and imposes obligations

154. See *Nada A. v. State*, 660 P.2d 436, 441 n. 5 (Alaska 1983), where the supreme court said that a child's right to a permanent, adequate home is not "fundamental" for purposes of constitutional analysis.

on DFYS to provide services to parents, precisely because of a societal belief that *children*, as a general rule, fare better with their parents (at least those who can minimally care for their children) than in an often impersonal foster care system. The reason for helping parents is so that they can provide for their children. Thus, parents' rights must be understood in the context of what is best for the children.¹⁵⁵

B. Proper Role for Judges

The role for judges in CINA proceedings emerged in interviews as a primary concern of parties in the CINA system. Many respondents thought that significant deficiencies in the handling of CINA cases could be cured if judges would increase the amount of initiative and effort they exercised. While a few judges adopted a positive, active role, most saw their proper role as more limited and passive than the role envisioned by the parties.

Advocates for a passive judicial role pointed out that few judges have training in this area and it is unreasonable to assume that most could become experts. Furthermore, most judges do not have an overall view of the funding limitations at DFYS and other agencies. What a judge might see as a reasonable and necessary order might have real and substantial negative consequences for agency workers. Nevertheless, the federal law and national practice guidelines clearly envision a much more active role for judges than they currently take. Judges should actively manage the pace and substantive progress of CINA cases because "[i]n child welfare cases, the judge is not merely the arbiter of a dispute placed before the court, but, rather, sets and repeatedly adjusts the direction for state intervention on behalf of each abused and neglected child."¹⁵⁶

Nor should judges treat CINA cases the same as other civil cases in the adversarial system. Because "the law assigns to the juvenile court a series of interrelated and complex decisions that shape the course of state intervention and determine the future of the child and family," the court must manage CINA litigation more proactively than other civil litigation.¹⁵⁷ Federal law requires the judge to be the gatekeeper in CINA cases. As one respondent pointed out, DFYS may have expertise in child welfare matters,

155. The supreme court acknowledged in one of its earlier child in need of aid decisions that "in recent years the courts have become increasingly aware of the rights of children." *D.M. v. State*, 515 P.2d 1234, 1237 (Alaska 1973) (footnote omitted).

156. RESOURCE GUIDELINES, *supra* note 95, at 15. One interviewee noted that in states in which the child is a ward of the court, judges see their responsibility as much more directly involving them in the case.

157. *Id.* at 14.

but it lacks expertise in court case management. The judge is the only player in a position to oversee case management and case progress.

Judges should get CINA cases off on the right track at the very beginning of the case by ensuring prompt notice to all parties. The findings showed that notice often did not go to all parties (absent parents and Indian tribes, especially) early in the case and that this lack of early notice substantially delayed some cases. Also, the court should consider requiring the state's attorney to file an affidavit certifying that all potential parties have been served with notice and describing the efforts made to locate any parties who were not served. The court should encourage assistant AGs and social workers to precede, or at least supplement, formal notice with direct, informal notice. If a potential party has not been served, the court should follow-up to make sure the state locates and serves the individual. Finally, the court should ensure from the very beginning that DFYS has a plan for the case, and that the agency and the parents know the court will review their progress.

As a general rule, judges should be assigned early in the case, and each judge should keep all cases before him or her from start to finish.¹⁵⁸ The judges should have a direct relationship with each family and should have a sense of ownership in the case and responsibility for the children involved. They should invest the time necessary, both on and off the bench, to gather complete information and assess the results of decisions. Also, at the temporary custody hearing and at other hearings, judges should address the parents directly, and they should impress upon the parents the seriousness of the matter and should offer to answer questions about orders or the process.

C. Reasonable Efforts Findings

This assessment found that, as a whole, Alaska's courts complied with the requirement of making reasonable efforts findings at the various points required by law and court rule. However, these findings often were part of a stipulated order and were presented at a brief hearing during which the judicial officer made a minimal

158. The National Resource Guidelines cite a number of benefits from one-family-one-judge calendaring. A single judge who hears all matters related to a single family's court experience develops a unique judicial perspective. The judge develops a long-term perspective that enables him or her to identify patterns of behavior exhibited over time by all parties, provide consistency and continuity and make decisions consistent with the best interests of the child. See RESOURCE GUIDELINES, *supra* note 95, at 19. Court locations that use judge-supervised judicial officers, such as Anchorage, still should maintain the principle of one-family-one-judge.

inquiry on the record. By investing only a few more moments in each hearing, judges could seriously inquire about the state's reasonable efforts, thus laying a foundation for DFYS to devise and, where necessary, revise the family's case plan. Also, by carefully reviewing prior DFYS efforts to help the family, "the court can better evaluate both the danger to the child and the ability of the family to respond to help."¹⁵⁹

