

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

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Abstract

Issues. Child protection cases (“CINA cases”) are among the most difficult litigation that the state courts handle. Some of the difficulties are inherent to the subject matter itself. For example, the emotional context of removing a child from his or her parents is a central part of these cases. Also, many of the parents who go through the child protection system suffer from chronic and ongoing problems such as substance abuse and mental illness. Many of the children suffer from traumatic mental and physical injuries. But aside from those difficulties inherent to the subject matter of these cases, a significant part of the challenge presented by CINA cases involve case management. CINA cases are complex, multi-party civil litigation in which the parties often include large bureaucracies such as child welfare agencies. Yet they differ from other complex, multi-party civil litigation because they are processed on an accelerated timeline. Judges must comply with a variety of laws that mandate timelines and deadlines for certain case events, as well as specific judicial findings at certain hearings. Finally, these cases require judges to make a series of interrelated decisions over time about the care and custody of neglected or abused children in the context of changing parental behavior and often severe family dysfunction. As such, successful management of these cases requires significant expertise, time and attention from court administrators and judges.

Goals and Objectives. This reassessment examines the current strengths and challenges of Alaska’s child protection system.¹ Goals of this reassessment were to examine the effectiveness, timeliness, and quality of child protection proceedings in Alaska’s state courts. Timeliness and effectiveness were assessed using case-specific information about compliance with statutorily mandated deadlines for hearings, trials, and other case events, and about frequency of continuances. Timeliness and effectiveness were further assessed using information from judges and others about the most common reasons for continuances and delayed permanency, the most common causes of case processing problems, and any special techniques or case management practices that improve handling of these cases. The quality aspect was measured through judges’ and stakeholders’ perceptions of the quality of legal arguments and evidence presented at proceedings, the court’s performance in providing adequate resources for these cases (including trained judicial officers), and the parties’ ability to

¹ This assessment builds on the results of two prior studies. A baseline assessment, completed by the Alaska Judicial Council in October 1996, evaluated 473 closed and open cases from four court locations (Anchorage, Bethel, Fairbanks, and Sitka). A subsequent evaluation, completed by Dr. Darryl Wood of the UAA Justice Center in June of 2002, examined case processing in the Anchorage, Bethel, Fairbanks, and Ketchikan trial courts.

consistently provide judges with information necessary to make decisions in these cases. Because almost half of the CINA cases in Alaska's courts involve Native children, this reassessment also examines the Alaska Court System's compliance with the federal Indian Child Welfare Act (ICWA).

Methodology. The reassessment examined both quantitative and qualitative data. Qualitative data included information from randomly sampled court case files with new petitions filed in 2001 and 2004 in five representative court locations (Anchorage, Bethel Fairbanks, Ketchikan, and Kotzebue). This information was entered into a custom-designed database and analyzed using statistical analysis software. Qualitative data included surveys mailed to judges and stakeholders statewide. Mail out questionnaires went to parents' attorneys, assistant attorney generals, guardians ad litem and ICWA workers statewide, in addition to all superior court judges and masters in the state. The surveys were then reviewed and analyzed for inclusion in the report.

Context for understanding the case file and survey data came from input from the CINA Court Improvement Committee, subsequent interviews with individual judges and stakeholders, reference to earlier child protection assessments published in 1996 and 2002, analysis of applicable state statutes and court rules, reference to court-related findings from the federal CFSR of the Alaska Office of Children's Services, and from the recent IV-D audit of the Alaska Office of Children's Services.

Conclusions and Recommendations. The study revealed that federal and state requirements for child protection cases put a significant burden on the court's calendar, clerical staff, and judicial training time. Nevertheless, the study showed that agencies and courts have made positive progress since 1996 on several important measures, including timeliness of adjudications and increased participation by Tribes in cases involving Native children. The study also revealed several strengths of the system, including the good quality of representation and the parties' professionalism, respect for judges, and few court-related delays in permanency.

However, several opportunities for additional progress remain. Adjudication findings still occur outside the 120 day limit, particularly in Anchorage. Temporary custody findings occur on average several days to several weeks after the initial probable cause hearing. Except in Fairbanks, delays also were found between the time of the adjudication hearing and the disposition hearing. The practice of continuing hearings was found to be common, and is a factor that may have contributed to the delays. Finally, the study identified technical problems with the phone system as an issue when a party participates by telephone, as many do in CINA cases in Alaska.

Abstract

Recommendations focused on the importance of judges and parties developing a shared understanding of practices and expectations concerning continuances and acceptable case delays. Another recommendation was for the court system to continue its program of improvements to telephonic equipment at all superior court locations, and to training of in-court clerks.

Part I: Introduction

A. Definition of Problem

Child protection cases (“CINA cases”) are among the most difficult litigation that the state courts handle. Some of the difficulties are inherent to the subject matter itself. For example, the emotional context of removing a child from his or her parents is a central part of these cases. Also, many of the parents who go through the child protection system suffer from chronic and ongoing problems such as substance abuse and mental illness. Many of the children suffer from traumatic mental and physical injuries.

But aside from those difficulties inherent to the subject matter of these cases, a significant part of the challenges presented by CINA cases involve case management. CINA cases are complex, multi-party civil litigation in which the parties often include large bureaucracies such as child welfare agencies. Yet they differ from other complex, multi-party civil litigation because they are processed on an accelerated timeline. Judges must comply with a variety of laws that mandate timelines and deadlines for certain case events, and make specific findings at certain hearings. Finally, these cases require judges to make a series of interrelated decisions over time about the care and custody of a neglected or abused child in the context of changing parental behavior and severe family dysfunction.

Underscoring the reality of these challenges, a comprehensive assessment of the Alaska Court System’s handling of child protection cases published in 1996 and a subsequent follow up study in 2002 found some deficiencies with respect to a number of aspects of CINA cases, including: notice, delay, quality of hearings, timeliness of case resolution, adjudication rates, and treatment of cases involving Native children. Thus, successful management of these cases requires significant expertise, time and attention from court administrators and judges.

B. Proceedings/Program to be Evaluated

This study evaluates the Alaska Court System’s recent performance handling child protection cases, and discusses that performance in the context of two earlier assessments that reviewed CINA case processing. This study further measures ACS’ current performance against the Alaska Supreme Court’s performance standard and court rules, against deadlines and mandates set in federal and state law, against national standards (where applicable), and against the federal HHS’ goals of safety, permanency and well-being for children in foster care.

This assessment is sponsored by the Alaska Court System's CINA Court Improvement Committee,² with funding from the federal Court Improvement Program. The CINA Court Improvement Committee has sponsored a variety of projects and initiatives since its inception in the late 1990s to raise the quality of practice in child protection litigation statewide.³ In addition, the CINA Court Improvement Committee functions as a unique forum for increasing communication and collaboration between the state court system, tribal representatives, the state child welfare agency (OCS), and other executive branch agencies involved in child protection litigation.

C. Geographical, Demographic and Governmental Context

Alaska's child protection system cannot be understood without reference to the unique geography, demographics, and service delivery structure of the state. Alaska is the third-most sparsely populated state in the country (about 1.1 residents per square mile).⁴ Residents are distributed unevenly between urban and rural places, with about 70% living in places of 2,500 people or more, and the rest living in small, clustered settlements and Alaska Native villages (many of which lack road access). Thus, although Alaska Natives account for only about 16% of the total population, they comprise 70-100% of residents in the rural areas.

Alaska's population is younger than the national average, and its Native American population is younger still (32.9 years on average for non-Native Alaskans compared to 23.3 years for Alaska Natives). About 30% of Alaska's population consists of children under the age of 18.⁵

In addition, although Alaskans in general enjoy a lower dependency burden compared to working-age people in other states, for Alaska Natives the burden is larger: Every 100 Alaska Native persons of working age support 87.2 additional persons, compared to 53.1 for non-Native Alaskans.

² The CINA Court Improvement Committee is a statewide, multi-disciplinary group of judges, court administrators and representatives from other agencies that meets 3-5 times per year, and makes recommendations to the Alaska Supreme Court regarding programs and projects that should be undertaken to improve the court system's handling of CINA cases.

³ The CINA Court Improvement Committee recommended development of the court system's CINA mediation program, sponsors ongoing, mandatory statewide training for judges, co-sponsored a series of interagency training conferences focused on the Indian Child Welfare Act (ICWA), and collaborated with the court system's Case Management System team to customize its children's module, among other things. These projects were funded with a combination of the federal CIP grant, matching contributions from the Alaska Court System, and in the case of the ICWA interagency conferences, with matching contributions from ANCSA nonprofits and tribal entities.

⁴ The demographic information in this section is taken from the Alaska Department of Labor and Workforce Development's publication, ALASKA POPULATION OVERVIEW: 1999 ESTIMATES (May 2000).

⁵ Figures drawn from 2000 Census data on Alaska Department of Labor and Workforce Development's web site. 190,717 of the state's 626,932 residents are younger than 18.

Alaskans as a group enjoy relatively high per capita incomes compared to the rest of the United States; however, Alaska Natives (and to some extent other rural residents) tend to have higher unemployment, lower labor force participation, and lower incomes compared to other Alaskans. Many Alaska Natives and some non-Native rural residents support themselves and their families through traditional subsistence hunting and gathering activities.

Alaskan children suffer from high per capita levels of child maltreatment compared to children in other parts of the United States. For federal fiscal year 2003, Alaska's rate of substantiated maltreatment per 1,000 children in the population was 22.5. This was the 4th highest rate of the 50 areas reported. (Data were reported for the District of Columbia but were not available for California.) The highest rate was 24.6 (Massachusetts) and the lowest was 1.6 (Pennsylvania).⁶ Alaska Native families are over-represented within the Alaska Office of Children's Services caseload: Alaska Natives comprise about 17% of the population of Alaska but Alaska Native children accounted for 61% of the reports of harm in 2004.⁷

Child neglect associated with parental alcohol abuse is a common theme in Alaska's child protection system. "Alcohol is the most abused substance in Alaska, with a rate of abuse and subsequent disruption described as epidemic."⁸ One study estimated the total cost for alcohol and other drug dependency in Alaska in 1999 at \$453 million.⁹ Alaska ranks second in the nation for the percentage of chronic drinkers; in 2001 it was estimated that 14% of the adult population in Alaska abuses or is dependent on alcohol as compared to 7% of the US population.¹⁰ Of the individuals in Alaska suffering from alcohol dependence, one of the highest risk and lowest- served groups is alcohol-dependent women with children.¹¹ Not surprisingly, then, Alaska ranks first of the fifty states for the rate of Fetal Alcohol Syndrome.¹²

⁶ This comparison statement is based on an analysis of the latest data available for federal fiscal year 2003 (Oct. 2002 - Sept. 2003) from Table 3.2 in CHILD MALTREATMENT 2003, a publication from the U.S. Department of Health & Human Services, Children's Bureau that can be found at <http://www.acf.hhs.gov/programs/cb/publications/cm03/cm2003.pdf>. Please note, however, that maltreatment rates are not necessarily comparable between states because states use many different definitions, policies, practices and data collection and entry procedures. For example, states define abuse and neglect differently and set different standards for investigation and substantiation. Rates listed in the publication include reports with findings of "Substantiated," "Indicated" or "Alternative Response Victim." For Alaska, reports with a finding of "Unconfirmed" were reported as "Indicated." Because only eight other states used a category in addition to "Substantiated," the above comparison information was based on "Substantiated" reports only.

⁷ Pope et al, *Exploring the Links Between Parental Substance Abuse and Child Welfare* at p. 17 (University of Alaska Anchorage School of Social Work 2005).

⁸ Pope et al, *supra* note 6, at p. 15.

⁹ Pope et al, *supra* note 6, at 15. The study, published by the McDowell Group in 2001, measured costs in the categories of productivity losses, criminal justice and protective services, traffic accidents and public assistance. *Id.*

¹⁰ Pope et al, *supra* note 6, at 16.

¹¹ Pope et al, *supra* note 6, at 16.

¹² Pope et al, *supra* note 6, at 16.

Child neglect associated with parental drug abuse also is common. Alaska ranks first of the fifty states in the rate of illicit drug use.¹³ Methamphetamine is increasingly becoming a problem in certain areas of the state. In an article posted on the web on March 8, 2005, the *Juneau Empire* reported that between 2003 and 2004, the number of methamphetamine labs in the Matanuska Susitna borough (a rapidly growing area north of Anchorage) discovered by authorities increased from nine to 42. The calls about methamphetamine to one OCS office in that area account for as many as 40 percent of the agency's total monthly child protection calls.

Against this backdrop of significant substance abuse and need for social and governmental services, Alaska's low population density, massive size, harsh weather and comparative lack of transportation infrastructure make delivery of those services both logistically complex and expensive. The service delivery problems tend to manifest most dramatically in the rural villages and settlements. In rural Alaska, the primary means of travel is by small airplane. In the summer, some villages can be reached by skiff, and in the winter they can be reached by snow machine or dog sled - but the primary means of transport continues to be by small airplanes. The reality of transportation in rural Alaska is described by this excerpt from the Alaska Justice and Law Enforcement Commission's recent draft report on problems in rural Alaska:

The expense of travel in Alaska is often doubted by individuals in the Lower 48, but air fare from Anchorage to many villages far exceeds air fare from Anchorage to Seattle. Some examples are round trip fares from Anchorage to the Pribilof Islands and the Aleutian Islands chain, which can exceed \$1,100. Travel to small villages in Western, Northwestern, and Northern Alaska requires flights to hubs, such as Bethel, Nome, Kotzebue, and Barrow, which can cost as much as \$900, followed by a second flight in an "air taxi" – most often a single engine Cessna – to a small, dirt airstrip in the remote village.

Child protection services in Alaska are funded and delivered by the state through the Alaska Department of Health and Social Services, Office of Children's Services ("OCS"). Alaska Native Tribes also deliver child protection services in some rural villages; however, only OCS files child protection litigation in state court. Lawyers and guardians ad litem who participate in child protection litigation also are funded through state executive branch agencies (Department of Law, Office of Public Advocacy, and Public Defender Agency), and not through local governments. Law enforcement services are delivered mainly through state funding of the Department of Public Safety

¹³ The statement comes from a U.S. Department of Health and Human Services report that is cited in Pope et al, *supra* note 6, at 16.

and the Village Police Safety Officer Program, except that some of the largest urban municipalities (for example, Anchorage, Palmer, Fairbanks, Juneau) also fund and operate local police forces.

There are no local or municipal courts in Alaska; the state courts handle child protection litigation.¹⁴ The Alaska Court System is a highly unified court with a centralized administrative structure. The ACS has two levels of trial courts, one of which (the superior court) is primarily responsible for hearing CINA cases. CINA appeals go directly from the superior court to the Alaska Supreme Court.

D. Significance of CINA Cases to Alaska Court System

While child protection cases account for only a small percentage (about 6%) of the total annual filings in the Alaska superior courts, information collected during the course of this research suggests that in fact those cases consume disproportionately more judicial and clerical resources. The belief that CINA cases consume judicial resources disproportionate to their representation in total superior court filings is supported by results of a survey sent to all judicial officers in the state who handle CINA cases.¹⁵ Over a third (39%) of those responding reported holding more than ten CINA hearings in the previous month, about 27% reported holding between three and nine CINA case hearings in the last month, and less than a third (32%) reported holding two or fewer CINA hearings in the previous month.

In addition to time spent in hearings, forty percent of judges who responded to the survey reported spending up to two additional hours per month preparing for hearings in CINA cases, while a quarter spent 2-6 additional preparation hours. Almost a third (32%) reported spending more than seven additional hours in the previous month preparing for CINA hearings.

In addition to bench time and preparation time, thirty-eight percent of respondents reported spending 1-3 hours in a typical month for community, training, committee work, or other activities related to child welfare concerns. Interestingly, 14% reported spending more than three hours in a typical month on such community activities.

¹⁴ Several villages or Tribes in Alaska operate tribal courts that work with child protection cases; however, the legal and policy implications of these activities are not yet settled in this state. Thus, interactions between the tribal court systems, the state court system, and state executive branch agencies have not been fully defined. The legal and practical implications of tribal court activity likely will continue to generate intense interest, discussion, debate and litigation in Alaska.

¹⁵ The survey is explained in the Method section, below.

A quick look at calendaring practices in CINA cases lends further support to the hypothesis. For example, in Bethel, each of the two superior court judges devotes one week per month (roughly a quarter of calendar time) to hearings in CINA cases. In Fairbanks, each of the five superior court judges devotes one afternoon per week to CINA cases. In Anchorage, two full-time standing masters devote roughly half of their time to CINA cases, in support of the eight superior court judges who are assigned those CINA cases.

Table 1 below shows statewide CINA case filings over the past few years compared to total superior court filings. The Table also shows how many petitions for termination of parental rights were filing in existing cases, because they signify the beginning of a new phase in the litigation and often necessitate significant additional judicial resources. The Table shows the total number of CINA cases, but it does not show how much time judges devote to their CINA cases. (As mentioned above, judges' reports of time spent on CINA cases suggest that judges and clerks spend disproportionately more time on CINA cases than would be expected based on their representation in total superior court filings. Judges felt that CINA cases consume more time because they require more hearings, more detailed findings, and involve more parties than other superior court litigation.)

Table 1: Child in Need of Aid (CINA) Filings Compared to Total Filings in Superior Courts Statewide* FY 2000 – 2004			
Fiscal Year	Superior Court Case Filings (Civil & Criminal)	CINA Case Filings	Number of Termination of Parental Rights Petitions Filed
2004	19,366	1,144	180
2003	18,584	1,169	207
2002	18,143	1,147	211
2001	17,802	1,228	228
2000	17,785	1,271	292

In fiscal year 2005, 22 CINA appeals were opened in the Alaska Supreme Court. During this same time, the court issued 17 CINA opinions (published and unpublished).¹⁶ The Supreme Court treats CINA cases as expedited matters. Alaska Statute 47.10.080(i) provides that, absent extraordinary circumstances, a decision on a CINA appeal must be issued no later than 90 days after (a) the date of oral argument on the appeal, or, (b) if oral argument is not requested, 45 days after the last date oral argument could have been timely requested. To implement that statute, the Supreme Court adopted

¹⁶ This number was lower than in previous years.

procedures under Alaska Appellate Rule 218 that expedite preparation of the record and briefing. Finally, the supreme court adopted internal standards in 2001 that encompass the time the court has ultimate control of the case - from submission of the case (usually that is the date of oral argument or conference) to the date of decision.

E. Goals of Program

The mission of the Alaska Court System is to provide an accessible and impartial forum for the just resolution of all cases that come before it, and to decide such cases in accordance with the law, expeditiously and with integrity. Specifically with respect to child protection cases, the court system's goals include complying with applicable performance standards, court rules, and state and federal laws.

F. Measurable Objectives

This study adopts several sets of measurable objectives related to timeliness, efficiency, fairness, treatment of parties, and quality of proceedings. In addition, this study reviews several other topics as required by the federal court improvement program. Each objective is described below.

1. Objectives Related to Timeliness

The frequency and length of judicial delays is an important topic in CINA cases, given the emphasis on finding permanency for children. This study examines the timeliness of CINA case processing, and attempts to document some of the factors that work against timeliness in these cases.

- a. Are case events occurring within deadlines set by state law and court rule?

Timeliness is important to achieving permanency.¹⁷ Timely case processing also reduces children and parents' uncertainty about their future.¹⁸ Timeliness measures in this study include: timeliness of adjudication hearings, disposition hearings, permanency hearings, termination of parental rights hearings, permanency plan decisions, and filing termination of parental rights petitions. In

¹⁷ Permanency is defined either as safely returning children home, or placing them in new, permanent homes.

¹⁸ Hardin, M. *The Future of Court Improvement Part I: Timeliness of Judicial Decisions*, Vol. 6, No.2 CHILD COURT WORKS (July 2003).

addition, this study evaluates timeliness by asking judges and stakeholders whether they perceive delay to be a problem in their CINA caseloads.

- b. If deadlines are not being met, why?

A finding that deadlines are not being met in a certain percentage of cases should not end the inquiry. An important goal of this project is to arrive at a better understanding of the reasons for delays.

2. Objectives Related to Efficiency

Efficiency can be related to timeliness, in that efficient courts may process cases more timely. However, efficiency is a separate objective, since timely case processing does not necessarily prove that procedures are efficient.

- a. Are the courts scheduling case events efficiently and holding hearings when scheduled?
 - 1. How often do courts continue hearings?

It is inefficient to reschedule and continue hearings multiple times. Generally, CINA court rules require a finding of “good cause” for a judge to continue a scheduled hearing. However, “good cause” is not defined, and no standards exist regarding the number of acceptable continuances per case. Principles of sound case flow management discourage any continuances and strongly encourage judges and administrators to schedule credible trial dates.¹⁹
 - 2. What types of hearings are most often continued?
 - 3. What are the most common reasons for continuances of hearings?

¹⁹ Trial Court Performance Standard 2.1 and Measure 2.1.4.

4. How often do hearings begin when scheduled?

Another way of looking at efficiency is to ask whether a process that may be very efficient from the court's perspective is in fact inefficient for court customers. An example would be the practice of "stacking" multiple hearings for one time, requiring the parties to waste time in court waiting for their case to be called. To measure this item, parties were asked how often hearings start when they are scheduled to begin.

b. Are courts adopting effective pretrial practices?

Since almost all decisions in CINA cases are arrived at through stipulation of the parties, an important part of credible scheduling is to know which hearings will be contested. An important way that judges can know is to hold pretrial conferences,²⁰ and in fact Alaska rules of court require the judge to hold a pretrial conference before the adjudication trial. This study assesses how often judges hold pretrial conferences as required, and whether parties find them helpful.

c. Are limitations in available court time inhibiting presentation of evidence?

1. How often are hearings interrupted for more than a day or two?

Obviously, interrupted hearings are inefficient and may contribute to delay. Although no standards exist for such gaps in hearing completion, a goal of this study is to learn how often interrupted proceedings occur and whether stakeholders perceive them as being a problem.

2. Are courts able to calendar hearings timely?

Parties were asked how long it took their local courts to schedule a hearing after it is requested.

