

FROM THE BENCHES AND TRENCHES EVALUATING THE COURT PROCESS FOR ALASKA'S CHILDREN IN NEED OF AID

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The study described in this article was undertaken by the Alaska Court System's Child in Need of Aid Court Improvement Committee in 2005. The study described the Alaska Court System's handling of child protection cases, compared that situation to findings from two earlier assessments, and discussed the court's performance in the context of applicable state and federal case-processing standards, including timeliness, efficiency, fairness, treatment of parties, and quality of proceedings. The analysis suggested that the Alaska Court System is doing well on several performance measures, including fairness, respectful treatment of parties, and quality of proceedings, but that room for improvement exists on others, particularly timeliness and efficiency. These general findings were complicated by significant variations on several measures among court locations and on some measures by survey results suggesting that practitioners and judges may not be dissatisfied with the system's current level of performance.

Child protection cases, or child-in-need-of-aid cases (CINA), 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. Many of the parents who go through the child protection system also suffer from chronic and ongoing problems such as substance abuse and mental illness. Many of the children suffer from mental and physical injuries.

Aside from those difficulties, many challenges presented by CINA cases involve case management. CINA cases are complex, multiparty civil litigation, which include bureaucracies, such as child welfare agencies. Yet they differ from other multiparty civil litigation because they are processed on a comparatively accelerated timeline. Judges must comply with a variety of laws that mandate timelines and deadlines for certain case events, and they must 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, often, 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 weaknesses 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. The study described in this article was undertaken by the Alaska Court System's

CINA Court Improvement Committee in 2005 as a follow-up to the earlier studies. The purposes were to document the current situation, to compare the current situation to state and national standards for case processing, and where possible to note any changes from the earlier studies. This article reports the results of the study, beginning with the legal and social contexts governing the handling of child protection cases in Alaska and including the court system's performance with regard to timeliness, efficiency, fairness, treatment of parties, and quality of proceedings.

Geographical, Demographic, and Governmental Context for Alaska. 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. Residents are distributed unevenly between urban and rural places, with about 70 percent 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 (Alaska Department of Labor, 2000). Alaskan children suffer from high per capita levels of child maltreatment compared to children in other parts of the United States.

There are no local or municipal courts in Alaska; the state courts handle child protection litigation. While several tribes in Alaska operate tribal courts that work with child protection cases, the legal relationships between the tribal court systems, the state court system, and state executive-branch agencies have not been fully defined. The Alaska Court System (ACS) is a 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.

Federal Policy Context. Although child welfare historically was an area of state, not federal, regulation, over the past thirty years Congress has profoundly affected the way the states handle child protection cases. Specifically, in 1974, 1978, 1980, and 1997, Congress enacted major legislation concerning child welfare laws and practices. The most important of these federal laws, and their impact on child welfare practices, are summarized below.

In 1974 Congress enacted the Child Abuse Prevention and Treatment Act (CAPTA), which required states to establish child-abuse reporting and investigation systems in exchange for federal funding for child-abuse prevention and treatment. The ensuing mandatory reporting laws caused an increase in the number of children removed from their homes and placed in foster care. As length of stays in foster care also increased, Congress became concerned that many children were being removed unnecessarily and that states were not making adequate efforts either to reunify them with their families or to place them with adoptive families. In response to the above concerns, Congress enacted the Adoption Assistance and Child Welfare Act of 1980, which established rules for child welfare case management, required states to make "reasonable efforts" to keep families together (by providing both prevention and family-reunification services), and required courts to review child welfare cases regularly.

In 1993 Congress passed "court improvement" legislation, making grants available to state court systems to analyze and improve handling of child protection cases. The Alaska Court System has participated from the beginning in this federal Court Improvement Program (CIP).

A new concern in the 1990s was that the child welfare system was biased toward family preservation at the expense of children's safety and well-being. At the same time, complaints continued about children staying too long in foster care, and research was presented to Congress suggesting that the instability of foster care damages children's psychological and social development. Further, it was thought that states were under-utilizing adoption as a permanent placement. In response to these trends, Congress in 1997 enacted the Adoption and Safe Families Act (ASFA) as an amendment to the 1980 Child Welfare Act. This new law added child safety, permanency and well-being as paramount concerns for any child welfare decision. It also encouraged states to move cases more quickly by requiring a permanent plan for the child within one year of removal and by requiring initiation of termination-of-parental-rights proceedings when the child has been in continuous out-of-home placement for fifteen of the most recent twenty-two months.