Judges should learn, to the extent possible, what resources are available in their communities so they can effectively make reasonable efforts findings. The judge cannot review the agency's efforts to provide services unless the judge knows what is available. Yet judges often do not know about appropriate treatment services, and the available services change rapidly. Thus, the court system should educate judges and magistrates about what services are available to families in their communities and statewide.¹⁶⁰ The court must consider how to keep the judges' knowledge current for these rapidly changing resources.¹⁶¹

D. Delay/Time Standards

The subject of delay is complex. The CINA system is fraught with tension between the parties whom delay benefits and those whom it harms. Although the child's need for stability and finality weighs in favor of resolving cases quickly, other parties' interests and caseloads create a system that tolerates delays of months or even years. Parents' constitutional right to the care and control of their child, their need for services that may not be immediately available, and their need for time to come to terms with what they have to do weigh in favor of delay. The judges' passive management styles and lack of time to devote to each individual CINA case also contribute to tolerance for delay. Large caseloads assigned to social workers and assistant AGs in some communities make them less likely to push hard for a timely resolution in any one case. Coming to a fair and just resolution may require time for parties to consider the various choices. The large number of par-

159. *Id.* at 38. Some jurisdictions use concurrent planning to help balance the tensions inherent in many foster care cases. In this process, the child welfare agency plans for reunifying the family, if possible, and simultaneously looks at realistic permanent placements for the child in case the reunification efforts do not succeed. Alaska's DFYS is exploring concurrent planning as a possibility for appropriate cases.

160. See Subsection E, *infra*, regarding judicial education.

161. Many communities have handbooks of resources that list local social services agencies, substance abuse treatment, counseling, and a wide range of other services. These and other resources can be used by judges or parties to assess the local services available for children and families.

ties also makes some delay inevitable. If a case is appealed, the pace of appellate proceedings may contribute to additional delay.

A recommendation that everything occur on time simply is not realistic. Judges and the other actors in the system must wrestle with the tensions in almost every case to establish a balance between speed, fairness and thoroughness. Nevertheless, judges and parties in courts around the state should take a serious look at procedures and expectations in speedier locations, such as Sitka. Although some judges and attorneys doubt whether the court can adjudicate cases quickly, Sitka gives evidence that they can.

The court system should develop comprehensive time standards for CINA cases, incorporate these time standards in the CINA Rules, and build them into its computerized case management system. Time standards are probably the most important concrete steps the court system can take to ensure CINA cases receive the attention they deserve and are processed expeditiously. The standards should allow the court discretion in exceptional cases.

At a minimum, time standards should include deadlines for completing contested temporary custody hearings, setting and completing adjudication hearings,¹⁶² setting disposition hearings (when they do not occur immediately after the adjudication hearing)¹⁶³ and completing contested termination of parental rights trials. In thinking generally about policies regarding delay, and in thinking about delay in each individual case, the court and judges should distinguish between "constructive" delay and "drift" delay. Constructive delay benefits the child. Drift delay arises when the case is delayed because of scheduling difficulties, such as waiting for services of key professionals, including judges, to become available. The court should consider adopting a rule that encourages promptness.¹⁶⁴

The assessment has shown the timeliness of adjudication hearings to be a particular concern. Part III discussed the impor-

162. Judges recommended 45-90 days; social workers and a number of attorneys (but not parents' attorneys) thought that adjudication could occur within 30 days. The Sitka court adjudicates many cases in about 60 days.

163. Some courts schedule separate adjudication and disposition hearings, while others hold both at the same time. We take no position on whether they should occur together, as long as delays between them do not exceed thirty days.

164. Possible language for such a rule might provide the following:

"Rule 1

....

(g) Avoiding Delay. These Rules will be construed to minimize delay, because delay in Child in Need of Aid cases directly prejudices the welfare of the involved children."

This language is based on the Children Act, 1989, ch. 41 (Eng.).

tance of early and accurate adjudicatory findings of abuse and neglect, and finds that fewer than half of all Alaska CINA cases statewide ever reach adjudication. If the case cannot be dismissed within thirty days of the temporary custody hearing, the judge should set it for adjudication.¹⁶⁵ National guidelines recommend, based on experience in other jurisdictions, that adjudication be completed within sixty days of removal of the child. Most persons whom we interviewed (other than parents' attorneys) believed that most cases should reach adjudication within forty-five to ninety days. Judges should deny requests to delay adjudication hearings absent newly discovered evidence, unavoidable delays in notifying parties, and unforeseen personal emergencies.¹⁶⁶ Laying out timelines for major events, especially adjudication, has a number of benefits, including reducing the number of preadjudication ninety-day review hearings, which might well save court hearing time in the case overall.