²⁰ Hardin, M. *The Future of Court Improvement Part I: Timeliness of Judicial Decisions*, Vol. 6, No.2 CHILD COURT WORKS (July 2003).

3. Do courts give the parties adequate time enough to present their case?

Parties were asked whether they had participated in hearings at which the judge did not give them adequate time to present their case.

- d. Are courts encouraging settlement in appropriate circumstances?

Most aspects of child abuse and neglect cases are resolved without contested hearings by agreement of the parties. Because an outcome reached by agreement is often superior to an outcome reached through litigation, courts should encourage settlement without contested litigation in appropriate cases.²¹ Ways that the court can encourage settlement in appropriate cases are through mediation, and through rules or pretrial orders that require the parties to meet. Alaska has a mediation program, and it has a rule of court that requires the parties to meet before the adjudication trial; but to what extent do parties perceive these procedures as helping them reach agreements?

- e. Frequency of contested hearings

The federal review requires the courts to evaluate the extent to which parties present witnesses, introduce evidence and make legal arguments. From a court management perspective, this item can be described as the frequency with which hearings are contested.

- f. How often are multiple hearings required on the same issue?

Even if hearings are timely scheduled and there is sufficient time to present evidence, it is inefficient if the judge cannot make the required decision and needs to hold another hearing. This study takes a brief look at the frequency with which disposition hearings are held, as a rough indicator on this measure.

²¹ See, NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES, RESOURCE GUIDELINES: IMPROVING COURT PRACTICE IN CHILD ABUSE & NEGLECT CASES at 42 (1995).

- g. Are judges and court administrators using strong case management techniques?

Effective case flow management is essential to successful permanency planning, and to ensure that delays in the court process do not interfere with the timely achievement of a permanent placement for the child.²² This study examines case management techniques and attitudes of Alaska judges.

3. Objectives Related to Fairness

Fairness is a fundamental goal of the Alaska Court System and the Trial Court Performance Standards.

- a. Is there evidence of disparate treatment of Native children with respect to adjudication?

The Alaska Judicial Council's baseline study published in 1996 found that Alaska Native children were adjudicated children in need of aid disproportionately more often than non-Native children, and there did not seem to be a legal justification for this disparate treatment. However, a follow up case file study performed after the law had changed to require adjudications within 120 days found that this disparity had disappeared. This study again measures the percentage of cases involving Native children that had an adjudication order compared to other cases.

- b. Do parties receive adequate notice of court proceedings?

A fundamental aspect of fairness is notice of court hearings. The 1996 Alaska Judicial Council baseline study concluded that notice practices, mainly with respect to Tribes, could be improved. While the 1998-2001 case file study found that notice had improved, the current study asks tribal representatives whether they get appropriate notice of hearings, particularly rescheduled or continued hearings.

²² *Resource Guidelines*, *supra* note 21, at 19.

- c. Are parties treated fairly?

Court staff and judges should treat parties and their representatives with fairness and respect. This objective is best measured by asking court users whether they feel that they were treated with fairness and respect.

4. Objectives Related to Quality

- a. Are parties being represented competently?

Judges cannot make sound decisions without competent attorneys and social workers, since the parties control the flow of information to the judge. In addition, the court relies on the parties to make their own decisions in the vast majority of cases. Attorneys and social workers should have the training and experience they need to fulfill their roles, should have time to prepare for hearings and other case events, and should not be replaced by other attorneys while cases are pending.²³ A goal of this study is to understand how well the parties are managing their cases and workloads.

- b. Are Tribes intervening in cases involving Native children?

Whether to intervene as a party in a state court CINA case is a decision left up to the Tribe. However, to the extent that Tribes intervene, more resources and information are brought to the table, potentially supporting better decisions and outcomes. This study attempts to measure rates of tribal intervention, and tribal representatives' perceptions of the court process.

- c. Are court and agency caseload sizes affecting judicial performance?

Even when courts and agencies are being managed efficiently and parties feel that they are being treated with fairness and respect, resource limitations may affect the quality of the decisions. Resource limitations may affect the amount of time that judges can

²³ Hardin, M. *The Future of Court Improvement Part II: Judicial Expertise and Legal Representation*, Vol. 6, No. 3, CHILD COURT WORKS (August 2003).

devote to a case, and they may affect the parties' ability to be prepared and present quality information to the judge.

- d. Are telephonic hearings impacting the quality of proceedings?

Because of the vast geographical distances in Alaska and the expense of travel, telephonic participation in court hearings is relatively common. This study examines the frequency with which parties participate telephonically in CINA cases, and whether that fact impacts the quality of those proceedings.

5. Other Federal Objectives

The federal Court Improvement Program has required state courts to assess a number of other items. Each of these items is listed below and addressed in the findings section.

- a. The performance of courts and the degree of collaboration with the State child welfare agency as reflected in the statewide assessment, final report, and PIP resulting from a CFSR;
- b. The sufficiency of judicial determinations in court orders as reflected in the final report and PIP resulting from title IV-E foster care eligibility reviews;
- c. Assessment of proceedings that determine whether independent living services are provided to a child or youth up to age 21;
- d. The functioning and quality of case tracking systems.

Part II: Literature Review

This section reviews other research and studies dealing with child protection litigation. The first section discusses earlier studies of Alaska's system, and the second section briefly discusses studies of other jurisdictions' systems.

A. Earlier Studies of Alaska's System

Others have studied the processing of child protection cases in the state courts in Alaska. Five recent studies and their findings are discussed below.

The 1996 Baseline Assessment of the Court Process. The first comprehensive assessment of the Alaska Court System's handling of child protection cases was authored in 1996 by the Alaska Judicial Council and funded through a grant to the Alaska Court System from the federal Court Improvement Program.²⁴ The Council studied case files in Anchorage, Sitka, Bethel and Fairbanks.²⁵ The Council's study reviewed 473 closed and open cases from 1995 and earlier. It also conducted extensive surveys and interviews of all stakeholder groups, including tribal representatives, parents' attorneys, guardians ad litem, judges, state attorneys, and social workers. In addition, the researchers observed court hearings and talked to policy makers.

The 1998-2001 Court Case File Study. In 2002, The Alaska Court System initiated a follow up study to the Council's baseline assessment. This second study, undertaken by the CINA Court Improvement Committee in cooperation with the University of Alaska Justice Center (Professor Darryl Wood), was intended to measure changes in case processing associated with the passage of ASFA²⁶ in 1997 and related changes in state law enacted in 1998. The second study relied on court case file data from a sample of 1998-2001 cases in Anchorage, Bethel, Fairbanks and Ketchikan.²⁷ This study analyzed 95 cases.

²⁴ See Carns, DiPietro, Connors, Cotton & Vandercook, IMPROVING THE COURT PROCESS FOR ALASKA'S CHILDREN IN NEED OF AID (Alaska Judicial Council 1996) (cited hereinafter as "*Judicial Council Study*"). The report can be downloaded from the Judicial Council's web site: www.ajc.state.ak.us.

²⁵ Anchorage (about 260,000 residents at that time) and Fairbanks (about 70,000 in the area) were considered urban courts. Sitka, in southeast Alaska, had the fourth largest population (about 8,500) of any city in the state, although the Sitka court had one of the lower caseloads. Bethel served its own population of about 4,000 primarily Alaska Native people living in fifty-six remote, rural villages spread throughout western Alaska along the Yukon and Kuskokwim rivers and the Bering Sea Coast. For reference, the total population of the state of Alaska in 1996 was roughly 600,000 people.

²⁶ Adoption and Safe Families Act, Public Law 105-89.

²⁷ Wood, Darryl, *An Analysis of Data for an Evaluation of Court Processing of CINA Cases* (June 2002) (hereinafter cited as "*Wood Analysis*"). This follow up assessment did not sample cases from Sitka because there were not enough filings in that court during the study years. Ketchikan was chosen as a replacement for Sitka on the grounds that both courts are in the first judicial district and Ketchikan was the next-largest court in that district that had enough filings to study. Anchorage, Fairbanks and Bethel demographics, populations, and court caseloads remained similar between the two study windows.

The 2002 Federal Child and Family Service Review (“CFSR”) of the Alaska Office of Children’s Services. A third assessment of Alaska’s child protection system was released in 2002 by the U.S. Department of Health and Human Services (Administration for Children and Families). Entitled ALASKA CHILD AND FAMILY SERVICES REVIEW (hereinafter cited as “AK CFR”), the report assessed OCS’ performance on seven child welfare outcomes in the areas of safety, permanency, and well-being, and with respect to seven “systemic” factors. This assessment found that OCS was performing well in three of the seven systemic factors, and that it was not performing well in any of the seven outcome areas. Although the CFR was focused on child welfare agency performance, and not court performance, it did note three permanency-related problems that were possibly relevant to court system functions. The first involved permanency hearings (timeliness and substance), the second involved termination of parental rights trials, and the third involved adoption delays.²⁸

The 2003 Federal Title IV-E Eligibility Review. The title IV-E foster care eligibility review is an audit conducted by the Administration for Children and Families to (1) determine compliance with the child and provider eligibility requirements as outlined in 45 CFR 1356.71 and Section 472 of the Social Security Act, and (2) validate the basis of each state’s financial claims to ensure that appropriate payments were made on behalf of eligible children and to eligible homes and institutions. The Region X Administration for Children and Families (ACF) conducted an initial file review of the State of Alaska’s title IVE program in September of 2003. The review examined case file documents and orders to determine how many of them contained certain types of judicial findings.²⁹

In the title IVE cases reviewed for Alaska, the report noted five strengths and one area needing improvement. Several of the strengths related to findings required in court orders:

- For cases for which title IVE was claimed, "contrary to the welfare" and "reasonable efforts to prevent" judicial determinations were consistently found in the initial court orders;

²⁸ AK CFR Report at pp. 62-63.

²⁹ Note that the practice in most courts in Alaska is for the assistant attorney general to draft the appropriate CINA order and findings for the judge’s review and signature. Thus, it is worth noting that the completeness of the court’s orders is largely a result of the AAGs’ efforts.

- Cases in which IVE was claimed included court orders with the "reasonable efforts to finalize the permanency plan" judicial determination when required; and
- Some court orders included judicial determinations with good case specific findings.³⁰

The final finding, categorized as an "area needing improvement," was that in some cases OCS had stopped claiming title IVE for time periods in which timely "reasonable efforts to finalize the permanent plan" judicial determinations had not been obtained. The report concluded that "[a]dditional efforts are needed to consistently obtain these determinations in a timely manner." However, the report did not specify why the determinations had not been obtained, so it was not clear whether the assistant attorney general neglected to ask for the finding, or whether the finding was requested but the judge made a negative finding.

The *Children in Alaska's Courts Project (April 2005)*. During 2004, the Alaska Court System conducted five regional forums across the state to ask professionals and the public what was working and what wasn't in the court system's responses to cases affecting children. (The project was supported with a grant from the State Justice Institute). At each forum, participants from the children's justice community were divided into four roundtables, one of which focused on child in need of aid cases (except in Barrow, where the planners decided to devote the entire day to discussion state-tribal relationships in children's cases). The participants were asked to identify strengths of the current system, challenges or weaknesses of the current system, and potential solutions. At the end of the day, these lists were collected and conveyed to the public at a public forum held during the early evening hours. Members of the public were offered the opportunity to comment on the lists, or to offer ideas and recommendations of their own. Over 300 people participated in the forums.

Taken together, these five earlier studies addressed a number of important topics including: notice, delay, length of hearings, length of cases, adjudication rates, final outcomes, ICWA compliance and special findings related to cases involving Native children. The most significant of these findings that relate to the court process are outlined briefly below.

³⁰ Other strengths were that eligibility files included good eligibility determination forms, and that Alaska has a good eligibility infrastructure with competent eligibility specialists trained and supported by knowledgeable central office staff.

1. Earlier Findings Related to Timeliness

a) General Findings on Timeliness

Both the 1996 Judicial Council baseline study and the 1998-2001 case file study found delay to be an issue in some but not all courts. The 1996 study found that hearings often did not start on time, and that other agencies sometimes did not process cases timely for a variety of reasons.³¹ The Alaska Judicial Council found that other agencies sometimes caused delay by failure to provide notice, transferring the case among social workers, failure to complete discovery timely, and failure to prepare papers timely (such as dismissals, reports and draft orders).³² Second, it found that whether a case was contested influenced the likelihood of delay.³³ Finally, it found that delays were caused by judges' difficulty finding calendar time that matched attorneys' schedules, and by continuances of scheduled hearings.³⁴ Another issue identified at the Bethel *Children in Alaska's Courts* roundtable was a tendency of the court to "bump" or continue CINA cases, apparently because of pressure from the criminal calendar.³⁵

On the other hand, the *Children in Alaska's Courts* report identified efficient and effective court procedures, proceedings, and timely decisions as strengths in the Fairbanks Superior Court. Participants cited early appointments of attorneys and guardians ad litem and good file management as specific examples of the Fairbanks court's strength in these areas.³⁶ Similarly, participants identified prompt calendaring, regular case and status conferences, and few continuances as strengths in the Juneau Superior Court.³⁷

b) Timeliness of Adjudication

Even those cases in the 1996 Judicial Council baseline study that were adjudicated did not reach that stage very quickly, although

³¹ *Judicial Council Study*, *supra* note 24, at 52.

³² *Judicial Council Study*, *supra* note 24, at 90-91.

³³ *Id.* at 92.

³⁴ *Id.* at 95.

³⁵ *Children in Alaska's Courts: Community Conversations Sponsored by the Alaska Court System* at p. 22 (April 2005). (Hereinafter cited as "*Children in Alaska's Courts*").

³⁶ *Children in Alaska's Courts*, *supra* note 35, at 18.

this finding varied by court location. In Anchorage, only 25% of cases reached adjudication in 120 days, compared to 29% in Bethel, 37% in Fairbanks and 70% in Sitka.³⁸

After state law was changed in 1998 to require adjudication to occur within 120 days, these findings began occurring earlier: Slightly more than half (54.6%) of the 1998-2001 cases were adjudicated in less than 120 days, and 80% were adjudicated in 188 days or less.³⁹ Again, this finding varied by court location, with Anchorage being the slowest (only 44.4% of cases reached adjudication in less than 120 days), and Ketchikan and Fairbanks being the fastest (83.3% and 87.5%, respectively, of cases adjudicated in less than 120 days). Bethel achieved the 120 day adjudication deadline exactly half of the time (50%).⁴⁰

Further analysis of the 1998-2001 sample revealed that cases in which one of the reasons for adjudication was a parent's substantial impairment by alcohol took longer to reach adjudication than those without a finding of alcohol impairment.⁴¹ Also, cases in which a parent was incarcerated took longer to adjudicate when compared to cases in which the parent was not incarcerated.⁴² The cases that took the least amount of time for adjudication were those that were adjudicated for reasons of mental injury and, especially, for reasons of an absent child refusing care.⁴³

c) Timeliness of Permanency Hearings

The federal government's CFSR, completed in 2002, also identified delay as a barrier to permanency for children. The reviewers found that "permanency hearings usually occur on time, but there are sometimes delays caused by continuances requested by one or more parties to permit additional time to prepare."⁴⁴ Stakeholders

³⁷ *Children in Alaska's Courts*, *supra* note 35, at 18.

³⁸ *Judicial Council Study*, *supra* note 24, at 68.

³⁹ *Wood Analysis*, *supra* note 27, at 5. Across the four court locations in the study, it took an average (mean) of 133 days to adjudicate a case. Half of the cases were adjudicated in 113 days or less, while three-quarters of the cases were adjudicated in less than 173 days. *Id.* at 4.

⁴⁰ *Wood Analysis*, *supra* note 27, at 5.

⁴¹ *Wood Analysis*, *supra* note 27, at 6.

⁴² *Wood Analysis*, *supra* note 27, at 6.

⁴³ *Wood Analysis*, *supra* note 27, at 6.

⁴⁴ AK CFSR at 62.

reported that the timeliness of permanency hearings varied depending on whether the judge strictly enforced the timeline, the court's calendar, and some courts' practice of granting continuances requested by the parties.⁴⁵ In addition, the federal reviewers reported that stakeholders at one court location complained about delays in termination of parental rights trials caused by judges granting requests for continuances.⁴⁶

d) Length of Cases

The 1996 Alaska Judicial Council baseline study found that about 45% of cases were closed within six months of filing. In another 40% of cases, six to eighteen months elapsed between filing and closing. A third group, about 15% of cases, took over 18 months to process.⁴⁷ While recognizing that judges and other actors in the system must “establish a balance between speed, fairness, and thoroughness” the Alaska Judicial Council recommended that the court system “take a serious look” at procedures and expectations at other courts in speedier locations.⁴⁸ It further recommended that the court system develop “comprehensive time standards” for all important stages of CINA cases.⁴⁹

2. Earlier Findings Related to Efficiency

a) Adjudication Rates

One of the more interesting findings from the 1996 baseline study was that only 46% of CINA cases ever progressed to the adjudication (or trial) phase.⁵⁰ Although a child might (and often did) spend months in state custody, the court never found the child to be “in need of aid.”⁵¹ The original study explained that the parties commonly agreed to defer adjudication as long as the parent was “working the case plan,” and that the parties viewed adjudication as

⁴⁵ *Id.*

⁴⁶ *Id.* at 63.

⁴⁷ *Judicial Council Study, supra note 24, at 54.*

⁴⁸ *Judicial Council Study, supra note 24, at 147.*

⁴⁹ *Judicial Council Study, supra note 24, at 54-55.*

⁵⁰ *Judicial Council Study, supra note 24, at 64.* This finding varied by location. For example, only 37% of Anchorage's CINA cases ever reached adjudication, compared to 36% of Fairbanks cases, 43% of Sitka cases, and 78% of Bethel cases. *Id.* at 64-65.

⁵¹ *Judicial Council Study, supra note 24, at 64-65.*

a “punishment” or step to be taken only in “hopeless” cases.⁵² This situation had changed for the 1998-2001 cases, in which roughly two-thirds (67.4%) were eventually adjudicated in court, and an additional 17.9% were dismissed.⁵³

b) Hearings

The 1996 Alaska Judicial Council baseline study counted the number of hearings and length of hearings per case, finding that CINA cases were characterized by multiple, short hearings. With respect to hearing length, the 1996 found that despite some local differences in patterns, statewide 84% of all hearings concluded in 20 minutes or less.⁵⁴ The Judicial Council concluded that these hearing patterns were inconsistent with guidelines published by the National Council of Juvenile and Family Court Judges calling for hearings of 60 minutes (for the first hearing in the case), and 30 minutes at most other stages.⁵⁵ The Judicial Council recommended that parties spend more time in hearings to ensure that adequate time was available to address substantive issues (paternity, relative searches, etc) and case planning.

Analysis of the 1998-2001 cases showed little difference on the hearing measure. When the typical hearing time was calculated using the median number of minutes, half of the hearings across the four jurisdictions were found to have lasted 8 minutes or less, while a quarter of the individual hearings were less than 5 minutes, and three-quarters of the individual hearings lasted 15 minutes or less.⁵⁶

With respect to the frequency of hearings, the 1998-2001 cases did appear to suggest an increase from the time of the original assessment.⁵⁷ In the original assessment, the average case

⁵² *Judicial Council Study*, *supra* note 24, at 64-65.

⁵³ *Wood Analysis*, *supra* note 27, at 2.

⁵⁴ *Judicial Council Study*, *supra* note 24, at 50.

⁵⁵ See *Resource Guidelines*, *supra* note 21, at 42, 51, 62, 74. Note that state and federal law, Alaska rules of court, and Alaska Court System performance standards all are silent as to hearing length and frequency in CINA cases.

⁵⁶ *Wood Analysis*, *supra* note 27, at 11.

⁵⁷ Note, however, that the two samples might not be comparable because so few cases in the original assessment had an adjudication, compared to most of the post-1998 cases.

reviewed had 4.7 hearings.⁵⁸ In the later cases, the typical adjudicated CINA court case was heard over a mean of 7.1 hearings.⁵⁹

After these results on frequency and length of hearings were published, practitioners criticized them as not being meaningful measures. They argued that frequent hearings did not necessarily indicate that things actually were being accomplished. They further argued that lengthy hearings are not necessary if the parties have met before the hearing and appear at the hearing with detailed agreements to quickly read into the record. Anchorage practitioners advised that they had changed local practice to encourage parties to appear at the hearing with agreements and details already worked out and quickly put the information in the record. Because of the practitioners' input, and also because information about frequency and length of hearings is expensive and time-consuming to collect from the court case file, it was decided not to pursue this item in the current study.

c) Case Management

Strong case management can greatly improve the efficiency of case processing. Strong case management was identified as a strength in the Juneau Superior Court by the *Children in Alaska's Courts* forum participants. Participants praised the Juneau court's practice of assigning the same judge throughout a child's case, to both CINA proceedings and any later adoption case.⁶⁰ Having the same judge handle all aspects of a child protection case is the practice at most superior court locations in Alaska, with the important exception of Anchorage. In Anchorage, a master handles most pre-adjudication proceedings, and the case is sent over to the assigned superior court judge only under certain circumstances.

⁵⁸ *Judicial Council Study*, *supra* note 24, at 52. Bethel cases had more hearings (an average of 6.6), while Sitka cases had the fewest hearings (an average of 2.7), Fairbanks had 3.2 hearings on average, and Anchorage had 4.1. *Id.*

⁵⁹ *Wood Analysis*, *supra* note 27, at 9.

⁶⁰ *Children in Alaska's Courts*, *supra* note 35, at 18.