ASFA continued the earlier approach of relying on state court judges to oversee child welfare agencies' decisions in individual cases; the law maintained existing mandatory findings and reviews and added others. Judges now must hold a "permanency hearing" to decide what will happen to each child when that child has been in foster care for twelve 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 fifteen of the prior twenty-two months; and provide out-of-home caregivers the opportunity to be heard at court hearings. The law also promotes the timely adoption of children, particularly through an adoption incentive payment program.

Another important piece of federal legislation is the Indian Child Welfare Act (ICWA), passed in 1978 in response to findings that "an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children from them by nontribal public and private agencies and that an alarmingly high percentage of such children are placed in non-Indian foster and adoptive homes and institutions." In Alaska, about 60 percent of the children in state protective custody are Indian children as defined by the ICWA. Cases involving these children must comply with specific requirements for family reunification and placement of the children.

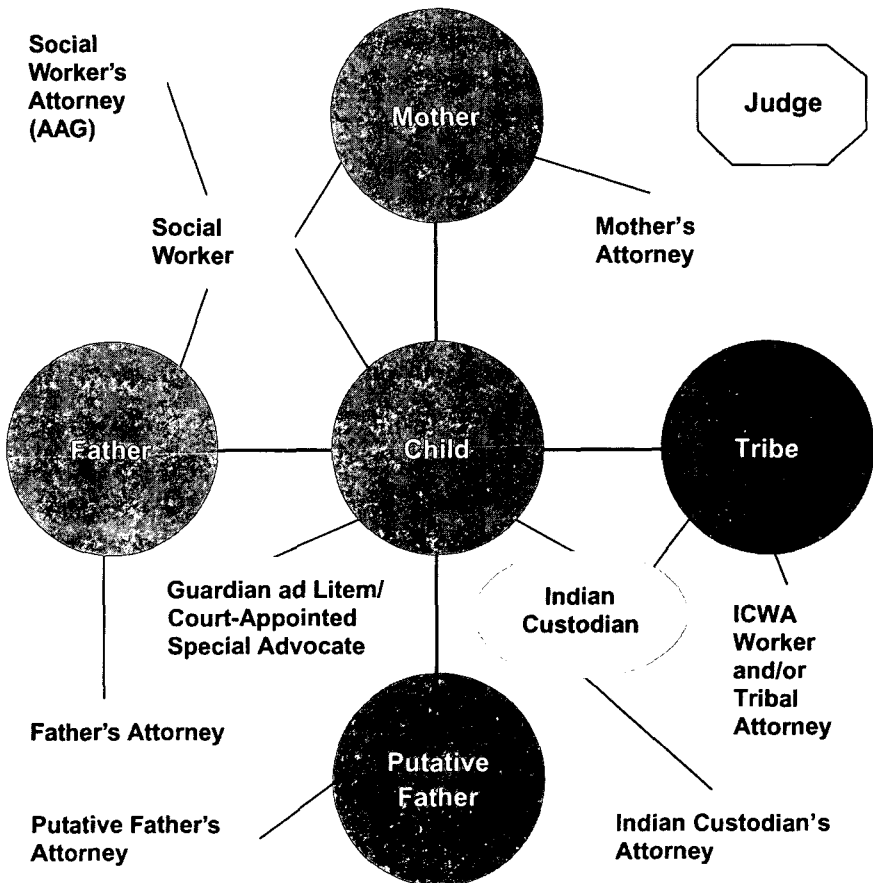
Like most states, Alaska made changes in response to congressional initiatives in child welfare. In response to the creation of the federal Court Improvement Program, the Alaska Supreme Court established its CINA Court Improvement Committee to study and make recommendations regarding programs and projects to improve child protection litigation. Membership includes judges, court administrators and representatives from all other state child protection agencies, and tribal representatives.

LEGAL CONTEXT

CINA cases are multiparty, civil litigation. Parties include the child's parents; the child; the child's legal guardian; the Indian child's Indian custodian; the Indian child's tribe; the guardian ad litem, who represents the "best interests of the child"; a court-appointed special advocate, a volunteer available in some parts of the state who spends time with the child and makes the child's interests known throughout the case; attorneys for the parents; attorneys for putative fathers; the social worker from the Office of Children's Services (OCS); and an assistant attorney general who represents OCS and the social worker (see Figure 1).