Court administration should consider effective case management strategies to make more calendar time available for CINA hearings. Numerous interviewees, particularly those in Anchorage and Fairbanks, complained about lack of timely access to judges' and masters' calendars for motions and other hearings, especially contested hearings.¹⁶⁷ The court also should consider other solutions, including hiring more judges or judicial officers to hear CINA cases.

The court should institute a pilot project requiring parties to attend pretrial conferences to see whether these can limit the issues at contested hearings, with less trial time and fewer scheduling problems.¹⁶⁸ The National Resource Guidelines state that pretrial conferences often help "to resolve preliminary issues and to arrive at a time estimate for the hearing."¹⁶⁹ This assessment found that some scheduling delays occurred because parties overestimated the amount of time needed for a hearing.¹⁷⁰ Because Anchorage already requires a preadjudication case conference, and because it

165. The National Council of Juvenile and Family Court Judges' Resource Guidelines for improving court practice in child abuse and neglect cases suggest that "[c]ourt rules or guidelines need to specify a time limit within which the adjudication must be completed." RESOURCE GUIDELINES, *supra* note 95, at 47.

166. *See id.*

167. We note that only a handful of the 11 Anchorage judges regularly (or ever) devote calendar time to CINA cases.

168. *See* ALASKA R. CINA P. 13.

169. RESOURCE GUIDELINES, *supra* note 95, at 20.

170. Data showed that although few hearings lasted longer than twenty minutes, attorneys often requested several hours or days of court time for contested hearings. Judges then had to look many weeks or months ahead in order to find the block of time on their calendars.

has the most CINA filings, it should be designated as the pilot project site.

E. Other Considerations

The assessment produced a number of further recommendations. The following highlight several of these recommendations. First, probably to a greater extent than any other part of our legal system, the foster care system would benefit from coordination and cooperation between the involved parties. The courts can do much to encourage this cooperation. For example, judges could encourage a non-adversarial tone in CINA cases which would produce several benefits. Parties may be more willing to stipulate to key issues than to litigate them. Stipulations can save court hearing time and can achieve outcomes superior to those reached through litigation. Parents and DFYS may work together to accomplish what is best for the child. A judge can encourage a non-adversarial tone by (1) requiring pre-hearing conferences involving the GAL, parents and state, (2) addressing discovery problems as soon as they come to the judge's attention and (3) encouraging interested parties and the court system administration to explore a mediation pilot project for CINA cases.

Second, the court system should systematically train all judges, magistrates and clerks about CINA cases, both at the annual judicial and magistrate conferences and at special training sessions. Respondents, including judges, stressed the need for basic education about the laws and procedures, as well as training to understand that CINA cases differ from other civil cases and the importance of looking at a case from the child's point of view. Other important topics would include education about reasonable efforts, what to look for in case reviews, family dynamics, cultural issues, and how actively to manage cases. To accomplish this, the court system should develop a CINA bench book for judges and magistrates which would lay out the nuts and bolts of how to handle a CINA case and include summaries of relevant state and federal legislation, court rules and appellate decisions. The book also should discuss appropriate timelines and case management philosophy. The court system should also develop a CINA handbook for clerks and administrators. This handbook would parallel the judge's bench book but would focus on clerks and administrators. Clerical and administrative understanding and oversight of CINA cases is critical to proper review.

Third, the court should allocate sufficient judicial and administrative resources to CINA cases. In the past, the court has recognized the importance of groups of cases by establishing committees to set and monitor policy and its implementation (for example, Rules Committees, Fairness and Access Committee and

Mediation Task Force), designating deputy presiding judges, allocating central administrative and clerical staff resources, and, in multi-judge courts, assigning judges to specialized caseloads. The court should consider each of these options, and other appropriate means, to ensure that CINA cases have adequate resources.

V. CONCLUSION

This Article has reviewed the statutory and case law affecting the child in need of aid process in Alaska. It has also discussed the findings of the Alaska Judicial Council's assessment of the CINA court process in four Alaskan cities. Finally, it has provided a number of recommendations to improve Alaska's foster care system. While these recommendations will not be easy to implement, failure to make improvements will directly lead to increased neglect and abuse of Alaska's children—our most important resource. In addition to the impact on children and families, failure to address problems in the system will deeply affect society as a whole. The cost and effort of improving Alaska's foster care system may be high, but it is not nearly so high as ignoring the problems.