3. Earlier Findings Related to Fairness

a) Notice of Hearings

The Indian Child Welfare Act and Alaska law require the state to notify tribes of certain major events in a CINA cases involving a Native child. The 1996 Alaska Judicial Council baseline study evaluated how often the required notice was given and whether it was timely, finding that that some evidence of notice appeared in 91% of the 213 ICWA cases reviewed, but that notice was timely only about two-thirds of the time.⁶¹ The Judicial Council found that notice of continued or delayed hearings created particular problems for tribal workers participating by phone (as many do), and concluded that notice practices could be improved.⁶²

The 1998-2001 case file study suggested that notice practices had in fact improved in the intervening years. The study found first, that Tribes were notified in nearly all ICWA cases. It further found that in three-quarters of the ICWA cases examined the Tribes were notified within the 10 day limit.⁶³

b) Adjudication of Native Children

The 1996 Alaska Judicial Council baseline study uncovered statistically significant disparities in the rates at which Native and non-Native children were adjudicated CINA, and this disparity held across all locations (with the possible exception of Bethel, where the difference could not be analyzed because all but two of the CINA cases there involved Native children).⁶⁴ The finding was that Native children were adjudicated CINA at statistically higher rates than non-Native children. The finding was unexpected, and the study was unable to fully understand the reasons for it or its full consequences.⁶⁵ The Judicial Council recommended that the court system and other agencies undertake further study to determine

⁶¹ *Judicial Council Study, supra* note 24, at 114-15.

⁶² *Judicial Council Study, supra* note 24, at 116.

⁶³ Wood Analysis, *supra* note 27, at p. 7.

⁶⁴ *Judicial Council Study, supra* note 24, at 124.

⁶⁵ *Judicial Council Study, supra* note 24, at 124-25.

whether disparate adjudication rates between Native and non-Native children would persist over time.⁶⁶

By the time of the 1998-2001 case file study, the law had been changed to require adjudications within the first 120 days of the case. This change in the law eliminated the disparate adjudication rate problem, because it increased adjudication rates for all cases across the board. Thus, in order to investigate whether Native and non-Native children still were being treated differently, the 1998-2001 case file study compared dispositions and reasons for adjudication in ICWA and non-ICWA cases. The study found no substantial differences between the child's status after final disposition in ICWA and non-ICWA cases.⁶⁷ Additionally, the study failed to find statistically significant differences between the reasons that ICWA and non-ICWA cases were adjudicated (with only one exception).⁶⁸

4. Earlier Findings Related to Quality

a) Tribal Participation

Both earlier case file studies assessed the participation of tribes in CINA cases involving tribal children. When a state court case involves tribal child, the Tribe may intervene as a formal party. The 1996 baseline study found that formal documents were filed on behalf of the Tribe in only 35% of cases involving Native children, suggesting a low rate of intervention, or at the very least a low rate of active participation by Tribes. This situation had changed dramatically by the time of the 1998-2001 study, which found that Tribes intervened in roughly three-quarters of ICWA cases. Even assuming that part of the increase may have been attributable to better data collection during the second study, this change seemed significant.

⁶⁶ *Judicial Council Study*, *supra* note 24, at 175.

⁶⁷ *Wood Analysis*, *supra* note 27, at 3.

⁶⁸ *Wood Analysis*, *supra* note 27, at 8. Percentage wise, ICWA cases were more likely to be adjudicated for reasons of parental impairment by alcohol, for reasons of physical harm or risk of harm, or for reasons of neglect. However, chi-square tests failed to reveal significance at the .05 level on these items. The only statistically significant difference between the reasons for adjudication in ICWA and non-ICWA cases, a reason that was more prevalent in non-ICWA adjudications, was whether parental mental illness placed the child at risk. *Id.*

Participants at the Bethel *Children in Alaska's Courts* forum identified increased tribal intervention as a strength of the system, because tribes often can find good placements for the children.⁶⁹ However, at the Anchorage *Children in Alaska's Courts* forum, participants cited consistency of tribal involvement as a challenge.⁷⁰ This finding may be related to the unique caseload of the Anchorage court, which includes cases from villages all over the state.

At the Juneau *Children in Alaska's Courts* forum, participants praised the judges' training and experience applying the Indian Child Welfare Act. They added that the Juneau court is receptive to tribal issues.⁷¹

b) Alternative Dispute Resolution

Participants at the Anchorage and Bethel *Children in Alaska's Courts* forums identified the court system's mediation and family group conferencing programs as strengths of the system. In Anchorage, participants praised the 80% success rate of those programs, while in Bethel they noted that the programs were effective because the community-based, family-centered approach was consistent with traditional Yupik values.⁷²

A recent study suggests that compared to traditional hearings, mediation can result in more timely resolution of cases, more long-term permanency, and lower rates of re-entry into care.⁷³ The study's findings also suggested that mediation generated detailed, case-specific service plans and provided families with a non-adversarial forum in which to be heard.

⁶⁹ *Children in Alaska's Courts*, *supra* note 35, at 18.

⁷⁰ *Children in Alaska's Courts*, *supra* note 35, at 22.

⁷¹ *Children in Alaska's Courts*, *supra* note 35, at 18.

⁷² *Children in Alaska's Courts*, *supra* note 35, at 18.

⁷³ Permanency Planning Department of the National Council of Juvenile and Family Court Judges, *Mediation in Child Protection Cases: An Evaluation of the Washington, D.C. Family Court Child Protection Mediation Program* (2005). The evaluation studied outcomes for 200 child abuse and neglect cases that were randomly assigned to mediation and a comparison group of 200 cases that were handled through the traditional hearing process. The study tracked the cases from initial hearing through disposition and beyond. Data sources included case file reviews, mediation program files, exit surveys, and interviews with judges and other stakeholders.

c) Therapeutic (Problem-Solving) Court

In Anchorage in 2002, the court system created a therapeutic court to handle CINA cases (referred to as the Anchorage Family CARE Court).⁷⁴ The court's mission is to "reunify families by combining intensive judicial supervision and monitoring with a treatment program, working with participants to break the cycle of addiction and building a better life for themselves and their children."⁷⁵ It is operated under standard problem-solving court principles: coordinated service delivery, frequent appearances before the judge, and a team approach by the professional parties. Although the number of parents involved is relatively small, participants at the Anchorage *Children in Alaska's Courts* forum identified the Family CARE Court as a strength.

d) Telephonic Access to Court Proceedings

Because of the vast geographical distances and difficulty of travel in Alaska, telephonic participation in court proceedings is relatively common. While telephonic participation improves the quality of proceedings by allowing participation that otherwise could not occur because of expense and distance, it also can be frustrating and prone to technological problems. Participants at the *Children in Alaska's Courts* forums identified telephonic participation as both a challenge and a weakness for the Alaska Court System. In Fairbanks, it was identified as a strength because of the availability of good technology to support the function; however, in Juneau it was identified as a weakness because of constant technological problems.⁷⁶

e) Training and Qualifications of Participants

Obviously, the quality of court proceedings is greatly impacted by the training and qualifications of the attorneys and professional parties, and also by how well the non-professional parties understand the court process. These issues were raised at the

⁷⁴ Anchorage "Family Community Assisted Recovery Efforts" Court.

⁷⁵ Family CARE Court brochure, 2004.

⁷⁶ *Children in Alaska's Courts*, *supra* note 35, at 18 and 23.

Children in Alaska's Courts forums in different guises in different locations. In Anchorage and Barrow, participants noted the difficulty faced by non-attorneys (specifically social workers in Barrow) in understanding court procedures. In Fairbanks, participants said that judges should be more mindful of the need to speak to parents slowly and directly during the initial court hearings so parents can understand. Fairbanks participants also noted that delays in appointments of attorneys and GALs sometimes mean that no one can help explain the situation for several days.⁷⁷

In addition, two regions (Barrow and Juneau) identified a need for more qualified and active guardians ad litem. In Juneau, participants felt that GALs should have better training, qualifications and be more active. In Barrow, participants said that there are no local GALs in many communities, so that the GALs who serve those communities are not familiar with the local culture.⁷⁸

B. Studies from Other Jurisdictions

Other states have undertaken assessments of their child protection systems. The first round of assessments occurred in the early and mid-1990s, and the states are now repeating that exercise as part of the federal Court Improvement Program.

At least one study has attempted to quantify the consequences of court delays. A Washington state study found that court continuances increased the duration of dependency and termination cases filed in Washington State by 31.8 days and 26 days, respectively.⁷⁹ In the Washington study, these delays increased the time children spent in foster care.

The Washington study further showed that children received an additional 11.9 days of foster care per continuance, and an average case contained 2.7 continuances, for a total of an additional 32.1 days of foster care associated with continuances in each case.⁸⁰ Interestingly, further analysis showed that

⁷⁷ *Children in Alaska's Courts*, *supra* note 35, at 25.

⁷⁸ *Children in Alaska's Courts*, *supra* note 35, at 25.

⁷⁹ Washington State Institute for Public Policy, *How Do Court Continuances Influence the Time Children Spend in Foster Care?* (March 2004). The study was based on statewide court records for children in dependency cases filed and closed between July 1997 and December 2002, for a total sample of 1,991 cases.

⁸⁰ *Id.* at 1. The study calculated the additional cost of foster care associated with continuances to be \$772 per case. *Id.*

continuances *early* in the case (before the adjudication) accounted for most of the effects of continuances on foster care.⁸¹

⁸¹ *Id.*

Part III: Methodology

This reassessment was designed and produced by the Alaska Court System CIP Coordinator, in close collaboration with the Evaluation Subcommittee of the CINA Court Improvement Committee, and in consultation with the Justice Center of the University of Alaska at Anchorage. The CINA Court Improvement Evaluation Subcommittee consists of one rural superior court judge (Hon. Richard Erlich of Kotzebue), one urban superior court judge (Presiding Judge Niesje Steinkruger of Fairbanks), and two trial court administrators (Gwendolyn Lyford of the Third Judicial District and Neil Neishem of the First Judicial District). Technical assistance from the UAA Justice Center came from Associate Professor Ronald S. Everett and from the director of the Alaska Justice Statistical Analysis Center, Alan McKelvie.

The Evaluation Subcommittee discussed and reviewed the case file data collection plan and reviewed the surveys. In addition, members of the Evaluation Subcommittee compiled lists of case filings from 2001 and 2004 and arranged for the randomly selected files to be sent into Anchorage for data entry.

Professor Everett consulted on the study design, survey design, and numerous other aspects of the project. Alan McKelvie completed basic analyses of the case file data through the relational database program ACCESS. For summary presentation and comparison on these issues the data were transferred into SPSS for the calculation of descriptive statistics on case processing. The Alaska Court System CIP Coordinator was responsible for preliminary data analysis and interpretation, and development of findings and recommendations; consultation on the initial analysis was provided by the Evaluation Subcommittee and Professor Everett. Consultation on subsequent analyses, conclusions and recommendations was provided by the full CINA Court Improvement Committee and the UAA Justice Center.

This reassessment used data from four major sources: (1) case files in five representative court locations; (2) written surveys from judges, ICWA workers, and attorneys and guardians ad litem statewide; (3) analysis of the laws and court rules governing Child in Need of Aid cases in Alaska; (4) input from the CINA Court Improvement Committee and its Evaluation Subcommittee.

A. Note about Comparability

Although most major aspects of this reassessment were designed to resemble the 1996 Alaska Judicial Council baseline assessment and the 1998-2001 case

file study summarized earlier, it was not a methodological goal of this project to be scientifically comparable with those earlier works. In fact, it must be acknowledged that any number of factors likely would prevent scientifically valid comparisons from being drawn. Most obviously, significant substantive and procedural changes in the law were enacted in the years between the studies. More specifically with respect to the case file data samples, we could not and did not match case file attributes likely to affect comparability such as the age of the cases, the stage of the cases, or the demographics of the parents. With respect to the survey data, we did not and could not match respondents on attributes likely to affect comparability such as changes in personnel, changes in office policy, level of experience, and many other factors. Despite the lack of scientifically valid comparability, we would contend that this study does accurately reflect current and recent practice, and its findings can legitimately be discussed in the context of the earlier studies to show in a general way how child protection litigation practices and outcomes might have evolved over time in Alaska.

B. Case Sampling Techniques

1. Court Locations and Sizes

The evaluation subcommittee decided to examine court cases from Anchorage, Fairbanks, Bethel, Ketchikan, and Kotzebue.⁸² This grouping was chosen to match as much as possible the sites chosen in the original assessment and to represent the mixture of courts in Alaska with respect to the following characteristics: urban/rural, judicial district, and small/medium/large. The list represents one court from each of Alaska's four judicial districts and two from the fourth district (Bethel and Fairbanks). It further represents two urban courts (Anchorage and Fairbanks) and three rural courts.

Kotzebue is the smallest court in the study (one superior court judge). Bethel, a small-but-busy court at the time of the original assessment, was expanded in 2003 from one to two superior court judges but remained busy. Ketchikan has two superior court judges and a much lower caseload

⁸² The original assessment studied court cases in Anchorage, Sitka, Bethel, and Fairbanks. While one goal of this reassessment was to repeat aspects of the original study, we could not include Sitka because it had too few case filings. Thus, we substituted Ketchikan, a similarly rural, first district court location. Kotzebue was included in this assessment to represent the second judicial district, because no court from the second district was included in the original assessment.

than Bethel. Fairbanks has five superior court judges. Anchorage is the largest court in the state, with 13 superior court judges and a specialized master who handles the bulk of non-contested hearings in CINA cases.

2. Age of Cases Sampled

The Evaluation Subcommittee decided to examine two groups of cases: (1) cases with new petitions filed in 2001 and 2004 and (2) cases filed after June of 2004. This mixture of cases was designed to be “old” enough to contain late-stage events such as permanency hearings and terminations of parental rights proceedings, while also “young” enough to yield the most current information on “early-stage” issues such as timeliness of temporary custody, adjudication and disposition findings. Anecdotal and experiential information suggested that the analysis should focus on late-stage and permanency issues. However, the group wanted to include more recent cases to ensure that the results accurately reflect current practice with respect to early-stage findings.

3. Case File Sampling and Data Collection

A list of all cases that had new CINA petitions filed during 2001 and 2004 for each of the selected court locations was provided by the trial court administrator, the clerk of court, or (in Kotzebue) by the superior court judge’s administrative assistant. Professor Everett used the lists of case filings as the sampling frame representing the population of cases, from which he selected a sample of cases from each of the five courts. The lists were obtained at different points in time so each court was sampled independently. The Anchorage cases were selected randomly from the list of case filings. The cases from the other court locations were selected using a systematic sampling design with random start to select a 10% sample from each location. The systematic sampling design produces a representative sample as all elements listed on the sampling frame have an equal probability of selection. In practice systematic sampling is virtually identical to simple random sampling, but is always easier to conduct and often more accurate. The overall sample size of 137 from a population of approximately 1500 has approximately a +/- 10% level of precision at the 95% confidence level. This is adequate for discussions of overall representativeness of these cases, compared to the population, but is weaker when discussing the specific impact of a single variable on

the process. In commonsense terms this means that the aggregate characteristics of the sample closely approximate those aggregate characteristics in the population. Obviously the sample size was a compromise among time, cost and methodological rigor. To demonstrate these competing demands, if we wanted to increase the level of precision to +/- 5% at the 95% confidence level, we would have needed a sample size of at least 300.

Working off of the Justice Center's list of selected cases, court staff from each location pulled the designated case files and mailed them to the data collection contractor in Anchorage. Table 2 below shows the numbers of cases reviewed from each court location. Although several locations had small sample sizes, they were included in order to represent more of the state.

Court Location	Cases selected from 2001	Cases selected from 2004	Total Number of Cases Reviewed
Anchorage	40	40	80
Bethel	12	7	19
Fairbanks	18	7	25
Ketchikan	2	3	5
Kotzebue	3	5	8
Totals	75	62	137

4. Problems with Case File Sampling

As with any case file research project, problems were encountered. One problem with the case sampling resulted from differences in the way files were organized in the different court locations. For example, Fairbanks and Anchorage handled multi-sibling families differently. In Fairbanks, attorneys filed a separate document for each case (usually with the appropriate child's name bolded) or the court copied documents. In Anchorage, sibling file folders were physically banded together, and only one file in the bunch would have most of the documents in the case.

Another problem concerned differences in the ways court handled subsequent petitions involving the same child(ren). Current practice is to open a new case for each new petition for adjudication; however, in Fairbanks in 2001 the practice was to file the second ("B Petition"), third

("C Petition") and subsequent petitions in the same file. Where the file had numerous petitions, the contractor recorded information about all petitions, but he entered the date of the new petition as the open date and put in the notes field that it was a "B Pet."

In some cases, non-emergency petitions were initially filed, and then the child was removed later. The contractor tried to note the date of removal in the *Orders* screen or another screen when that information was available. The 2001 Kotzebue files appeared to be missing log notes and other information. Where important information was missing, the contractor asked court staff in Kotzebue to find the information (which may have been filed in a different file), or in a couple of instances in which the case had been appealed, found the information in the appellate case file in Anchorage. The 2004 Kotzebue files were complete.

C. Case File Data Entry and Analysis

The evaluation subcommittee worked with the Statistical Analysis Center at the University of Alaska Anchorage to modify the Microsoft Access data base that had been used for the case file data in the original assessment. The database generally was streamlined, and the least relevant fields were deleted in order to make the data collection process more efficient and focused. After modification, the database was successfully tested on a sample of 10 cases from Anchorage to ensure that it was comfortable to use and to ensure that the data being collected were sufficient to answer the questions posed by the research design.

Data was entered into the database by a contractor who is an attorney familiar with child protection cases and who also had prior experience using this database.⁸³ The data collection contractor entered the data from each paper court file into the computerized database on a laptop, and then sent the paper files back to the originating court location. This data collection took approximately one month, beginning in July 2005 and ending in August 2005.

The database was designed in such a way that codes were included on the front-end data entry screens of the Microsoft Access database. After data collection was complete, the Alaska Court System CIP Coordinator worked with Professor Everett and the director of the Statistical Analysis Center to create a series of MS

⁸³ This contractor also entered the data for the study of 1998-2001 CINA cases.

Access queries that generated the data subsets for input into SPSS. The director of the Statistical Analysis Center then used SPSS to perform the statistical analyses.

D. Written Surveys

Three written surveys were developed for this study. The purpose of the surveys was to collect qualitative information not readily apparent from the case files, to measure participants' attitudes, and to supplement the information in the case file review. Each is described below.

1. ICWA (Indian Child Welfare Act) Workers' Survey

The first written survey was designed to understand ICWA workers' experience of state court CINA litigation.⁸⁴ The Alaska Court System CIP Coordinator designed the survey in collaboration with the evaluation subcommittee and a local expert who conducts extensive training of ICWA workers statewide. Questions chosen for the survey focused on re-examining areas identified as problems in the original assessment, and also on topics more recently identified by knowledgeable practitioners as worthy of inquiry. The survey was pre-tested with an experienced ICWA worker in the Anchorage area, who did not suggest any changes.

The ICWA survey was sent to the U.S. Department of the Interior, Bureau of Indian Affairs, Alaska Region Office in Juneau for distribution to all ICWA workers in the state. The BIA Alaska Region Office sent the survey to 231 tribes and the Social Service Directors for the 12 Regional Non-Profit Tribal Organizations by a combination of electronic and regular mail the week of July 18, 2005 with a cover letter strongly encouraging the recipients to complete the survey.⁸⁵ 116 completed surveys were received in time for processing, a 47.7% return rate.

⁸⁴ In Alaska, an "ICWA worker" is the title generally used to designate a person hired by an Alaska Native tribe or its designee to represent the Tribe's interest in matters involving the safety and protection of Tribal members, particularly children that are alleged to be abused or neglected. The ICWA worker may be responsible for developing and coordinating community education events relating to child protection (e.g., parenting classes and community awareness campaigns), for participating and/or facilitating the child protection team, for advising tribal government and other entities regarding the safety of Tribal member children and court cases, and for responding to reports of harm or assisting OCS with investigations. The ICWA worker also might work in collaboration with a tribal attorney. These positions generally are funded by the Bureau of Indian Affairs pursuant to social services grants or contracts. In many villages, the position is only part-time, although the ICWA worker may be full time in larger villages and villages that have additional sources of funds beyond those provided by the BIA.

⁸⁵ The survey return deadline was August 5, 2005.

The survey results were entered into an Excel spreadsheet based on coding provided by Professor Everett. The spreadsheet data were then transferred into SPSS and frequencies were generated from that software program.

Many of the ICWA workers who responded had significant experience, with 41% reporting that they had been ICWA workers for more than three years. About a quarter had less than one year of experience. About 38% worked 20 hours or less per week, while 23% worked 20-30 hours per week and 39% worked more than 30 hours per week.

Half of the ICWA workers who responded had court cases in other states, while almost all (87%) had at least one case in Alaska state courts over the past three years. The majority of the ICWA workers reported having cases in Anchorage, Bethel and Fairbanks, but almost all superior court locations were represented with at least one case.

Over half (55%) of the ICWA workers had some college or a college degree, with many reporting that they had received training in social work, child development and other topics.

2. Judge Survey

The second written survey was designed to understand caseload management practices and judges' experience with CINA litigation. The survey was designed in collaboration with the evaluation subcommittee and a local judicial officer with expertise of CINA issues. Ideas for questions in the survey came from similar surveys posted on the web site of the ABA Center for Children and the Law, from a user's manual for conducting the re-assessment published by the ABA Center for Children and the Law, from the Alaska Court System CIP Coordinator's knowledge of current issues in CINA case processing obtained through discussions of the CINA Court Improvement Committee, the federal CFSR, and from the CIP Coordinator's other conversations with knowledgeable judges and practitioners.

The judge survey was pre-tested by four judicial officers, and it was then revised based on their comments and reactions. It was mailed out the week of August 8, 2005 under a cover letter from the Chief Justice of the

Alaska Supreme Court to all judicial officers in the state with jurisdiction to hear CINA cases: 32 superior court judges, 8 masters and 21 magistrates with master appointments. Of the 61 surveys distributed, 38 completed surveys were returned for a 61% response rate overall. Table 3 below shows the respondents by judge type.

Judge Type	Possible Respondents	Actual Respondents	Response Rate
Superior Court Judge	32	21	66%
Master	8	4	50%
Magistrate	21	13	66%
Total	61	38	61%

Among superior court judge respondents, all judicial districts were well represented, with percentage of responses ranging from a low of 60% in the first district to a high of 73% in the third district.

The survey results were entered into an Excel spreadsheet based on coding provided by Professor Everett. The spreadsheet data were then transferred into SPSS and frequencies were generated from that software program.

3. Attorney and GAL Survey

The third written survey was designed for attorneys and GALs. Questions for this survey were drafted by the Alaska Court System CIP Coordinator in consultation with representatives from the Public Defender Agency, the Office of Public Advocacy, and the Department of Law (all members of the CINA Court Improvement Committee). Ideas for questions came from similar surveys posted on the web site of the ABA Center for Children and the Law, from a user's manual for conducting the re-assessment published by the ABA Center for Children and the Law, from the CIP Coordinator's knowledge of current issues in CINA case processing obtained through discussions of the CINA Court Improvement Committee, the federal CFSR, and from the CIP Coordinator's other conversations with knowledgeable judges and practitioners.

The Attorney/GAL survey was pre-tested by an experienced GAL, an experienced Assistant Attorney General, and an experienced parents' attorney. It was revised slightly based on their comments and reactions. Distribution lists were compiled in consultation with a representative from each of those agencies.

The survey was distributed by electronic mail to the different respondent groups on September 1 and 2, 2005, with a cover letter explaining the purpose of the survey and urging respondents to take the time to complete the survey. The Office of Public Advocacy distributed the survey to 100 CASA volunteers and 60 GALs statewide. The Department of Law distributed the survey to the 24 assistant attorneys general who handle CINA cases statewide. The assistant attorneys general and guardians ad litem were asked to complete the survey by September 9. The CIP Coordinator distributed the survey to 15 parents' attorneys statewide, who were asked to complete the survey by September 12.

Only 25 completed surveys were received by the deadline(s), so the deadline was extended and respondents were urged again to complete their surveys. This time, an additional 13 surveys were returned in time for processing, for a total of 38 completed surveys.

Surveys were returned by respondents who practice in each of the four judicial districts and who practice at every superior court location. Completed surveys were received from 16 guardians ad litem and 6 CASA volunteers, 9 assistant attorneys general, 6 parents' attorneys, and one respondent who did not identify his or her primary role.

All GAL/Attorney surveys were entered into an Excel spreadsheet based on coding provided by Professor Everett. The spreadsheet data were then transferred into SPSS and frequencies were generated using that software program.

E. Drafting of Report

A first draft of this report was circulated to the CINA Court Improvement Committee and evaluation subcommittee members on September 14, 2005. The CINA Court Improvement Committee discussed the first draft and made

recommendations for revisions and additional analysis at its half-day meeting on September 16, 2005.

Part IV: Findings

The findings are divided into three parts. The first subsection discusses the history of federal and state policy regarding child protection cases as a way of explaining the purposes and issues surrounding child protection litigation. The second subsection gives a general overview of the specific laws and court rules that govern child protection litigation in Alaska.⁸⁶ The third subsection contains the meat of the findings from the current study, namely, findings about the extent to which the Alaska Court System's actual practices and procedures actually reflect the legal and policy requirements imposed by state and federal laws.

A. Background and Context for Understanding Case Processing of Child Protection Litigation

In order to analyze the issues and problems confronting courts in the handling of child protection cases, it is important to understand how the federal government's involvement in the child protection arena has affected state laws and policies, and how that involvement has in turn changed the way the courts process these cases. This section briefly summarizes the evolution of the federal government's involvement in this area, and the specific effects of this involvement on the work of state executive branch agencies and courts. The section then explains the current law in Alaska governing child protection litigation as a foundation for understanding the findings and data presented in the third section.

1. Evolution of Federal Policy Regarding Child Protection

Numerous commentators have described how child protection litigation has evolved over the past thirty years in ways that place new demands and expectations on courts and judges.⁸⁷ Much of this evolution has been initiated at the federal level, through a series of Congressional actions on laws and funding for states' child protection services. Congress passed major federal child protection legislation in 1980, in 1993, and then again in 1997.

⁸⁶ A detailed explanation of these laws and procedures appears in Appendix A.

⁸⁷ See, for example, BUILDING A BETTER COURT: MEASURING AND IMPROVING COURT PERFORMANCE AND JUDICIAL WORKLOAD IN CHILD ABUSE AND NEGLECT CASES (ABA Center on Children and the Law, 2005) at 1 (hereinafter "*Building a Better Court*"); *Resource Guidelines*, *supra* note 21, at 10.

a) Adoption Assistance and Child Welfare Act

The first Congressional action came in 1980 with passage of the Adoption Assistance and Child Welfare Act.⁸⁸ Congress passed this law in response to findings that state foster care systems were failing to provide maltreated children with stable and permanent homes.⁸⁹ Finding that state foster care systems were allowing children who had been taken from their parents to move from foster home to foster home without ever being adopted or reunited, Congress created a funding and regulatory scheme designed to stop this “foster care drift.” The 1980 Act created requirements and fiscal incentives designed to improve state foster care practice, including reorganization of federal funding for foster care to encourage child welfare agencies to find permanent homes for children. In general, the hierarchy of federal goals for state child welfare agencies was: first, to prevent children being removed from the home by providing timely social services to at-risk families; second, if a child was removed to try to reunite the family; and third, if reunification failed, to find permanent (adoptive) homes for the children fairly quickly. More importantly for purposes of this paper, however, Congress decided to use state court judges to oversee implementation of its scheme by requiring them to make certain findings about how child welfare agencies were delivering services in individual cases, and to review the child welfare agencies’ decisions about removal and placement of individual children.⁹⁰

b) Court Improvement Program

The next Congressional initiative came in 1993 with passage of “court improvement” legislation as part of the Omnibus Budget Reconciliation Act of 1993.⁹¹ OBRA provided federal funds to state child welfare agencies and Tribes for preventive services and services to families at risk, and designated a small portion of these funds to be offered to state court systems. The state courts were

⁸⁸ Public Law 96-272, codified at 42 USC §§ 670-677.

⁸⁹ The following summary of federal legislative policy is drawn from the excellent overview by Hon. Leonard P. Edwards published in the Foreword to Making it Permanent: Reasonable Efforts to Finalize Permanency Plans for Foster Children, by C. Fiermonte & J. Renne (ABA 2002).

⁹⁰ The 1980 Act required state court judges to (1) review the child welfare agency’s decision to remove a child from the home based on the standard that failure to remove the child would have caused serious detriment, and (2) make a finding whether the social worker had made “reasonable efforts” to prevent the child’s removal and to reunify the family after removal.

required to conduct assessments of their foster care and adoption case processing, and to develop and implement a plan for system improvement.⁹² Reauthorized in 1997 as part of ASFA and then extended and amended in 2001 as part of the Promoting Safe and Stable Families Amendments to title IV-B-2 of the Social Security Act,⁹³ the Court Improvement Program (“CIP”) continues to provide a small annual set-aside for state courts to improve their handling of child protection cases.⁹⁴ Current goals of the CIP include implementing improvements deemed necessary by each state’s highest court for the safety, well-being and permanence of children in foster care, and implementing a corrective action plan, as necessary, in response to findings identified in a child and family services review of the state’s child welfare system.⁹⁵ Also required as a condition of continued funding is the current reassessment of the court’s handling of child protection cases.⁹⁶

c) Adoption and Safe Families Act

In 1997 Congress enacted the Adoption and Safe Families Act (“ASFA”).⁹⁷ ASFA contains a number of requirements that state child welfare agencies must meet for a child in state custody to qualify for Title IV-E funding.⁹⁸ ASFA requires and encourages child welfare agencies to focus on the outcomes of safety, permanency and well-being for abused and neglected children.

ASFA was not a radical departure from the original 1980 scheme; however, it did shift the relative importance of the goals of child safety and family reunification—child safety is now more clearly a focus. ASFA also elevated the goal of “permanency” for children,

⁹¹ Public Law 103-66.

⁹² U.S. Department of Health and Human Services, Administration for Children and Families, Program Instruction No. ACYF-PI-94-12 (Issued June 27, 1994). Alaska’s required assessment was completed in 1996 by the Alaska Judicial Council.

⁹³ Public Law 107-133, signed on Jan. 17, 2002.

⁹⁴ In FY 2005, about \$13.25 million was set aside to fund the Court Improvement Program. Of that total, the Alaska Court System will receive approximately \$100,000; it matches that grant at 25%.

⁹⁵ The court improvement program’s goals and authorization are now found in Section 107 of the PSSFA. The program is reauthorized through FY 2006.

⁹⁶ U.S. Department of Health and Human Services, Administration for Children and Families, Program Instruction No. ACYF-CB-PI-03-04 (Issued March 28, 2003).

⁹⁷ Public Law 105-89. Soon thereafter, the federal HHS Administration for Children and Families, promulgated extensive regulations to implement ASFA.

⁹⁸ ASFA (Pub. L. 103-89) implements titles IV-B and IV-E of the Social Security Act, 42 USC §§ 620-632, 670-679. Congress adopted ASFA in response to what it saw as serious problems in the child welfare system. By adopting ASFA, Congress changed federal foster care law to make safety and permanency the primary focus of the law. In January of 2000, the federal HHS promulgated regulations to implement ASFA. These regulations are codified at 45 C.F.R. §§ 1355, 1356 and 1357.

including a new emphasis on shorter timelines for decisions to be made about permanent placement (including termination of parental rights). Finally, ASFA continued the earlier approach of relying on state court judges to oversee child welfare agencies' decisions in individual cases by maintaining existing mandatory findings and reviews, and by adding a few more as well.⁹⁹

2. Alaska's Responses to Federal Policy Changes

Like most states, Alaska has initiated changes over the years in response to Congressional initiatives in child welfare. In 1998, the Alaska Legislature responded to ASFA with extensive amendments to state law.¹⁰⁰ Among other things, the Legislature changed state law to mirror the federal requirements related to deadlines for a judicial finding that a child has suffered abuse or neglect, holding of permanency hearings, timing of termination of parental rights petitions, and findings about reasonable efforts to finalize the permanency plan.¹⁰¹ Alaska's child welfare agency, the Office of Children's Services (formerly known as the Division of Family and Youth Services), also over the years has changed its procedures and priorities to reflect the new federal emphasis on permanency, including speedier adoptions. The amendments to state law also have required attorneys and guardians ad litem who litigate child protection cases to adjust their litigation goals and pace.

The Alaska Supreme Court responded to the 1998 changes in state law by amending its rules of court to implement the new statutes. In addition, the Alaska Court System has participated from the beginning in the federal Court Improvement Program ("CIP").¹⁰² The Alaska Court System's original assessment, conducted by the Alaska Judicial Council and released in 1996, was the first comprehensive evaluation of child protection cases in Alaska's courts.¹⁰³ The assessment included

⁹⁹ Among other things, judges now must: hold a "permanency hearing" to decide what will happen to each child when that child has been in foster care for 12 months; make findings as to whether the child welfare agency made "reasonable efforts" to finalize a permanent plan for each child; require the child welfare agency to file a petition to terminate parental rights when a child has been out of the home for 15 of the prior 22 months; and provide out-of-home caregivers the opportunity to be heard at court hearings.

¹⁰⁰ See Section 1, ch. 99, SLA 1998 (Alaska Temporary and Special Acts and Resolves), explaining that the purpose of the amendments to state law was in part to "provide the legal mechanisms by which the state can use its resources for the best interest of children in this state."

¹⁰¹ The child protection statutes are codified at Alaska Statutes 47.10.

¹⁰² The Alaska Court System has received approximately \$100,000 per year for court improvement activities since the program began, and has matched that funding at 25%.

¹⁰³ Carns, DiPietro, Connors, Cotton & Vandercook, *Improving the Court Process for Alaska's Children in Need of Aid* (Alaska Judicial Council 1996).

recommendations for improvement directed at both the Alaska Court System and at other agencies. The Alaska Supreme Court formed the CINA Court Improvement Committee to oversee management of the federal government's Court Improvement Program grant.

The CINA Court Improvement Committee is a multi-disciplinary group of judges, court administrators and representatives from other agencies. The committee, which enjoys statewide participation from all represented agencies, meets 2-3 times per year, and makes recommendations to the Alaska Supreme Court regarding programs and projects that should be undertaken with federal CIP funds. Projects funded at least in part with this federal grant money over the years have included: developing and maintaining a mediation program, increased training for judges, interagency training conferences focused on the Indian Child Welfare Act (ICWA), and this evaluation.¹⁰⁴ In addition, the CINA Court Improvement Committee has functioned as a unique forum for increasing communication and collaboration between the state court system, the state child welfare agency (OCS), other executive branch agencies involved in child protection litigation, and tribal organizations.

B. Legal Context for Understanding the Data

This section gives a brief overview of the federal and state laws that currently govern child protection litigation in Alaska, and the roles played by the various state agencies that are responsible for these cases.¹⁰⁵ Laws relevant to this discussion are found at Alaska Statutes 47.10., the Child in Need of Aid Rules promulgated by the Alaska Supreme Court ("CINA Rules"), and the federal Indian Child Welfare Act.

1. Parties

CINA cases are multi-party, civil litigation. Parties include:

- Parents, included an Indian child's putative father who has acknowledged paternity and other putative father(s);
- Child
- Child's legal guardian;

¹⁰⁴ Often, projects were funded with a combination of federal grants, matching contributions from the Alaska Court System, and in the case of the ICWA interagency conferences, with matching contributions from ANCSA nonprofits and tribal entities.

¹⁰⁵ A more detailed and complete explanation of court processes, procedures, and substantive laws is included in Appendix A.

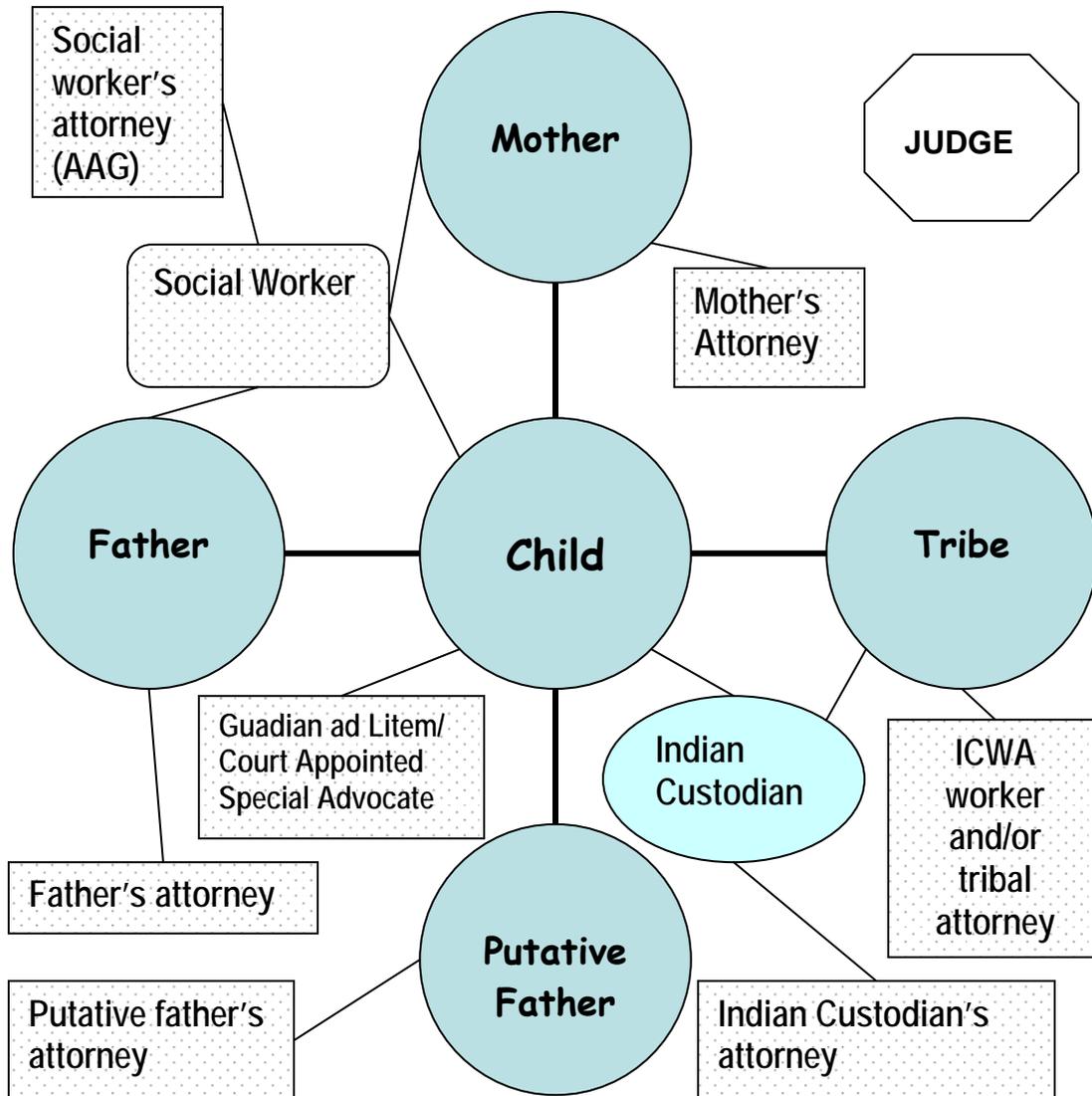
- Indian child’s Indian custodian;
- Indian child’s tribe;
- Guardian ad litem. The GAL is appointed at or before the first hearing through the Office of Public Advocacy (“OPA”) to represent the best interests of the child;
- Court Appointed Special Advocate. CASAs, who are recruited, trained and managed by OPA, are available in some parts of the state. They are volunteers who spend time with the child and make the child’s interests known throughout the case;
- Attorney(s) for the parents, appointed at or before the first hearing through the Public Defender Agency (“PDA”) or Office of Public Advocacy (“OPA”) to represent the parents;¹⁰⁶
- Attorney(s) for putative father(s);
- Social worker, who works for the state Office of Children’s Services; and
- Assistant attorney general from the Department of Law (“DOL”) who represents OCS and the social worker.

The parties and their basic legal relationships to each other are represented graphically in Figure 1, below.

¹⁰⁶ When the Public Defender Agency has an ethical conflict of interest that would prevent it from representing a parent, representation is provided by OPA. Parents are free to hire private attorneys, although few do.

Parties and Legal Relationships in CINA Cases

(Fig. 1)



In Alaska, guardians ad litem, parents' attorneys and states' attorneys most often are state employees who are employed by agencies in the executive branch.¹⁰⁷ Funding for these functions is provided with state funds. Generally, each parent and putative parent is appointed his or her own attorney.

If facts of the case suggest that both parents should not be represented by the same attorney, the judge can appoint an attorney for each parent. If facts of the case suggest the need, the judge also may appoint an attorney for the child to represent the child's expressed wishes (which may differ from the GAL's opinion of the child's best interests).

If the case involves a Native child (as about half of Alaska's cases do), the Native child's tribe is notified about the case and has the right to intervene. If the Tribe formally intervenes in the case, it becomes a full party with the same procedural rights as the other parties. Most Tribes rely on trained contractors referred to as "ICWA workers" to participate in these cases. Some Tribes also use attorneys, many of whom are employed by Alaska Native regional corporations (often referred to as "ANCSA non-profit corporations," because they were created by the Alaska Native Claims Settlement Act). There are 225 federally recognized tribes in Alaska.

2. Additional Participants

In addition to the parties, state law entitles a number of other persons involved in the child's life to notice and an opportunity to be heard at certain stages of the litigation. These participants include out-of-home care providers and grandparents. In addition, other family members sometimes attend open hearings in CINA cases.

3. Proceedings

Shortly after a social worker has removed a child from his parents' home, the worker must either commence legal proceedings or return the child home.

¹⁰⁷ Both OPA and the PDA fulfill their responsibilities through a combination of staff attorneys and staff GALs who are employees of the State of Alaska. The agencies supplement those employee positions through contracts with private attorneys and individuals throughout the state. GALs are not required to be attorneys, although many are. GALs are official parties to the CINA case, meaning they have the same rights as the other parties to discovery and court participation.

a) Temporary Custody Hearing

If the worker does not return the child home, legal proceedings begin with the temporary custody hearing. At this hearing, the court decides whether there is probable cause to believe that the child is a child in need of aid (in other words, whether there is probable cause to support the court's jurisdiction over the child). The court also makes a temporary custody decision at this hearing (decides whether the child will return home or be placed outside the home for the duration of the litigation).

b) Pre-Adjudication Activities and Adjudication Hearing

The next stage in the litigation is the adjudication hearing; however, before that hearing occurs the parties must meet without the judge to discuss the case (this is called the meeting of the parties). After the meeting of the parties, the court holds a pretrial conference with the parties to plan for the adjudication trial or hearing.

At the adjudication hearing, the judge decides whether the child is a child in need of aid, based on criteria set out in state statute. Reasons for finding a child to be in need of aid are set out in state statute. They include:

- a parent has abandoned the child [AS 47.10.011(1)];
- a parent is incarcerated and cannot provide care [AS 47.10.011(2)];
- a custodian with whom the child has been left is unwilling or unable to provide care [AS 47.10.011(3)];
- the child is in need of medical care [AS 47.10.011(4)];
- the child is habitually absent from home or refuses to accept available care [AS 47.10.011(5)];
- the child has suffered substantial physical harm due to the parent's actions or inaction [AS 47.10.011(6)];
- the child has suffered sexual abuse [AS 47.10.011(7)];
- conduct by or conditions created by the parent have or might result in mental injury to the child [AS 47.10.011(8)];

- conduct by or conditions created by the parent have subjected the child to neglect [AS 47.10.011(9)];
- the child has been harmed or likely will be harmed by the parent's addictive or habitual use of an intoxicant [AS 47.10.011(10)];
- the parent has a mental illness or serious emotional disturbance that places the child at substantial risk of physical harm or mental injury [AS 47.10.011(11)]; or
- the child has committed an illegal act as a result of pressure, guidance or approval from the child's parent [AS 47.10.011(12)].

c) Disposition Hearing

At or after the adjudication hearing, the judge holds a disposition hearing. The purpose of the disposition is to determine the appropriate disposition of a child who has been adjudicated a child in need of aid. At this hearing, the court determines whether the child should be committed to the child welfare agency for placement (usually outside the home) or returned to the parent(s). If the child is committed to OCS for placement, the disposition order must set a follow up hearing to occur within twelve months of the date the child entered foster care.

d) Permanency Hearing and Ongoing Monitoring

No later than twelve months after the child entered foster care, the court holds a permanency hearing. At this hearing, the judge determines a permanent plan for a child in state custody, and determines the future direction of the case (for example, whether to terminate parental rights and whether the permanency plan for the child should be reunification, adoption, legal guardianship, or another planned, permanent living arrangement such as placement with a fit and willing relative). The court must continue to hold permanency hearings every year (or more frequently) until the child finds a permanent home or is released from state supervision.¹⁰⁸

¹⁰⁸ State law requires a permanency hearing for every child under the court's jurisdiction, regardless of whether the child is in foster care or at home, to be held within 12 months after the date a child enters foster care. See AS 47.10.080(l) and (f). Every twelve

e) Termination of Parental Rights

In some cases, the parties or the judge will decide that the child cannot safely be reunified with the parents, and the state files a petition to terminate parental rights. Termination of parental rights is considered a type of disposition, but it is given special treatment in this report because it is the most serious and potentially time-consuming aspect of a CINA case. Often, a parent will voluntarily relinquish his or her parental rights, sometimes in exchange for the promise of future contact with or news of the child. Some parents refuse to voluntarily relinquish their rights, in which case the issue goes to trial. If the parent's rights are terminated, the child is free to be adopted. However, the actual adoption happens in a separate case.

C. Findings of Current Study

This section evaluates the extent to which the Alaska Court System's actual practices and procedures reflect requirements imposed by state laws. The analyses presented here are drawn from 137 cases from Anchorage, Fairbanks, Bethel, Ketchikan and Kotzebue with new petitions filed in 2001 and 2004.

After the child was removed from the home and the case was reviewed by a judge at the temporary custody hearing, the judge in most instances ordered that the child remain out of the home. In only about 13% of cases did the judge allow the child to return to the home, and in an additional 17% of cases the judge ordered supervision. Thus, most of the cases in this sample involved children who spent at least part of the case in foster care.

For each case in the sample, we recorded the reason that the judge formally adjudicated the child as a child in need of aid. Recall that under Alaska law, there are essentially twelve different reasons to support a child in need of aid finding [these are listed above in section B(3)(b)]. The judge can and often does find that more than one of the statutory situations exists for each case. Taken as a whole, the cases sampled in this study reveal a picture of substance abuse and neglect in the household. Table 4 below lists the six most commonly found reasons that the children in this case sample were adjudicated children in need of aid.

months after the first permanency hearing, court rules and state law require either a permanency hearing or an annual review for each child who remains a ward of the state. See AS 47.10.080(f), CINA R. 17.2.

Reason	Statute Section
Child harmed by parent's alcohol/drug use	AS 47.10.011(10)
Neglect	AS 47.10.011(9); former AS 47.10.010(a)(6)
Child suffered mental injury	AS 47.10.011(8)
Child suffered physical harm or risk of harm	AS 47.10.011(6); former AS 47.10.010(a)(3)
Abandonment	AS 47.10.011(1); former AS 47.10.010(a)(1)
Sexual abuse	AS 47.10.011(7)

*Note: Many cases contain > 1 reason for adjudication

The study also examined final outcomes in the sampled cases. Looking at the child's situation at the time that a release of custody was filed, we see that many children achieved permanency by returning home, and others achieved it through adoption. Of the 45 cases contained a release of custody, the most common scenario was for the child to be returned home (44%). The next most common outcome was adoption (33%). Other outcomes included placement with a legal guardian (4%), emancipation (6%), and placement with a relative (one case).

1) Findings Related to Timeliness

The study recorded and analyzed elapsed time between important case events,¹⁰⁹ and asked parties and judges questions about their perceptions of timeliness and delay. Interestingly, parties and judges did not seem to be overly concerned about court-related delay in CINA cases. Only 13 of the judges said that they thought delay was a problem in their cases (15 said "no," four did not know, and five did not answer). Similarly, fifty-eight percent of parties said court delays were a problem in "very few" cases. An additional 24% said court delay was a problem only in "some" cases. Parties identified the termination of parental rights stage as the most problematic for court-created delays.

Judges also tended to identify delay at the later stages of the litigation as being more problematic than at earlier stages. Thus, they identified the termination of parental rights trial (and to a lesser degree the adjudication hearing) as a stage at which delay was "often" or "very often" a problem, while reporting that delay was "not very often" or "never" a problem at the

¹⁰⁹ In gathering the case file information, the data collection contractor examined written orders in the court file. From the written order, the contractor recorded the earlier of (1) the date the judge signed the order, (2) the effective date of the order, or (3) the *nunc pro tunc* date. The data collection contractor did not go through the log notes to find any earlier dates of oral orders made on the record by the judges. While this method ensured consistency, accuracy, and made it relatively easy to find the desired information, some of the written orders may have had dates that were several days later than the date of the judge's oral finding and order.

pre-adjudication stage.¹¹⁰ The apparently widespread belief that case delay during the early or “preliminary” stages is less harmful (or even helpful) than delay at the later stages should be discussed and examined further.

a) Are case events occurring within deadlines set by state law and court rule?

1) Time from Filing to Temporary Custody Finding

After OCS removes a child from the home without a court order, it must file a petition with the court within 24 hours. The court then must hold a temporary custody hearing within 48 hours (including weekends and holidays) after OCS files the petition. The purpose of this temporary custody hearing is for the judge to make a finding whether there is probable cause to believe that the child is a child in need of aid and to determine whether the child should continue in out-of-home placement.¹¹¹

Each of the trial courts in the state has procedures for ensuring that the initial temporary custody hearing is held within 48 hours after the petition is filed, and these procedures ensure that hearings are convened timely.

Neither court rules nor state statutes specify when a temporary custody finding must be completed. The case file data revealed that temporary custody hearings often are continued, so that the temporary custody finding is not completed until a subsequent hearing several days later.¹¹² In Anchorage, the initial temporary custody hearings were set before a standing master but were routinely continued because parents needed time to consult counsel. If parents decided to contest the probable

¹¹⁰ “Not very often” was defined as 1-25% of cases, “sometimes” was 26-50% of cases, “often” was 51-75% of cases and “very often” was 76-100% of cases.

¹¹¹ The *Resource Guidelines* recommends that the court should make the temporary custody hearing “as thorough and meaningful as possible” and the judge should “conduct an in-depth inquiry.”

¹¹² The court may continue a temporary custody hearing at the request of a parent or guardian upon a showing of good cause for why the parent or guardian is not prepared to respond to the petition. A continuance must be requested before or at the outset of the hearing. CINA R. 10(a)(2); AS 47.10.142(d). If the judge continues the hearing, he makes a preliminary determination of whether the child should continue in out-of-home-placement pending the next hearing. See AS 47.10.142(d).

cause/temporary custody issue, the hearing usually was continued for several days until it could be set before a superior court judge. In contrast, judges in Bethel and Ketchikan routinely made probable cause and temporary custody determinations at the initial hearing. In Fairbanks, superior court judges usually conducted the initial hearings, and parents' attorneys often were present.

Given these differences in approaches to continuances at the temporary custody hearing, it was not surprising that temporary custody findings in Anchorage took longer, on average, to achieve than in the other locations. However, even in locations other than Anchorage, the final temporary custody findings did not occur, on average, until several days after the initial temporary custody hearing. Table 5 shows the differences.

Court Location	Average (Mean)	Median	Minimum	Maximum
Anchorage	20.5	14.5	1	96
Bethel	6.9	2.0	0	27
Fairbanks	10.9	9.0	0	29
Kotzebue	6.2	5.2	1	29
Ketchikan	5.2	5.3	1	8

Neither court rules nor state statutes specify when the probable cause/temporary custody finding should be made. However, the National Council of Juvenile and Family Court Judges recommends that if the court cannot conduct a “careful and complete” temporary custody hearing, the court should continue the hearing “for not more than 24 hours.”¹¹³

¹¹³ *Resource Guidelines*, *supra* note 21, at 32.

When the current findings about temporary custody hearings were reviewed by practitioners on the CINA Court Improvement Committee, they contended that delay often was a positive force at this stage of the case. They said that continuing the temporary custody hearing gave parents time during the continuance to get services so at the subsequent hearing they could convince the judge it was safe to return the child home. They argued that delaying the finding supplied the urgency for the parents or parents' family to come forward with a plan. They said that the urgency would be lacking if the temporary custody finding already had been made.

Although the parties may have achieved this result in some instances, the frequency of that outcome cannot be seen in this data.¹¹⁴ Nor is it certain that an equally good result could not have been achieved without the continuance. Given the results of the Washington study on the detrimental effects of early-stage case delay, this issue should be examined further.

2) Time elapsed from temporary custody finding to adjudication order

Court rule and state law require that an adjudication order be entered no later than 120 days from the date that the child entered foster care.¹¹⁵ The Alaska Court System's time standard is that 98% of cases will be adjudicated within 120 days. The data from this study showed an improvement over the court's performance in 1996. In 1996, in Anchorage, only 25% of cases reached adjudication in 120 days, compared to 29% in Bethel, 37% in Fairbanks and 70% in Sitka. In this study, 51% of the cases had an adjudication order entered within 120 days.¹¹⁶

The average number of days it took a case to get to adjudication varied by court location. Fairbanks cases averaged less than 120 days, and court locations other than Anchorage were very close to the 120 day mark. Table 6 below, gives the breakdown by location.

¹¹⁴ As mentioned at the beginning of this section, the number of cases containing a temporary custody order of supervision or return home was small compared to the total number of temporary custody orders.

¹¹⁵ For purposes of this study, we calculated the adjudication timeliness item by counting the number of days from the date that the temporary custody order was entered to the date that the adjudication order was entered.

¹¹⁶ This percentage is based on 89 cases. A total of 89 cases in the sample had at least one adjudication order.

Court Location	Average (Mean)	Median	Minimum	Maximum
Anchorage	151	118	28	481
Bethel	124	122	42	236
Fairbanks	114	111	0	208
Kotzebue	128	128	103	152
Ketchikan	136	138	118	152

The 120 day adjudication rule is not absolute. Court rules allow the adjudication to be delayed past 120 days based on the judge's finding of "good cause."¹¹⁷ In determining whether to grant a continuance for good cause, the court must take into account the age of the child and the potential adverse effect that the delay may have on the child.¹¹⁸

Assuming that all cases exceeding the 120 day limit had good cause findings, the numbers above suggest that lawyers and judges in different locations may use differing interpretations of "good cause." Other explanations could be that some courts had more credible calendars than others. For rural courts, "good cause" delays could have been related to the fact that their CINA attorneys do not live in the community. These rural courts have to wait for the attorneys to schedule a trip, and trips can be delayed by limited travel budgets, weather, and conflicting calendars.

One of the goals of the evaluation subcommittee was to explore whether cases from 2004 were being handled more expeditiously than cases from 2001. It was thought that the later cases might be more expeditious as lawyers and judges fully implemented procedures to meet the timelines that went into effect in 1998. A calculation of elapsed time from the temporary custody order to the adjudication order for the 2004 cases lent limited support to the hypothesis that lawyers and judges have over time become more

¹¹⁷ CINA R. 15(a).

¹¹⁸ CINA R. 15(a).

conscious of the 120 day deadline. The breakdown showed that for the 2004 cases, Anchorage averaged 154 days, Bethel averaged 145 days, Fairbanks averaged 116 days, Kotzebue averaged 115 days, and Ketchikan averaged 127 days.¹¹⁹

3) Time elapsed from adjudication order to the disposition order

The disposition hearing is to occur either at the adjudication or within a “reasonable time” after the adjudication. Disposition determinations are handled differently in different court locations. In Anchorage there is usually a separate disposition hearing held after adjudication. In Fairbanks, adjudication and disposition are routinely combined, whether they occur by stipulation or at a hearing. Often, in Fairbanks adjudication is based on a detailed, written offer of proof prepared by the Attorney General's Office. In Fairbanks, the disposition report is filed under seal at the time of the adjudication and opened immediately after the adjudication.

Given these differences in approaches to scheduling and holding the disposition hearing, it was not surprising that dispositions in Anchorage took longer, on average, to achieve than in the other locations. The statistics for Fairbanks reflect the practice there of resolving disposition and adjudication at the same time. Table 7 shows the differences.

Table 7				
Days from Adjudication Order to Disposition Order				
N = 74				
Court Location	Average (Mean)	Median	Minimum	Maximum
Anchorage	132	116	0	641
Bethel	5.8	0	0	75
Fairbanks	0	0	0	0
Kotzebue	160	160	78	243
Ketchikan	30	0	0	94

¹¹⁹ The sub-sample of cases available for this analysis was N = 40 cases. This analysis did not calculate whether differences in this item between the 2001 cases and the 2004 cases were statistically significant. Rather, the calculation is presented here as a “snapshot” of recent case processing outcomes.

Delays in the disposition decision could be related to any number of factors, both systemic and case-specific. In the category of systemic factors, delays might be caused by the practice of assigning different social workers to the adjudication and the disposition. An example of case-specific factors can be taken from a case in Anchorage that continued for 21 months without a disposition. That case involved a mentally ill child who had been placed in a secure treatment facility, and the delayed disposition may have reflected the parties' uncertainty about the outcome for that child.

4) Days from temporary custody order to the first permanency order

State law requires a permanency hearing to occur within twelve months after the date a child enters foster care.¹²⁰ Court rules require the permanency hearing to be set at the disposition hearing.

Anecdotal information and information from the federal CFSSR suggested that in some cases permanency hearings were not being scheduled timely, perhaps because agency case management systems lacked the capability of tracking that requirement.¹²¹

The case file review suggested that some permanency hearings may have been delayed beyond the 365 day limit, although possible gaps in the data prevented firm conclusions on this item. The possible gaps in the data arise from failure in some instances to designate permanency findings as such in the case file documents. In Anchorage (and perhaps other locations) permanency findings and orders sometimes are made during the course of other hearings (for example, disposition hearings), and then the written permanency findings are embedded in those other documents without including "permanency" in the title. When the contractor noticed permanency findings embedded in another type of order, those were recorded as a "permanency order." However,

¹²⁰ For purposes of this analysis, the permanency hearing date was calculated based on the number of days from the temporary custody order to the first permanency order.

¹²¹ The court system's legacy case management system lacked the capacity to track the permanency hearing requirement. The court's new case management system, installed in Anchorage, Palmer and Fairbanks within the past two years, does have that capability.

the data collector could have missed some of the permanency findings that were not clearly set out.

Given that caveat, the data showed that 60 cases in the sample had at least one permanency order.¹²² However, only 43 of the 60 had enough information in the file to be able to calculate the elapsed time from the temporary custody order to the first permanency order. Table 8 shows the results.

Court Location	Average (Mean)	Median	Minimum	Maximum
Anchorage	658	630	263	1302
Bethel	357	358	306	404
Fairbanks	385	363	294	571
Kotzebue	Only 1 case	Only 1 case	Only 1 case	Only 1 case
Ketchikan	374	392	334	397

The information in Table 8 should be viewed with caution. The court case files did not include enough information to know how long a child had spent out of home versus placed in the home under agency supervision. This information would have been good to know, because there appears to be some disagreement around the state whether a child who is placed in the home at the one-year mark should have an annual review hearing or a permanency hearing. Thus, some of the children whose cases are represented in Table 8 could have spent significant amounts of time placed at home. In fact, further investigation revealed that at least two of the longest five cases in Anchorage did in fact involve children who had been at home during a significant part of the litigation. These children may have had annual reviews instead of permanency hearings.

¹²² Sixty cases had at least one permanency hearing, and 30 had more than one permanency hearing. Twelve cases had more than one permanency order.

5) Days from filing of case to termination order

One way to examine the goal of achieving permanency is to examine, for those cases that ended in a termination of parental rights, how long the case went on before that outcome was achieved. The case file sample contained 20 cases from Anchorage and Fairbanks, and one from Ketchikan in which at least one order to terminate parental rights had been entered.

In Anchorage, the average time that elapsed between case filing and entry of the termination order was 819 days (median was 776). The minimum number of days was 82 and the maximum was 1304. In Fairbanks, the average was 807 days (median of 729). The minimum was 589 and the maximum was 1251.¹²³

Another way of looking at the termination question is to measure the amount of time between the filing of the termination petition and the outcome of the child being freed for adoption. A dozen cases in the sample contained termination orders for both parents. In those cases, the final termination order was entered on average about 237 days after filing of the petition.

6) Days from filing of petition to terminate parental rights to termination trial/hearing

Once a petition to terminate parental rights is filed, the court is required to hold the trial within six months (about 180 days). The data suggested that the courts were doing a good job of beginning those trials timely.¹²⁴ Table 9 shows the numbers.¹²⁵

Table 9				
Days from Filing of Termination Petition to Start of Termination Trial				
N = 11				
Court Location	Average	Median	Minimum	Maximum
Anchorage	157	84	75	372
Fairbanks	120	126	23	174

¹²³ Averages could not be calculated for Ketchikan because it had only one case.

¹²⁴ The Ketchikan case did not have a termination trial.

¹²⁵ These averages include only those cases in which a trial was held.

a) If deadlines are not being met, why?

Factors related to delay were numerous and varied: difficulties coordinating the parties' schedules with the court's calendar, lack of treatment services, a child's special needs, turnover among the parties, workload, finding time on the court's calendar for contested hearings, transfer of a case from one area of the state to another, and many other reasons. These and other reasons are touched on throughout this report.

b) Delays in achieving permanency

Judges and parties were surveyed about reasons for delays in achieving permanency. About 44% of judges reported that they had encountered problems over the past year making the requisite permanency findings based on the evidence presented at the hearing. Judges most often identified untimely reports and unclear permanency plans as the reasons they were unable to make the required findings.

The judges' perceptions were similar to those reported by the parties: Only four of the 38 party respondents reported that all their cases had achieved permanency in twelve months. The parties identified cases involving children with special needs as the most significant factor preventing timely permanency. Other commonly cited factors were lack of a home study, delayed mental health assessment/treatment, and delayed substance abuse assessment/treatment.

Judges also were asked for information about factors that delayed permanency in cases that had not achieved permanency within 12 months. Six of the 33 who answered the question said that all their cases had achieved permanency within twelve months. Of the judges who had cases in which permanency was delayed, the most common reason cited was lack of mental health assessment and/or treatment. The second most common reason was lack of substance abuse assessment and/or treatment and that the

child was hard to place because of special needs and costs (tie). The third most common reason was not being able to identify a permanent plan and delayed home study.

2. Findings Related to Efficiency

- a) Are courts scheduling case events efficiently and holding hearings when scheduled?
 - 1) How often do courts continue hearings?

A goal of this study was to provide information to begin a discussion about continuances in CINA cases. To begin the conversation, this study collected information from the case files about the number and frequency of continuances of hearings in CINA cases. The data do not show the length of continuances, merely the number.

It should be acknowledged that neither the court system rules nor statutes contain any standards about how many continuances should be granted in a case. Instead, continuance decisions are left up to the judge based on the parties' showing of good cause why a hearing should be continued. Nevertheless, Trial Court Performance Standard 2.1 encourages the trial court to exercise "early and continuous control" over cases to ensure that matters will be heard when scheduled.¹²⁶

We collected information about ten types of hearings that occur in CINA cases.¹²⁷ Of the 768 hearings recorded in our case file database, 329 were continued—about 43% of all hearings. Another way of looking at this item is to report that about 90% of the cases in the sample had at least one hearing that was continued (N = 123). Further analysis (set out in Table 9 below) suggested that most CINA cases

¹²⁶ Bureau of Justice Assistance, TRIAL COURT PERFORMANCE STANDARDS WITH COMMENTARY at 11 (Office of Justice Programs, July 1997).

¹²⁷ We recorded information about the following types of hearings: temporary custody, adjudication, disposition, termination of parental rights, permanency, relinquishment, annual review, extension of custody, dismissal, and release from custody. Because of time and budget constraints, we did not record information about placement reviews and status hearings.

containing at least one continuance were characterized by multiple continuances.

Table 10 Number of Continuances Per Case N = 123				
Court Location	Average	Median	Minimum	Maximum
Anchorage	6.3	6	2	14
Bethel	5.1	5	2	9
Fairbanks	5.8	4.5	1	17
Kotzebue	4	4	1	8
Ketchikan	6.6	5	5	10

2) What types of hearings are most commonly continued?

Analysis suggested that some hearings were continued more often than others. Many of the hearing continuances occurred at the temporary custody stage (44 cases had a continued temporary custody hearing).¹²⁸ As discussed above, this is not surprising given some of the courts' approaches to continuances at the temporary custody hearing and to the availability and readiness of parent's attorneys. However, the files showed that about 13% of temporary custody hearings resulted in the child being returned home, with an additional 17% resulting in a supervision order.

For children who are returned home at the temporary custody hearing, delays in concluding that hearing could increase the number of days they spent in foster care during the continuance. Practitioners, however, resisted this conclusion, asserting instead that they used the delay to reduce the overall number of days the child spent in foster care by putting in place services during the continuance that allowed the child safely to be returned home. As discussed

¹²⁸ Eight cases had two continued temporary custody hearings, and two cases had three continued temporary custody hearings.

earlier, the data in this study do not appear to show this result with much frequency.

Anecdotal reports in the federal CFSR suggested that permanency hearings often did not occur timely because of continuances granted by the judge. The data from the case files showed that 18% of permanency hearings were continued. The 18% continuance rate is actually lower than the overall continuance rate of 43%. Thus, the case file data cannot be said to support a conclusion that continuances of permanency hearings are a regular occurrence.

Interestingly, the judges' perceptions of frequently continued hearings seemed to differ from the case file data. When asked which hearings over the past year a party had asked for a continuance, these judges identified the termination of parental rights trial as the hearing at which it was most common to receive a request for a continuance either "often" or "very often."¹²⁹ However, relatively few of these judges recalled requests for continuances being made at the initial temporary custody hearing (56% said they received continuance requests at this hearing were "not very often;" although six said they received those requests often or very often). These perceptions may be colored by the fact that superior court judges at many locations do not routinely handle the initial temporary custody hearing (in many places, masters handle those hearings).

Only three judges reported that requests for continuances occurred "often" at the disposition hearing. This finding suggests that the delay in disposition orders uncovered by the case file review probably was not caused by continuances requested at the hearing. Rather, the delay may be caused by waiting too long after adjudication to set the hearings, setting the hearing too far out, or untimely reports.

¹²⁹ "Often" was defined as 51 to 75% of cases, and "very often" was defined as 76% or more of cases.

3) What are the most common reasons for continuances of hearings?

The contractor attempted to ascertain in the case file log notes, for those hearings that were continued, the reason cited for the delay.¹³⁰ The most common scenario, accounting for 30% of all continuances, occurred when the parties asked to put off a hearing in the hopes that they could settle the matter without litigation. The second most common reason, cited 24% of the time, was on request from an attorney, and often these requests were not opposed by any of the other parties. The third most common reason, cited 16% of the time, was that a parent did not have an attorney. Table 10 below shows the results.

Reason for Continuance	Frequency	Percent
Possible case resolution	99	30%
Attorney requests continuance	78	24%
Parents need attorney	52	16%
Need for further evaluation	41	13%
Parents not available/can't locate parents	13	4%
Court initiates continuance or court time not available	11	3%
Report not timely	10	3%
Parents need time	9	3%
Other	12	4%

Relatively few continuances (N = 11) in the case file data were initiated by the court. The data showed that the court initiated the continuance in only five instances, and the case was continued because of inadequate court time in only six instances. This data is consistent with judges' and practitioners' perceptions as reported in the surveys.¹³¹

The judges and practitioners also were asked to indicate the most common reason cited in requests for continuances,

¹³⁰ Only one reason was entered for each continuance, even though more than one reason may have been cited and some of the reasons listed are not mutually exclusive. The contractor tried to choose the most significant or dispositive reason based on the log notes.

¹³¹ Most of the judges (26 out of 28 who answered) and all of the practitioners believed that when a request for a continuance is made, the request most often comes from a party and seldom is initiated by the court.

other than continuances requested at the initial temporary custody hearing. The judges and the practitioners most often cited the reasons that the parties were close to a resolution, and lack of discovery from OCS, perceptions supported by the case file data.

4) How often do hearings begin when scheduled?

Parties were asked to estimate within the last six months how many of their hearings did not start on time because the judge was not ready or not available. About two-thirds (67%) said “very few” hearings started late.¹³² About a quarter (26%) said “some” hearings started late, and two said “most” hearings started late. However, about a third (36%) of people who waited for hearings waited less than ten minutes. Half waited more than ten minutes but less than thirty minutes, and only three said they usually waited more than an hour. From these results, it appears that most court hearings are delayed only by a few minutes; however, the three responses indicating waits of longer than an hour are cause for concern.

b) Are courts adopting effective pretrial practices?

Since almost all decisions in CINA cases are arrived at through stipulation of the parties, an important part of credible scheduling is to know which hearings will be contested. An important way that judges can know is to hold pretrial conferences,¹³³ and in fact Alaska rules of court require the judge to hold a pretrial conference before the adjudication trial.

Most judges (18 out of 27 who answered) said they conduct a pretrial conference with the parties before the adjudication

¹³² “Very few” hearings was defined as 0-25% of hearings, “some” was defined as 26-50% of hearings, and “most” was defined as 51-75% of hearings.

¹³³ Hardin, M. *The Future of Court Improvement Part I: Timeliness of Judicial Decisions*, Vol. 6, No.2 CHILD COURT WORKS (July 2003).

hearing.¹³⁴ Parties generally said the pretrial conferences were helpful (27 out of 38 said they were “useful” or “very useful”).

Rules of court also require the parties to meet without the judge before the pretrial conference. Most practitioners reported that the judge(s) at their location require this “meeting of the parties;” however, seven said that it was not required. Most parties (N = 28) said that the meeting of the parties was “useful” or “very useful.”

- c) Are limitations in available court time impacting case litigation?
- 1) How often are hearings interrupted for more than a day or two?

Judges were asked how often in the past year they had presided over hearings that were interrupted for more than 48 hours. Seventy-one percent said that “very few” hearings were interrupted, and the remainder said that “some” hearings were interrupted, and similar responses came from the parties.¹³⁵ According to the judges, interrupted hearings most commonly occurred in at the temporary custody hearing, followed by the adjudication and termination of parental rights hearings (tie). The parties’ perceptions, however, differed on this item. About a quarter of the parties identified the termination of parental rights hearing as the one most commonly interrupted, followed by the temporary custody and adjudication hearings.

When asked why they could not complete hearings in the time allotted, judges said that the court did not have sufficient time on its calendar, a finding echoed by the parties. The other two reasons cited most often by the judge respondents were that the parties were not ready or available to start on time, and that the parties did not have time to complete the hearing during the designated time,

¹³⁴ The nine that said they did not may have been the Anchorage judges because the masters generally hold the pretrial conference in their cases.

¹³⁵ 63% of parties said “very few” hearings were interrupted and 31% said “some” were interrupted.

while the parties said it was because a party or witness was not prepared to proceed.

2) Are courts able to calendar hearings timely?

The parties were asked whether their local courts timely handled expedited hearings, timely scheduled contested adjudication and disposition hearings, and timely scheduled visitation and placement hearings. On each of these measures, most parties (from 71-79%) said “yes.”

3) Do courts give the parties adequate time to present their cases?

The parties were remember over the past year when they had participated in contested hearings or trials, how often the court had not given the adequate time to present necessary evidence and arguments. Most respondents (60%) said that the time was inadequate at “very few” hearings. Twenty-one percent said the time was inadequate at “some” hearings.¹³⁶ The parties’ most common reason given for the inadequate time was that someone had underestimated the time needed to present or cross-examine witnesses.

d) Are courts encouraging settlement in appropriate circumstances?

Parties were asked to comment on the usefulness of the court system’s mediation program. Twenty-six of the 38 respondents said the program was “useful” or “very useful,” and all but seven respondents said they thought mediation decreased the need for contested hearings.

Parties advanced a number of ideas for things that courts could do to help them settle cases. Several mentioned that the parties should be required to file pre-trial briefs to better identify areas of agreement and disagreement (some judges already require this).

¹³⁶ “Very few” hearings was defined as 0-25% of hearings, “some” was defined as 26-50% of hearings, and “most was defined as 51-75% of hearings.

Others said that the court should require parties to meet with their clients before the meeting of the parties, require social workers participating in mediation to have settlement authority, encourage mediation, encourage settlement, and ensure that parties get discovery timely.

e) Frequency of contested hearings

Another interesting statistic is the number of cases that had a contested hearing. As expected, the data showed that only a fraction of CINA cases actually go to a contested hearing. For purposes of this inquiry, a “contested” hearing was defined rather restrictively, as one in which witnesses were called and evidence was presented. Using this definition, we found that about 11% (N=15) of the cases in the sample actually went to a contested adjudication, temporary custody, termination or permanency hearing.¹³⁷ Interestingly, no case had more than one contested hearing.

The data collector did note that other hearings (notably placement hearings) that were contested were not counted. Also, hearings not classified for this analysis as “contested” might have had contested elements or issues. Note too, that the statistics presented here may under-represent the true number of contested hearings because the data were taken from log notes, which may have been incomplete or unclear.

f) How often are multiple hearings required on the same issue?

Another way of looking at efficiency is to try to get an idea of how many times in one case a particular type of hearing is held. This analysis was performed for disposition hearings. The disposition hearing may not be held before adequate information is available upon which to enter an informed disposition order, or if OCS has failed to make reasonable or active efforts.¹³⁸ Thus, finding multiple disposition hearings in a case might indicate that the parties were not prepared to present the necessary information to the judge.

¹³⁷ We did not record contested placement hearings, of which there were several.

¹³⁸ CINA R. 17(c).

The analysis revealed that out of the 56 cases that had at least one disposition hearing, seventeen (30%) had more than one disposition hearing.¹³⁹ These numbers suggest that although in some locations disposition hearings may not occur very close in time to the adjudication, the disposition decision usually is made without needing another hearing.¹⁴⁰

- g) Are judges and court administrators using strong case management techniques?

Just under half (48%) of the judges said that they manage their CINA cases “more” or “much more” actively than other civil litigation that they handle. Only 18% said they manage it less or much less actively, while about a third said they manage it the same.

Information from the judge survey instrument suggested that most judges use special pretrial orders and techniques for managing timeliness in CINA cases.

- h) Quality of treatment

Thirty-four of the 38 party survey respondents agreed or strongly agreed that they were treated with courtesy and respect.¹⁴¹ Thirty agreed or strongly agreed that their client was treated with courtesy and respect.¹⁴²

One survey measure uncovered an area where improvement could be made. Only about half of the respondents agreed or strongly agreed with the statement, “As we left the court, my client knew what to do next about the case.” About 22% disagreed with that statement.¹⁴³ This finding is consistent with a suggestion arising out of the *Children in Alaska’s Courts* report that judges should speak directly and clearly to the parents in CINA cases.

¹³⁹ One case had four disposition hearings, four cases had three, and twelve cases had two.

¹⁴⁰ The analysis does not include discretionary reviews of disposition orders authorized by CINA R. 19.1(c).

¹⁴¹ Three party-respondents were neutral and one strongly disagreed.

¹⁴² Five party-respondents were neutral and three did not answer.

¹⁴³ The remaining party-respondents were either neutral or marked “not applicable.”

3. Findings Related to Fairness

a) Cases involving Native children

One goal of this study was to look for any disparities between ICWA and non-ICWA cases. While cases involving Native children should not be handled exactly the same as those involving non-Native children (because ICWA, not state law, applies), fairness dictates that any disparities between the two types of case should be accounted for by the differing legal standards.

Forty-five of the 137 cases (33%) sampled for this study involved a Native child. This percentage is less than those found in earlier studies; however, it is not clear why.¹⁴⁴

The 1996 Alaska Judicial Council baseline study found that Native children were adjudicated children in need of aid disproportionately more often than non-Native children, but the 2002 study found no disparate adjudication issue for Native children. The analysis of cases sampled for this study measured the average amount of time it took for Native children's cases to be adjudicated versus non-Native cases. The analysis showed that cases involving Native children reached adjudication on average about 159 days after filing, and that number was 169 days for non-Native children.

This study also examined outcomes involving Native children. Thirty-nine of the 45 ICWA cases contained a final status or resolution. Of those 39 cases, the most common outcome was for the child to be returned home (64%). The second most common outcome was to be adopted or placed with a legal guardian (28% of cases). The child was placed with a relative in 5% of cases and emancipated in 2% of cases. These outcomes seem similar to outcomes for non-Native cases, in which the most common result (45%) was to return home, and the second most common (36%) was to be adopted.

¹⁴⁴ In the 1996 Judicial Council study, 45% of children reviewed for the project were Indian under ICWA. In the 2002 Wood analysis, 66% (N=42) of the 64 adjudicated cases involved Indian children.

b) Adequate notice of proceedings

The judges did not perceive lack of timely notice of hearings as being a significant problem in their CINA cases.¹⁴⁵ However, this perception was not necessarily shared by ICWA workers who were asked how often they receive notice of rescheduled, delayed, continued or cancelled hearings before the hearing began. About a third (32%) said they received such notice in “some” cases, while 22% said they received that notice in “none” or “few” cases. Only 31% said they received timely notice of hearing changes “most,” “all” or “almost all” the time.

59% of ICWA workers reported being informed of the pretrial conference before it occurs in most or almost all cases. However, 29% said they were informed in “none” or “few” of their cases.

57% of ICWA workers said they are informed of the meeting of the parties before it occurs in “none,” “few” or only “some” of their cases, while only 43% said they got that scheduling information “most” or “all” of the time. Taken as a whole, the survey information suggests that although progress has been made to include tribes more routinely in CINA case events, room for improvement still exists.

c) Are parties treated fairly?

The parties were asked several questions related to fairness.¹⁴⁶ Thirty-five of the thirty-eight respondents agreed or strongly agreed that on a typical day when they had CINA-related business at the courthouse they were “treated the same as everyone else.”¹⁴⁷ Thirty-two agreed or strongly agreed that the judge was fair.¹⁴⁸

¹⁴⁵ No judges said that lack of timely hearing notice was a significant problem; however, one said that when it was a problem, it most often affected the tribe, and two said problems with notice most often affected foster parents.

¹⁴⁶ The questions used on this survey were taken from the *Court Tools* instrument developed by the National Center for State Courts.

¹⁴⁷ The other three party-respondents were neutral.

¹⁴⁸ Four party-respondents were neutral and one disagreed.

4. Findings Related to Quality

- a) Are parties being represented competently?

Fewer than half (about 46%) reported that a case plan was in the file “most” or “all” of the time, while about a third reported that “very few” of their CINA cases had a case plan in the file.

The survey information from the judges generally suggested that the quality of representation in CINA cases in Alaska is relatively high. Sixty-one percent of the judges said that attorneys and parties in CINA cases are “the same” or “better” prepared than parties in other civil litigation. Although it seemed that the most positive evaluations went to the guardians ad litem, judges also praised the work of parents’ attorneys and assistant attorneys generals. Judges did identify one problem on this item: frequent social worker turnover.

Parents’ Attorneys. About half of the judges said parents’ attorneys were prepared to represent their clients in “most” or “almost all” temporary custody hearings. A larger percentage of judges said that PDs were prepared to represent their clients in “most” or “almost all” adjudication, disposition, permanency, and termination of parental rights hearings. Most judges reported that parents’ attorneys presented evidence or made arguments that were important to their decisions at “most” or “almost all” hearings.

Guardians ad litem. All but three judges reported that the same guardian ad litem appeared at all stages of the same case most or almost all the time. All of the judges agreed that GALs were prepared to participate at “most” or “almost all” adjudication, disposition, permanency and termination hearings (all the judges agreed that the GALs were “almost always” prepared to participate at termination hearings). Just under two thirds said that the GALs were prepared to participate at the temporary custody hearing “most” or “almost all” the time.

Similarly, most judges agreed that guardians ad litem presented evidence, cross-examined witnesses, or made arguments that were

important to their decisions at “most” or “almost all” hearings. Most judges reported that GALs monitored the implementation of case plans and orders in “most” or “almost all” of their cases.

Assistant attorneys general. About 58% of judges reported that the same assistant attorney had represented OCS at all stages of the same case “most” or “almost all” the time. Most judges reported that the AAG was prepared to represent OCS at “most” or “almost all” hearings.

Most judges reported that the AAG timely filed proposed court orders in “most” or “almost all” of their cases over the past two years.

Social worker. The judges reported that the same social worker does not often stay assigned during the life of the case. In fact, 40% of judges said that the same social worker had been assigned to all stages of the same case in “very few” cases. However, most judges reported that the social worker was prepared to participate at “most” or “almost all” hearings.

b) Tribal intervention in ICWA cases

The 1996 study found that formal documents were filed on behalf of the Tribe in only 35% of cases involving Native children, suggesting a low rate of intervention or at the very least a low rate of formal participation by Tribes. This situation had changed dramatically by the time of the 2002 study, which found that Tribes intervened in roughly 75% of ICWA cases. The current study reaffirms the trend towards high rates of tribal participation in state court litigation: Our contractor found evidence of intervention in 43 of the 45 cases involving Native children (95% of cases). The fact that Tribes are formally intervening in their children’s cases is considered to be a strength, since they bring additional resources and local knowledge to the table.

Comments from the ICWA worker survey suggested that tribes have adopted a policy to intervene in every case involving an enrolled tribal child, except under very limited circumstances.

Implementation of this policy has been supported by funding and technical assistance provided by the BIA and through BIA contractors such as the Tribal Law and Policy Institute. The high rates of tribal intervention certainly suggest that the BIA funding has been an effective tool in improving tribal participation, and therefore quality of information, in state court CINA cases.

Results from the ICWA worker survey suggested that some judges could improve the level of tribal participation at hearings by asking ICWA workers if they would like to speak. While over half (55%) of ICWA workers reported that the court gave them time to speak at hearings in “most,” “all” or “almost all” cases, 11% said that happened in “few” or “no” cases.

- c) Are court and agency caseloads affecting judicial performance?

The caseloads carried by attorneys and GALs in Alaska was cited often as a major factor contributing to delays, failure to adequately prepare for hearings, difficulty coordinating schedules, and inefficiency because of last-minute preparation.

- d) Telephonic hearing participation

Telephonic participation in CINA cases is the norm in Alaska. About 70% of judges and 89% the parties reported that “most” or “almost all” of their CINA hearings involve telephonic participation by one or more parties.

Over half (57%) of judges and half (50%) of the parties who had participated in telephonic hearings thought that it affected the quality or efficiency of the hearing. Judges who noticed that telephonic participation affected their hearings most often cited technological problems such as difficulty getting people connected, losing connections, and poor sound quality. A number of judges said that getting participants connected by the phone often delayed hearings, made hearings take longer, and was hard to coordinate. Several respondents noted that credibility decisions and evaluation of witnesses’ demeanor were problems. Several judges reported that it was more difficult to know whether the people on the phone

could hear and understand what was happening in the courtroom. One judge mentioned that the telephone exacerbated cultural communication issues.

About a third (31%) of ICWA workers reported that when they participated telephonically the court asked whether they wanted to question witnesses “most,” “all” or “almost all” the time, while 29% said that they were offered that opportunity in “few” or “no” cases.

These survey responses, along with the findings from the *Children in the Courts* forums, suggest that improving telephonic hearing technology and process should be a priority for the court system.

5. Findings Related to Other Federal Objectives

a) Title IV-E Eligibility

The federal Court Improvement Program requires this study to assess “the sufficiency of judicial determinations in court orders as reflected in the final report and PIP resulting from title IV-E foster care eligibility reviews.” The State of Alaska’s title IVE program was reviewed in 2003, and the results were discussed in Part II A, above.

Since the results of the IV-E Eligibility review were positive, no formal response was undertaken by the Alaska Court System. However, in an effort to further improve practices in this area, the Anchorage Children’s Court has implemented a procedure for sharing information needed at IVE reviews with information presented at the court’s permanency hearing. The court sends OCS its calendar and OCS sends a IVE reviewer to attend the court’s pre-hearing conference and the permanency hearing, thus reducing the need for duplicate information to be presented at both the IVE review and the court hearing.

b) Collaboration with OCS on its CFSR

The federal Court Improvement Program requires this study to assess “the performance of courts and the degree of collaboration with the State child welfare agency as reflected in the statewide assessment, final report, and PIP resulting from a CFSR.” The

results of OCS' CFSR are explained above in Part IIA. Although the CINA Court Improvement Committee was not formally involved in the data collection leading up to the assessment, OCS had invited a number of individual judges to participate in that process. When the results of the CFSR were released, Region X representatives did so in a joint presentation to the CINA Court Improvement Committee and OCS. After the CFSR was released, OCS staff, Region X representatives, and the coordinator of the CINA Court Improvement Committee met several times to determine which CFSR findings implicated courts, and what responses might be undertaken.

Having identified several items that potentially implicated court practices or policies, the CINA Court Improvement Committee coordinator brought that analysis before the committee for discussion on several occasions.¹⁴⁹ Over the course of those meetings and discussions, a strategy was developed and implemented. The strategy included a proposal for a rule change, upgrades to the court's new case management system, and a letter to judges explaining the findings and suggesting ways that judges could help OCS improve its performance. The court-related items were then formally included in OCS' Plan for Improvement.

After the PIP was accepted, the CINA Court Improvement Committee coordinator and the staff person at OCS met at least quarterly to discuss progress on action items and timelines. In addition, the CINA Court Improvement Committee coordinator and the OCS PIP contact also met with representatives of Region X to check on progress and trouble-shoot as necessary.

In addition to formal collaboration on the PIP, individual judges and OCS collaborate informally in other ways. For example, OCS has designated a manager at its Anchorage office to be a liaison between OCS and Anchorage Children's Court. The liaison is a "trouble-shooter" to whom the court can turn for help with missing reports or other problems.

¹⁴⁹ The CINA Court Improvement Committee membership includes the head of OCS and the staff person at OCS who is in charge of the PIP and its implementation.

c) Independent Living Services

The federal CIP requires this study to assess proceedings that determine whether independent living services are provided to a child or youth up to age 21. State law prohibits courts or OCS to retain jurisdiction over a child in need of aid past the child's nineteenth birthday, unless the young person consents to continued jurisdiction.¹⁵⁰ However, state law requires OCS to design, develop, and implement a foster care transition program to provide support and services to individuals who reach or have reached the age of 16 or older while in foster care.¹⁵¹ OCS recently evaluated its efforts in this area in a report from the University of Alaska.¹⁵² The report compared Alaskan children's scores on the Ansell-Casey Life Skills Assessment instrument to national benchmarks, and reported on focus group discussions with foster children who had "aged out" of the system. The study found that Alaskan children were weaker than the national average in the areas housing and community resources, and money management, and stronger on daily living tasks and social development.¹⁵³ The focus groups revealed that Alaskan foster children believe they need more skills than just those listed in the Ansell-Casey instrument, because of Alaska's unique geographic, cultural and social contexts.¹⁵⁴ The youth also indicated that some skills measured in the Ansell-Casey have limited applicability in rural Alaska, for example, knowing how to use an ATM or knowing how to operate kitchen appliances.

An article published in the *Anchorage Daily News* on September 6, 2005 reported OCS receives \$500,000 a year in federal funds specifically to help foster youths succeed on their own, with which it funds four specialists who help teens plan for college, train for jobs, write resumes and run a household. Currently, there are 236 teens age 16 or older in Alaska foster care, and about 40 to 50 age out every year.

¹⁵⁰ AS 47.10.100.

¹⁵¹ AS 47.18.300.

¹⁵² Sirles, Lally, et al, Alaska Foster Youth and Independent Living Skills: An Examination of the Skills Necessary for Alaskan Youth Transitioning from Office of Children's Services Custody to Independent Living (2005).

¹⁵³ Sirles & Lally, *supra* note 153, at 27.

d) Alaska Court System's Case Management Systems

The ACS has purchased a new case management system and recently implemented it in Anchorage, Palmer, and Fairbanks (three courts which account for the majority of the CINA cases filed in the state). After the system was installed in Palmer and Anchorage, a subcommittee of the CINA Court Improvement Committee, clerks of court, and ISS staff designed custom modifications to the system so that it could track required hearings, and record reasons for continuances, among other things. The vendor released the modifications, and the customized system is in use now. Other courts continue to use the legacy system, which has less functionality.

¹⁵⁴ Sirles & Lally, *supra* note 153, at 9. For example, adults in rural Alaska need to know how to survive and navigate in the backcountry and during harsh weather conditions, and they need to know how to hunt and gather; but those life skills that are not measured in the Ansell-Casey instrument.

Part V: Conclusions and Recommendations

The following conclusions and recommendations were arrived at from researching CINA case files, federal and state law and legislative history, previous CINA reports, and surveying system participants. They are organized into topics that reflect the themes and most interesting findings of the current study.

A. Parties' Perception of Delay Generally

Conclusions. Parties' attitudes towards and perceptions about delay are an important factor in any analysis. The judge, attorney and GAL survey responses suggested that the parties do not necessarily perceive delay, especially at the early stages, as negative. In fact, many of the parties had quite the opposite perspective. Also, while judges, attorneys and GALs noticed delay at the late stages (termination), they did not seem to notice it as much at the early stages. This perception seemed inconsistent with the case file data, which suggested that most delays and continuances occur in the earlier stages.

Recommendation. To the extent that parties and judges are satisfied with the pace of litigation in the CINA cases, recommendations about delay reduction will not be productive. The Judicial Education Committee should consider sponsoring a workshop for all superior court judges and masters who handle CINA cases. The workshop should include the delay-related results of this study, a review of the federal and state case processing requirements, including the underlying reasons for the timelines, and ample opportunity for judges to discuss among themselves expectations and attitudes towards case processing in CINA cases.

B. Delays at Temporary Custody Stage

Conclusions. Delays at the early stages of the case are of interest because how the case is handled at the beginning could shape its future progress. For example, while a case plan may be developed by the social worker early in the case, the implementation of the case plan (such as accessing services) may not occur in earnest until after the temporary custody finding, or even after adjudication. Case planning may be disrupted or delayed as the parties focus their energy and attention on the litigation process.

The case file data suggested that delays occurred at early stages of the cases: at temporary custody and adjudication. With respect to delayed entry of temporary custody

Part V: Conclusions and Recommendations

orders, the data suggested that although the court system is doing an excellent job of holding the initial temporary custody hearing within 2 days of the filing of the petition, the actual decision on temporary custody often is not concluded at that first hearing. Rather, one or more additional temporary custody hearings and orders are made anywhere from 5 to 20 days, on average, after filing.

Delays at the temporary custody stage seemed to be related to protection of parties' legal rights (for example, the parent not having consulted an attorney before the temporary custody hearing or a continuance to allow an attorney to be appointed for the parents). Moreover, there is no deadline within which the probable cause and temporary custody determinations should be concluded.

Recommendations. The agencies and the court system should consider how to develop a process in which parents appear far enough in advance of the temporary custody hearing to establish their eligibility for court-appointed counsel, and to confer with counsel in advance of the hearing.¹⁵⁵ Close consultation would be required with the Public Defender Agency and the Office of Public Advocacy, and additional resources might be necessary.

C. Delays at Adjudication

Conclusions. The data collector noticed a number of cases in Anchorage (and, to a lesser extent, in other court locations) where an order adopting a stipulation for adjudication was entered several weeks after the stipulation but with no earlier effective date. If adjudication cannot be counted as "completed" until these orders adopting stipulations are entered, delays in filing those orders and getting them signed by the judge could be negatively affecting timeliness statistics.

Both the survey and case file data suggested that pretrial delays often were related to discovery issues. Effective April 15, 2006, the Alaska Supreme Court has amended the Child in Need of Aid discovery rule and replaced it with a more expanded rule entitled "Disclosures, Depositions, and Discovery." Among other things, the new rule requires the parties to make certain initial disclosures early in the proceeding, specifies the materials to be provided by different categories of expert witnesses, and provides guidelines for discovery from a guardian ad litem. This change may help reduce future discovery-related delays.

¹⁵⁵ See *Resource Guidelines*, at 34.

Recommendation. Individual judges should consider, given their caseload and their own courts' performance on this measure, how to ensure that written orders accurately reflect case events, particularly with respect to stipulations.

D. Delays at Disposition Hearings

Conclusions. The disposition is an important step to determining the future progress of the case. The *Resource Guidelines* recommend that disposition be completed within 30 days after adjudication, except where extensions of time are required because of newly discovered evidence, unavoidable delays in obtaining critical witnesses, and unforeseen personal emergencies of parties or counsel.¹⁵⁶ The data gathered for this report suggest that only Fairbanks, Bethel and Ketchikan appear to be regularly completing the disposition within that recommended time frame.

Recommendations. The agencies and the court system should explore how to achieve dispositions closer in time to the adjudication, without sacrificing quality of decisions. Parties and judges also should consider whether a time standard or guideline might be useful here.

E. Use of Continuances

Conclusions. The case file data showed hearing continuances to be a common occurrence in CINA cases, and this was one finding that did not seem to vary by location. Accepted principles of court case management teach that continuances should be rare. The case file and survey data showed that the most common reason for continued hearings was that the parties were close to a resolution of the subject matter of the hearing. This type of delay might often be within the parties' control, since they could have started their settlement negotiations earlier. It is not clear, however, that CINA practitioners and judges are dissatisfied with the current practice with respect to continuances.

Recommendations.

The frequency with which continuances are given in CINA cases is an issue that should be discussed by judges and parties statewide and regionally, with a possible goal of coming to a shared understanding about appropriate frequency of continued hearings.

¹⁵⁶ See *Resource Guidelines*, at 55.

F. Quality

Conclusions. A recurring theme amongst both the judges and the parties was that the biggest strength of the CINA system in Alaska is the behavior, attitude and skill of the parties. Comments in this vein included praise for the professionalism and collegiality of counsel, recognition of the parties' dedication, hard work and commitment, praise for attorneys' skill at protecting their clients' rights, caring, committed judges, and judges who make CINA cases a priority.

Conversely, a recurring theme in the category of challenges to the system was turnover of social workers and other parties, and non-resident attorneys. Turnover and non-resident attorneys were thought to negatively impact both quality and efficiency, because a person new to the case takes longer to get up to speed, and also because the new person lacks the pre-existing relationship with the other parties necessary to effectively manage and resolve the case.

These findings support a conclusion that continuity of personnel plays a critical role in CINA cases, at least as they are litigated in Alaska. Similarly, judges' and attorneys' knowledge of these cases appeared to be a strength.

Recommendations. Although agencies in Alaska generally strive to retain experienced attorneys, GALs and social workers, this finding suggests that even more attention should be paid to this item. Additionally, agencies might consider whether or how each superior court location could be served by a resident attorney. Similarly, training for judges, GALs, and attorneys should be ongoing and frequent, with particular attention paid to newer employees.

G. Court Resource Issues

Conclusions. This study supported the belief held by many Alaska judges that child protection cases consume judicial and clerical resources disproportionate to their percentage of the total civil caseload. These cases are monitored more closely, hearings are comparatively frequent, telephonic participation is high, and coordinating calendars among the court and the parties is time consuming. Additionally, this area of the law is comparatively complex, due to the overlay of state and federal requirements, and few judges have any familiarity with it when they take the bench. Thus, the demands that these cases place on judges' working and training time are significant.

H. Alternative Dispute Resolution & Therapeutic Courts

Conclusions. This and prior studies suggest that the Alaska Court System's mediation and family group conference programs and its Family Care Court, are strengths of the system.

Recommendation. The Alaska Court System's mediation and family group conference programs and its Family Care Court should be supported and continued.

I. Permanency and Termination of Parental Rights

Conclusions. It seemed that the most common and significant reasons for delayed permanency were related to specifics about the parties and children's needs and not necessarily the legal process. Specifically, practitioners identified mental health assessment and treatment delays as a significant factor delaying permanency.

Another issue that surfaced in the file review was the need for permanency findings and orders clearly to reflect what they are so that they can be accurately recorded and tracked.

A third issue was that there seems to be some inconsistency or confusion on the part of parties and judges about how procedurally to review permanency issues for children who are living at home under state custody orders.

Recommendations. The CINA Court Improvement Committee should work with the Department of Law to ensure that permanency findings and orders clearly reflect what they are, so that they can be accurately recorded and tracked. The CINA Court Improvement Committee should work with judges from each judicial district and parties to develop a shared understanding about procedures for reviewing permanency issues in cases where children are living at home under state custody orders.

J. Tribal Participation

Conclusions. This review suggested that tribal intervention in ICWA cases is a strength of the system. The data showed that Tribal participation in cases involving Native children has increased significantly since the base line assessment. Survey results suggested that judges generally welcome Tribal involvement and would like Tribal representatives to become even more actively involved in hearings.

Recommendations. Outcomes for Native children could be further enhanced if Tribes who already are intervening continued to increase the level of their participation at hearings and in case planning. Also, the Alaska Court System should consider ways in which it can increase efforts to reach out to tribes, especially with respect to urban judges who may have cases involving children from a variety of Alaska Native cultures and communities. Possible mechanisms could include “meet your judge” forums in rural villages or hub communities.

K. Telephonic Hearings

Conclusions. Telephonic hearings are the norm in CINA cases in Alaska, yet they are still problematic in several locations. Some of the problems associated with telephonic participation are technical in nature (dropped calls, poor sound quality), while others involve difficulties providing notice of rescheduled hearings, availability of telephonic participants at the time of the hearing, and how to efficiently manage a hearing at which multiple parties are appearing telephonically.

Recommendations. The Alaska Court System should continue its program to improve telephonic equipment and training for its in-court clerks statewide. Telephonic participants who experience difficulties are encouraged to contact the local area court administrator or the court system’s central administrative office in Anchorage.

Approximately 10 years of court improvement activities in Alaska and nationwide have raised the profile of child protection cases among judges and court administrators. A variety of organizations, including the American Bar Association’s Center on Children and the Law, the National Council of Juvenile and Family Court Judges, the Conference of Chief Justices, the Conference of State Court Administrators, the Pew Charitable Trusts, the Annie E. Casey Foundation, and the Dave Thomas Foundation for Adoption, have encouraged courts and judges to step beyond court improvement and to adopt outcome and performance measurements in child protection cases.¹⁵⁷ The findings of this and other reports suggest that understanding how to achieve those goals, and then marshalling the resources necessary to do so, will be a complex and resource-intensive undertaking.

¹⁵⁷ See, for example, *Building a Better Court*, *supra* note 87, at 1-2. In September, 2005, the Conference of Chief Justices, the Conference of State Court Administrators, and the National Council of Juvenile and Family Court Judges co-sponsored a national judicial leadership summit on child protection, using grants from the Pew Charitable Trusts, the Annie E. Casey Foundation, and the Dave Thomas Foundation for Adoption, Fostering Results, and the State Justice Institute.

Appendix A

Summary of Law and Procedure Governing CINA Litigation in Alaska

This appendix explains in detail the federal and state laws and court rules that currently govern child protection litigation in Alaska.

State law authorizes the Office of Children’s Services to take emergency physical custody of a child without a court order under certain circumstances.¹ If OCS determines that continued custody is necessary to protect the child, it must notify the court of the emergency custody by filing a petition alleging that the child is a child in need of aid, and it must file the petition within 24 hours of taking custody.² This petition is referred to as a “petition for adjudication.”³ The filing of the petition triggers scheduling of a court hearing, followed by a whole series of hearings and proceedings designed ultimately either to enable the child to return home (the most common outcome), or to terminate the parents’ rights to the child and free the child for adoption or another permanent placement (for example, with a relative).

A. *Temporary Custody Hearing*

1. Purpose

The purpose of the temporary custody hearing is for the judge to make an initial determination as to the strength of the state’s case (“probable cause”) and to determine where the child should be placed (in the home or in the care of OCS). The temporary custody hearing must occur within 48 hours after the filing of the petition.⁴

2. Participants

Persons entitled to notice and participation at the temporary custody hearing include parents whose rights have not been terminated,⁵ the child’s legal guardian, the child’s Indian custodian, the Indian child’s tribe, the OCS social worker, the Guardian ad litem and/or Court Appointed Special Advocate, any out-

¹ AS 47.10.142.

² AS 47.10.142(c); AK CINA R. 6(a).

³ The conditions that make a child in need of aid in Alaska are set out in the main body of the report and AS 47.10.011.

⁴ AS 47.10.142(d); AK CINA R. 10(a)(1)(A).

⁵ “Parent” includes an Indian child’s putative father who has acknowledged paternity, even if paternity is not established. 25 USC § 1903(9).

of-home care provider and grandparents,⁶ any person who has legally intervened in the case, and the parties' attorneys.⁷

This initial hearing, sometimes referred to as the emergency custody hearing, is closed to the public; however, subsequent temporary custody hearings are open as long as the parent, child or other party has had an opportunity to obtain representation.⁸ No member of the public may disclose information that would tend to reveal the identity of the child.⁹

3. Continuances

The court may not grant a continuance of this hearing unless it finds "good cause" why the parent, guardian, or Indian custodian is not prepared to respond.¹⁰ If a continuance is granted, the court must determine whether placement in the home during the continuance would be "contrary to the welfare" of the child.¹¹

As a practical matter, the initial temporary custody hearing is almost always continued because a party (usually the parent and the parent's attorney) tells the judge that they are not prepared to respond. When this happens, the judge tries to set the continued hearing for a time within the next week or two.

4. Appointments Made at or Before Temporary Custody Hearing

At or before the first temporary custody hearing, judges appoint attorneys to represent the parents and guardians ad litem to advocate for the best interests of the child. Judges must appoint a guardian ad litem (GAL) to represent the best interest of a child alleged to be abused or neglected.¹² The judge must appoint the GAL "as soon as the court has notice that the child is entitled to one."¹³ Thus, the GAL appointment generally occurs at

⁶ At this hearing, the court can limit the presence of out-of-home care providers and grandparents pursuant to AS 47.10.070(e).

⁷ AK CINA R. 7(b) and 2(l).

⁸ AS 47.10.070(c)(1) & (2).

⁹ AS 47.10.070(f). The law requires the judge to make an order prohibiting members of the public from doing so.

¹⁰ AS 47.10.142(d).

¹¹ AS 47.10.142(d). Whether or not the hearing is continued, the judge is required to make the "contrary to the welfare" and "reasonable efforts" removal findings described below. See CINA R. 10.1, AS 47.10.142(e).

¹² CINA R. 11(a).

¹³ CINA R. 11(b).

or before the first hearing. In Alaska, the state-funded Office of Public Advocacy provides GAL services for child in need of aid cases.¹⁴

Parents in CINA cases are entitled to be represented by counsel at all stages of the proceedings.¹⁵ The judge must appoint counsel for a parent or guardian who is financially unable to employ counsel, unless the parent waives the right to counsel by convincing the judge that he or she understands the benefits of counsel and knowingly waives those benefits.¹⁶ The state-funded Alaska Public Defender Agency provides legal representation for indigent parents in child in need of aid cases.¹⁷ In case of a conflict of interest at the PDA, the state-funded Office of Public Advocacy also represents parents in child in need of aid cases. The practice in Alaska is to appoint counsel for the parents at or before the first hearing.¹⁸

In addition, Alaska law provides that an attorney can be appointed to represent the child.¹⁹

5. Required Inquiries and Advisements

The court must make a number of inquiries, advisements and orders at the temporary custody hearing. First, the judge must order any members of the public who are attending the hearing not to disclose information that would readily reveal the child's identity.²⁰ The court must ensure that all parties have a copy of the petition.²¹ The court must advise the parents, guardian, and Indian Custodian of their right to an attorney (court-appointed if indigent), right to a hearing at which OCS is required to prove the allegations in the petition, right to confront and cross-examine witnesses, present witnesses on their own behalf, the privilege against self

¹⁴ OPA uses a combination of staff and contract GALs. OPA also administers the Court Appointed Special Advocate (CASA) program, which recruits, trains and deploys volunteers from the community to assist the GAL in CINA cases.

¹⁵ CINA R. 12.

¹⁶ CINA R. 12.

¹⁷ AS 18.85.100.

¹⁸ AS 18.85.100(e) permits an assistant public defender to investigate and prepare in advance of the temporary custody hearing, as well as to represent the parent at the hearing. Continued representation of the person by the Public Defender Agency after the temporary custody hearing is contingent on satisfaction of the financial eligibility requirements.

¹⁹ AS 47.10.050(a) provides that whenever in the course of a CINA case it appears to the court that the welfare of a child will be promoted by the appointment of an attorney to represent the child, the court may make the appointment.

²⁰ AS 47.10.070(f).

²¹ CINA R. 10(b)(1).

incrimination, and the right to request a continuance. The judge also must advise that the child has the right to a GAL, and that the tribe and Indian Custodian have the right to intervene.²² Finally, the court advises the parents that they may be liable for child support if the child is placed outside the home.²³

Also at the temporary custody hearing, the court should make at least an initial determination about whether the child is an Indian child.²⁴ If the child is an Indian child, the court should further determine (at this hearing or a subsequent hearing) the identity of the Indian child's tribe,²⁵ whether the child is a ward of a tribal court,²⁶ and whether the child has an Indian custodian.²⁷ The child's identity as an Indian child is important to establish early in the case, because proceedings involving Indian children must comply with the procedural and substantive requirements of the federal Indian Child Welfare Act.

6. Evidence

At the temporary custody hearing, otherwise inadmissible hearsay is admissible if it is probative, reliable, and trustworthy, and the parties have a fair opportunity to meet it.²⁸

7. Required Findings and Orders

There are a number of findings and orders that the judge must make at this first hearing.

- a. **Probable Cause Finding.** The judge first must determine whether probable cause exists to believe that child is in need of aid, and specify which subsection(s) of AS 47.10.011 apply.²⁹ If probable cause does not exist, the judge orders the child released from state custody and returned to the parent, adult family member, guardian

²² CINA R. 10(b)(2).

²³ CINA R. 10(b)(1); AS 47.10.084(c).

²⁴ If the court knows or has reason to know that case involves an Indian child, OCS must notify the child's tribe about the child in need of aid case. 25 U.S.C. § 1912(a), see also CINA R 7(e)(1).

²⁵ See 25 USC §1903(5), CINA R. 6(b)(2).

²⁶ See 25 USC § 1911.

²⁷ See 25 USC §1903(6).

²⁸ CINA R. 10(b)(3).

²⁹ CINA R. 10(c); AS 47.10.142(e). The legal standard for probable cause is defined in *Matter of J.A.*, 962 P.2d 173 (Alaska 1998): Considering all the circumstances, is there a "fair probability or substantial chance" that the child is in need of aid?

or Indian custodian.³⁰ If probable cause exists, the judge must explain the reasons to the child, parent, or Indian custodian.³¹

- b. Custody Finding. If probable cause is found, the court must determine whether to commit the child to OCS for “temporary placement,” or to the parent or Indian custodian with OCS supervision.³² If custody is not given to OCS, the judge must specify terms and conditions to be required of the parent(s) or Indian custodian, and the child.³³ If custody is given to OCS, the judge must specify the terms, conditions and duration of placement.³⁴

- d. Contrary to the Welfare/Imminent Harm Findings. To approve removal from a child’s home, the court must determine that continued placement in the home is “contrary to the welfare” of the child.³⁵ The court must inform the child and parents or Indian custodian of its reasons for the contrary to the welfare finding.³⁶ Also, the court may remove an Indian child only if removal is necessary to prevent imminent physical damage or harm or there is clear and convincing evidence, including testimony of qualified expert witnesses, that the child is likely to suffer serious emotional or physical damage if the child is left in the home.³⁷

- e. Active/Reasonable Efforts Findings. If the court authorizes the child’s removal from the home, the court must determine whether OCS made reasonable efforts to prevent removal.³⁸ Alternatively

³⁰ CINA R. 10(c); AS 47.10.142(e); AS 47.10.080(c).

³¹ AS 47.10.142(e).

³² See AS 47.10.142(e).

³³ AS 47.10.142(f).

³⁴ AS 47.10.142(f).

³⁵ CINA R. 10(c)(3); see AS 47.10.142(e). The court rule and state statute are consistent with ASFA’s requirement that the first court order on the child’s removal find that “continuation in the home is contrary to the welfare of the child.” See 45 CFR §1356.21(c). If the child welfare agency fails to secure this finding, the child’s stay in foster care is ineligible for Title IV-E funding. 45 CFR §1356.21(c).

³⁶ AS 47.10.142(e).

³⁷ CINA R. 10(c)(3), see also 25 USC § 1912(e).

³⁸ AS 47.10.086(a); CINA R. 10.1. The court rule and state statute are consistent with ASFA’s requirement of a court finding that “reasonable efforts have been made to prevent the child’s removal from home” within 60 days of removal in order for the child welfare agency to receive Title IV-E funding for the child’s entire stay in foster care. See 45 CFR §1356.21(b).

the court may find that it was not possible under the circumstances to make efforts to prevent removal.³⁹ If the child is an Indian child, the court must determine whether the active efforts required by 25 USC §1912(d) were made to provide remedial services and rehabilitative programs to prevent the breakup of the family, and whether they were successful. A finding that OCS failed to make reasonable or active efforts is not in itself grounds for returning the child.⁴⁰

- f. ICWA Placement Preference Findings. If the court authorizes removal of an Indian child, the court must determine whether OCS complied with ICWA placement preferences, or whether there is good cause to deviate from those preferences.⁴¹

8. Additional Orders & Considerations

Judges may evaluate the case at this early stage and make other appropriate orders. They may consider paternity and make orders regarding paternity. If the child is committed to OCS, the court may order parents to disclose information about relatives willing to care for the child,⁴² or ask the Tribe for information about relatives. The court may order OCS to file a visitation plan.⁴³ The court may entertain requests for needed examinations, evaluations, or immediate services.

Also at this hearing, or at any time in the litigation, the judge may refer the case to mediation, family group conferencing, or a settlement conference.

Finally, the court should set the outside date for holding the adjudication hearing—to be completed within 120 days after the temporary custody hearing.

³⁹ At any stage of a proceeding, the court may determine, upon motion of a party, that the reasonable efforts described in AS 47.10.086(a) are not required or need not be continued. The moving party bears the burden of proof by a preponderance of the evidence, and the court's primary consideration is whether the finding that reasonable efforts are not required would be in the child's best interest. AS 47.10.086; CINA R. 17.1. The statute lists circumstances in which a court may find that reasonable efforts are not required. AS 47.10.086(c).

⁴⁰ CINA R. 10.1(b)(1)(B)(2).

⁴¹ CINA R. 10.1(b)(A); 25 U.S.C. § 1915(b).

⁴² AS 47.10.080(r)(5).

⁴³ See AS 47.10.080(p) and (t); AS 47.10.084(c).

B. Meeting of the Parties and Pretrial Conference

The judge's finding at the temporary custody hearing that there is probable cause to believe that the child is in need of aid is only an initial determination. In order for the case to continue, the state must prove at a subsequent hearing that the child continues to be in need of aid. In Alaska, this subsequent hearing is called the "adjudication hearing." However, before the adjudication hearing occurs, court rules require the parties and the court to engage in some case planning and case management activities.

1. Meeting of the Parties

After the temporary custody hearing, the parties must meet to discuss the case.⁴⁴ At this "meeting of the parties," the parties must ensure that an appropriate case plan is in place for the child and the family, and they must prepare for the pretrial conference.⁴⁵ The judge is not present at this meeting. To ensure that the parties do not overlook this meeting, the court requires them to submit within 10 days after the meeting a written summary of what they discussed and decided.⁴⁶

2. Pretrial Conference

Within about thirty days after the meeting of the parties, the court will hold a pretrial conference.⁴⁷ Generally speaking, the purpose of the pretrial conference is for the judge and the parties to prepare for the upcoming adjudication hearing, including considering how to streamline or eliminate presentation of evidence, how to encourage stipulations and settlement, and establish timelines for presentation of evidence.⁴⁸

⁴⁴ CINA R. 13(a).

⁴⁵ CINA R. 13(a).

⁴⁶ See CINA R. 13(a).

⁴⁷ CINA R. 13(a). The rule does not specify when the pretrial conference should occur; however, it does specify that the meeting of the parties must occur at least 30 days before the pretrial conference, unless otherwise specified by the judge.

⁴⁸ See CINA R. 13(b). The list of Rule 13(b) pretrial discussion topics includes: efforts to locate and serve all parties, simplification of issues, amendment of pleadings, resolution of discovery issues and pending motions, use of settlement and settlement procedures, ways to avoid the introduction of unnecessary evidence, use of experts at trial, whether the child will testify, and establishing reasonable limits on the time allowed for presenting evidence.

C. *Adjudication Trial/Hearing*

1. Purpose and Timing

The adjudication hearing is a trial to the court on the merits of the petition for adjudication.¹ Alaska law requires the adjudication trial to be completed within 120 days after the temporary custody hearing, absent a showing of good cause why it should take longer.²

In determining good cause, the court must consider the child's age and the potential adverse effect of delay on the child.³ However, if the case involves an Indian child, federal law prohibits the court from holding the adjudication hearing until at least ten days after the parent, Indian custodian and tribe have received notice of the adjudication.⁴ Federal law further requires the court to grant the request of a parent, custodian or tribe for postponement for up to 20 additional days to prepare for the hearing.⁵

2. Participants

Persons entitled to notice and participation at the adjudication hearing are the same ones entitled to notice and participation at the temporary custody hearing. This hearing is open to the public provided that the parent, child or other party has had an opportunity to obtain representation.⁶

3. Evidence

At the adjudication hearing, OCS must prove by a preponderance of the evidence that the child continues to be in need of aid.⁷ If OCS does not

¹ CINA R. 15(a).

² CINA R. 15(a); AS 47.10.080(a). In 2000, the Alaska Supreme Court adopted a time standard that 98% of CINA adjudications should be completed within 120 days of the probable cause finding.

³ CINA R. 15(a).

⁴ 25 U.S.C. § 1912(a); *see also* CINA R. 15(b).

⁵ *Id.*

⁶ AS 47.10.070(c)(1) & (2). The hearing can be closed by written order of the judge upon a showing that the hearing or part of the hearing would reasonably be expected to "stigmatize or be emotionally damaging to a child; inhibit a child's testimony in that hearing; disclose matters otherwise required [by law] to be kept confidential...; or interfere with a criminal investigation or proceeding or a criminal defendant's right to a fair trial in a criminal proceeding...." AS 47.10.070(c)(3).

⁷ CINA R. 15(c). If the adjudication is consolidated with the termination petition, OCS' evidentiary burden is "clear and convincing." CINA R. 18(c)(1)(a).

meet its burden, the judge orders the child released from state custody and returned to the parents or Indian custodian.

4. Required Findings and Orders

The court finds a child to be a child in need of aid if it finds by a preponderance of the evidence that the child has been subjected to any of the following:

- (1) a parent or guardian has abandoned the child, and the other parent is absent or has committed conduct or created conditions that cause the child to be a CINA;
- (2) a parent, guardian or custodian is incarcerated, the other parent is absent or has committed conduct or created conditions that cause the child to be CINA, and the incarcerated parent has not made adequate arrangements for the child;
- (3) a custodian with whom the child has been left is unwilling or unable to provide care, supervision, or support for the child, and the whereabouts of the parent or guardian is unknown;
- (4) the child is in need of medical treatment to cure, alleviate, or prevent substantial physical harm or is in need of treatment for mental injury and the child's parent, guardian or custodian has knowingly failed to provide the treatment;
- (5) the child is habitually absent from home or refuses to accept available care and the child's conduct places the child at substantial risk of physical or mental injury;
- (6) the child has suffered substantial physical harm, or there is a substantial risk that the child will suffer substantial physical harm, as a result of conduct by or conditions created by the child's parent, guardian or custodian or by the failure of the parent guardian or custodian to supervise the child adequately;
- (7) the child has suffered sexual abuse, or there is a substantial risk that the child will suffer sexual abuse, as the result of conduct by or conditions created by the child's parent, guardian or custodian or by the failure of the parent, guardian or custodian to adequately supervise the child;...
- (8) conduct by or conditions created by the parent, guardian or custodian have (A) resulted in mental injury to the child; or (B) placed the child at substantial risk of mental injury as a result of (1)

- a pattern or rejecting, terrorizing, ignoring, isolating, or corrupting behavior that would, if continued, result in mental injury; or (ii) exposure to conduct by a household member, as defined in domestic violence laws, against another household member that is a crime of domestic violence;
- (9) conduct by or conditions created by the parent, guardian or custodian have subjected the child or another child in the same household to neglect;
 - (10) the parent, guardian or custodian's ability to parent has been substantially impaired by the addictive or habitual use of an intoxicant, and the addictive or habitual use of the intoxicant has resulted in a substantial risk of harm to the child;
 - (11) the parent, guardian or custodian has a mental illness, serious emotional disturbance, or mental deficiency of a nature and duration that places the child at substantial risk of physical harm or mental injury; or
 - (12) the child has committed an illegal act as a result of pressure, guidance or approval from the child's parent, guardian or custodian.⁸

If the court does not enter a disposition at the adjudication hearing, it must enter appropriate orders and findings pending disposition.⁹ These findings and orders are the same for any hearing at which a judge is authorizing removal or continuing out-of-home placement for the child:

- to whom will custody be given (including the terms, conditions and duration of custody);
- the contrary to the welfare and imminent harm findings;
- the active/reasonable efforts findings, and
- the ICWA placement preference findings.¹⁰

5. Additional Orders and Considerations

At the adjudication hearing, judges are encouraged but not required to engage in case management and planning activities. For example, judges are encouraged to direct OCS to identify and locate parents, including

⁸ AS 47.10.011.

⁹ CINA R. 15(f).

¹⁰ See CINA R. 10.1.

unwed fathers, and to establish paternity. The court may direct OCS to locate and evaluate relatives as possible caretakers, and order parents to disclose relative information.¹¹ The court may order OCS to file visitation plan.¹² For older children, the court may order the child to remain in placement and advise the child of consequences for running away.¹³ The court may order the parties to file reports, studies or examinations to aid its disposition decision.¹⁴ And, the court may refer the case to mediation, family group conferencing, or a settlement conference.

If the judge finds that the child is in need of aid, the judge must hold a disposition hearing “without unreasonable delay.”¹⁵ In some cases, disposition hearings occur at the same time as the adjudication hearing; however, because the disposition may not be held without adequate information upon which to enter an informed disposition,¹⁶ in other cases the disposition hearing is delayed.

D. Disposition Trial/Hearing

1. Purpose and Timing

The purpose of the disposition hearing is to determine the appropriate disposition of a child who has been adjudicated a child in need of aid.¹⁷ The disposition hearing occurs at or shortly after the adjudication. In preparation for the disposition hearing, the court orders OCS to file a disposition report. OCS must file its report 10 days before the disposition hearing.¹⁸

2. Participants

Persons entitled to notice and participation at the disposition hearing are the same ones entitled to notice and participation at the adjudication hearing. This

¹¹ AS 47.10.080(r)(5).

¹² See AS 47.10.080(p).

¹³ See AS 47.10.142(f).

¹⁴ CINA R. 15(f)(3), CINA R. 16(b).

¹⁵ CINA R. 15(f)(3).

¹⁶ CINA R. 17(c).

¹⁷ CINA R. 17(a).

¹⁸ CINA R. 16(a)(2).

hearing is open to the public to the same extent as the adjudication hearing.¹⁹

3. Required Findings and Orders

A disposition order must be accompanied by findings of fact.²⁰ In making its disposition order, the court shall keep the health and safety of the child as the court's paramount concern and consider: (1) the best interests of child; (2) the ability of state to take custody, care for the child, and protect child's best interests; and (3) potential harm to the child caused by removal from home and family environment.²¹

In addition, if the judge is authorizing removal or continuing out-of-home placement for the child, the judge must make the same findings as at previous hearings:

- to whom will custody be given (including the terms, conditions and duration of custody);
- the contrary to the welfare and imminent harm findings;
- the ICWA placement preference findings, and
- the active/reasonable efforts findings.²²

If the child has been placed outside the home and the court finds that the state failed to make reasonable efforts, or in the case of an Indian child, failed to make active efforts, the court may not enter a disposition order.²³

4. Additional Orders and Considerations

Judges are encouraged but not required to engage in case management and planning activities at the disposition hearing. The judges are encouraged to consider referral to mediation or family group counseling (especially with respect to resolving case plan and placement disputes), and to address visitation issues.

5. Ongoing Responsibilities

¹⁹ AS 47.10.070(c)(1) & (2).

²⁰ CINA R. 17(d)(1).

²¹ AS 47.10.082.

²² See CINA R. 10.1.

²³ CINA R. 17(c).

If the child is committed to OCS for placement, the disposition order must set the permanency hearing to occur within 12 months after the child entered foster care.²⁴ If the court placed the child in the home under a supervision order under, the court must review the case in 12 months, and OCS must file a report on annual review at least 20 days before this annual review.²⁵

E. Permanency Hearing and Annual Review

1. Purpose and Timing

The purpose of the permanency hearing is to establish a permanent plan for a child in out-of-home placement, and to determine the future direction of the case. The permanency hearing must occur within twelve months after the date a child enters foster care,²⁶ within 30 days after the court determines that reasonable efforts are not necessary, or upon request of a party, upon good cause shown.²⁷ In preparation for this hearing, OCS must file a report 10 days before the hearing.²⁸ If the court cannot make a finding required at this hearing, it must schedule and hold another permanency hearing within a “reasonable period of time.”²⁹

The case of a child who has been placed under state supervision but is not placed outside the home is reviewed annually by a judge. This review occurs without a hearing.³⁰ At the annual review, the court makes findings related to whether the child continues to be in need of aid, and whether continued supervision by OCS is in the child’s best interest.³¹

2. Participants

Persons entitled to notice and participation at the permanency hearing are the same ones entitled to notice and participation at the adjudication hearing.³² The

²⁴ CINA R. 17(f); AS 47.10.080(f). AS 47.10.088(f) explains how to calculate the date the child entered foster care.

²⁵ CINA R. 17(f), 19(a) and 19(b).

²⁶ AS 47.10.080(l). Under federal law, a state that fails to hold a permanency hearing for a child is considered out of compliance with the state plan, although the individual child remains eligible for Title IV-E matching funds. See 45 CFR 1356.21(h); 65 FR 4058.

²⁷ CINA R. 17.2(a).

²⁸ CINA R. 17.2(c).

²⁹ CINA R. 17.2(e)(5), AS 47.10.080(l)(3). AS 47.10.990(23) defines “reasonable period of time.”

³⁰ See CINA R. 19. A party may request an evidentiary hearing, or the court may order one on its own motion. CINA R. 19(c).

³¹ CINA R. 19.

³² See CINA R. 2(l), 17.2(b); AS 47.10.030(b) and (d); AS 47.10.080(f).

tribe is entitled to notice and participation even if it has not intervened as a party.³³ The parties (including the child), foster parents, other out-of-home care providers, and grandparents are entitled to be heard.³⁴ This hearing is open to the public to the same extent as the adjudication hearing.³⁵

3. Required Findings and Orders

The judge must make written findings at the permanency hearing.³⁶ First, the judge must determine if child continues to be in need of aid, and specify which subsection(s) of AS 47.10.011 apply.³⁷ Second, the judge must determine a permanent plan for the child. The permanent plan must address: (1) whether and when the child should return to a parent, guardian or Indian custodian; (2) whether the child should be placed for adoption or legal guardianship, or (3) whether the child should be placed in another planned, permanent living arrangement. If the judge chooses another planned, permanent living arrangement, the order must specify how the arrangement will be achieved. For a child 16 or older, the judge must determine what services are needed to transition to independent living or adult protective services.³⁸

In addition, the court must make written findings related to whether OCS has made reasonable efforts to finalize the permanent plan for the child,³⁹ whether the parent or guardian has made substantial progress to remedy the conduct or conditions in the home that made the child in need of aid,⁴⁰ and for an Indian child, the court must make the standard ICWA placement preference findings.⁴¹ If the permanent plan is for the child to remain out of the home, the judge must determine whether the child's placement continues to be appropriate and in the child's best interests.⁴²

³³ CINA R. 17.2(b).

³⁴ AS 47.10.080(f).

³⁵ AS 47.10.070(c)(1) & (2).

³⁶ CINA R. 17.2(e).

³⁷ CINA R. 17.2(e)(1).

³⁸ CINA R. 17.2(e)(2)-(5).

³⁹ AS 47.10.080(l)(4)(D); CINA R. 17.2(f)(4). The statute and rule are consistent with ASFA's requirement that the child welfare secure a finding about whether it has made reasonable efforts to finalize the permanency plan.

⁴⁰ CINA R. 17.2(f)(1), (2); AS 47.10.080(l)(4)(B).

⁴¹ See 25 U.S.C. § 1915(b).

⁴² CINA R. 17.2(f)(3), AS 47.10.080(l)(4)(c).

Finally, the court must determine whether OCS is required to file a petition to terminate parental rights.⁴³ Termination of parental rights is discussed below.

4. Ongoing Responsibilities

The court has ongoing monitoring obligations beyond the first permanency hearing or annual review. Annual reviews occur every 12 months, and permanency review hearings must occur at least annually until the permanent plan is successfully implemented.⁴⁴ Then, the court must hold a hearing to review the permanent plan at least annually until the plan is successfully implemented.⁴⁵ Also, if the permanency plan approved by the court changes after the permanency hearing, OCS shall promptly apply for another permanency hearing and the court shall conduct the hearing within 30 days after application.⁴⁶

F. Termination of Parental Rights Issues

1. Purpose and Timing

In some cases, state law requires OCS to file a petition to terminate the rights of one or both parents. OCS must file a petition to terminate parental rights if the child has been in foster care for at least 15 of the most recent 22 months; the child is younger than six and has been abandoned; the court found that the best interests of the child do not require further reasonable efforts; the parent has made three or more unsuccessful attempts within a 15-month period to improve; or the parent made no effort to remedy the offending conduct or home conditions by the time of the hearing.⁴⁷

When OCS files a termination petition, it “shall attempt to locate all living adult family members of the child” and “shall concurrently identify, recruit, process and approve a qualified person or family for an adoption.” An

⁴³ AS 47.10.080(l)(2)(B).

⁴⁴ See AS 47.10.080(l)(5); CINA R. 19.

⁴⁵ AS 47.10.080(l)(5); CINA R. 17.2(i).

⁴⁶ CINA R. 17.2(h); AS 47.10.080(l)(5).

⁴⁷ AS 47.10.088(d). OCS is not required to file a petition to terminate parental rights if OCS has documented a compelling reason that filing would not be in child’s best interest, or if OCS is required to make reasonable efforts under AS 47.10.086 but has not done so consistent with the case plan. AS 47.10.088(e). These state laws are generally consistent with ASFA, which requires the child welfare agency to file a petition to terminate parental rights if the child has been in out-of-home care for 15 of the past 22 months, or the agency must document a compelling reason not to file the petition.

adult family member who is not ineligible for a foster care license and who requests adoption “shall” be approved by OCS absent good cause.⁴⁸

In practice, a significant number of petitions to terminate parental rights are resolved by one or both parents agreeing to a voluntary relinquishment of their rights.⁴⁹ A parent who voluntarily relinquishes parental rights may retain one or more privileges with respect to the child, including the ability to have future contact, communications and visitation.⁵⁰ If the parent and OCS have agreed to retained privileges, and the court determines that termination is in the child’s best interests, the court incorporates the privileges into the order terminating parental rights, along with a recommendation that the retained privileges be incorporated in an adoption or legal guardianship decree.⁵¹ The court may not enter an order terminating parental rights less than ten days after the parent has signed the relinquishment.⁵²

If the petition is not resolved by a settlement or voluntary relinquishment, the case goes to trial. The court must hold the termination trial within six months after the petition is filed, absent good cause.⁵³

2. Participants

Persons entitled to notice and participation at this hearing are the same ones entitled to notice and participation at the adjudication hearing. This hearing is open to the public to the same extent as the adjudication hearing.⁵⁴ If a parent has failed to appear after service of notice, and the court concludes that a continuance is not likely to result in the attendance of the non-appearing parent, the court appoints counsel for the absent parent.⁵⁵

3. Required Findings and Orders

At this hearing, the court must determine whether OCS proved by clear

⁴⁸ AS 47.10.088(i).

⁴⁹ The procedures for voluntary relinquishments are set out in AS 25.23.180(b) and AS 47.10.089 for non-Indian children, and under 25 USC § 1913 for Indian children.

⁵⁰ AS 25.23.180(j).

⁵¹ AS 25.23.180(j) and AS 47.10.089(e). People who subsequently wish to adopt the child may challenge incorporation of the retained privileges into the adoption decree. AS 25.23.180(m).

⁵² The relinquishing parent has the right to withdraw the relinquishment for a certain amount of time after it was given. See AS 47.10.089(c) and 25 USC § 1913(a).

⁵³ AS 47.10.088(j).

⁵⁴ AS 47.10.070(c)(1) & (2).

and convincing evidence that the child was subjected to conduct that makes the child a child in need of aid.⁵⁶ The court further must find whether the parent failed to remedy the conduct or home conditions that placed child at substantial risk of harm, or failed, within a reasonable time, to remedy the conduct or conditions that placed child in substantial risk of harm so that returning the child would place the child at substantial risk of physical or mental injury.⁵⁷ In addition, for an Indian child, the court must determine whether OCS proved beyond a reasonable doubt (including the testimony of expert witnesses) that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.⁵⁸

The court also must make reasonable/active efforts findings (by a preponderance of the evidence),⁵⁹ and the court shall consider and make a finding regarding the child's best interests.⁶⁰ The court must make its findings and enter its order within 90 days after the last day of trial.⁶¹

4. Ongoing Responsibilities

If the court did not approve a permanent placement at the termination of parental rights trial, OCS must report to the court within 30 days on its efforts to find a permanent placement, and quarterly thereafter.⁶² In addition, the court must hold the statutorily required permanency hearings.⁶³

If the court terminates a parent's rights to the child, OCS tries to find an adoptive parent or other permanent placement for that child. However, when OCS finds an adoptive family, the prospective adoptive parent must file a separate civil adoption case. The prospective adoptive family hires its own attorney for the adoption case, and parties to the CINA case may not be involved in those proceedings. Many judges who handle CINA cases involving termination of parental rights outcomes request that they also be assigned to any subsequent adoption case involving that child or children.

⁵⁵ CINA R. 12(d).

⁵⁶ See AS 47.10.080(c)(3) and AS 47.10.088.

⁵⁷ CINA R. 18(c)(A)(i) and (ii). In making this finding, the court may consider any fact relating to best interest of child. AS 47.10.088(b). Under some circumstances, incarceration of a parent may be sufficient grounds for terminating parental rights. AS 47.10.080(o).

⁵⁸ 25 USC § 1912(f), CINA R. 18(c)(3).

⁵⁹ 25 USC § 1912(d); CINA R. 18(c)(2)(A) and (B); AS 47.10.086(a).

⁶⁰ AS 47.10.082, AS 47.10.088(c).

⁶¹ CINA R. 18(g); AS 47.10.088(k).

⁶² CINA R. 18(h); AS 47.10.088(i); AS 47.10.080(c)(3).

⁶³ See AS 47.10.080(l), AS 47.10.088(f), and CINA R. 17.2(i).

G. *Appeal*

Child in need of aid cases are appealed from the trial court to the Alaska Supreme Court. The supreme court handles CINA cases on an expedited basis.