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 liti-

Figure 1
Parties and Legal Relationships in CINA Cases



gation. These participants include out-of-home care providers and grandparents. In addition, other family members sometimes attend open hearings in CINA cases. If the case involves a Native child, as roughly half of Alaska's cases do, the Native child's tribe is notified about the case and has the right to intervene (become a party). Most tribes—there are 225 federally recognized tribes in Alaska—rely on trained tribal members, referred to as ICWA workers, to intervene and participate in these cases. **Legal 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 to the home. If the worker does not return the child to the home, the court holds a temporary custody hearing within two days, at which the court decides whether there is probable cause to support the court's jurisdiction over the child and decides whether the child will return home or be placed outside the home.

The next stage in the litigation is the adjudication hearing; but before that hearing the parties must meet without the judge to discuss the case ("the meeting of the parties"), after which the court holds a pretrial conference with the parties to plan for the adjudication trial or hearing. The adjudication hearing must be completed no later than 120 days after the temporary custody order. At the adjudication hearing, the judge decides whether the child is a child in need of aid (CINA), based on criteria set out in state statutes. Reasons for finding a child to be in need of aid include abandonment, failure to provide care, infliction of physical or mental harm, neglect of the child, or harm to the child due to drug or alcohol addiction. Each of these grounds is defined in state statutes; for example, "neglect" includes failing to provide the child with adequate food, clothing, shelter, education, medical attention, or other care and control necessary for the child's physical and mental development although the parent is financially able to do so or is offered financial or other reasonable means to do so. The law also specifies that the court may not find a minor to be a child in need of aid solely on the basis that the child's family is poor, lacks adequate housing, or exhibits a lifestyle that is different from the generally accepted lifestyle standard of the community where the family lives.

At or after the adjudication hearing, the judge holds a disposition hearing, which under court rules must be held "without unreasonable delay." At this hearing, the judge determines the appropriate disposition of the child. The judge can commit the child to the welfare agency for placement, usually outside the home, or return the child to the parents. If the child is committed to OCS for placement, the disposition order must set a follow-up hearing to take place within twelve months of the date the child entered foster care. At that point, the court holds a permanency hearing, at which the judge determines a permanent plan for a child in state custody and determines the future direction of the case. Acceptable permanent placements include reunification, adoption, legal guardianship, emancipation, or another planned, permanent living arrangement such as placement with a fit and willing relative. The court must continue to hold permanency hearings at least every year until the child finds a permanent home or is released from state custody.

In some cases, the parties or the judge may decide that the child cannot safely be reunified with the parents, and the state files a petition to terminate parental rights. 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 voluntarily to 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. Termination of parental rights is considered a type of disposition, and it is the most serious and potentially time-consuming aspect of a CINA case.

The legal process outlined above shows all the hearings that might be necessary to complete a CINA case; however, the reality of processing these cases is that only a fraction actually go to a contested hearing, defined rather restrictively for this inquiry as one in which witnesses were called and evidence was presented. About 11 percent (N=15) of the cases in the sample actually went to a contested adjudication, temporary custody, termination, or permanency hearing; but the data collector noted that other hearings—notably placement hearings—were contested, and hearings not classified for this analysis as “contested” might also have had contested elements or issues. The true number of contested hearings may be underrepresented here because the data were taken from log notes, which may have been incomplete or unclear; even so, it is clear that virtually all issues in these cases are resolved by agreement of the parties without a ruling from the judge.

THIS STUDY

The purposes of this study were to document current practices in CINA case processing and to compare the current situation to state and national standards for case processing, noting where possible any changes from the earlier studies. In order to evaluate the Alaska Court's System's performance in relation to state and national standards, the study gathered information about five items: timeliness, efficiency, fairness, treatment of parties, and quality of proceedings. These five areas correspond to national performance standards for trial courts that have been developed and tested by the National Center for State Courts (1990). The study assessed several different measures corresponding to performance in each of the five areas. For example, the measures relating to timeliness included elapsed time between legal events, use of continuances, and parties' perceptions of and attitudes toward delay. Measures relating to efficiency included pretrial practices, hearing scheduling and interruption, multiple hearings, and use of telephonic hearings. Fairness and quality of treatment were examined in the context of whether the parties received adequate notice and time to present their cases and whether Alaska Native children had different outcomes than non-Native children. Quality of representation also was examined. Each of these items is discussed below.

Methodology. The study described here used information and 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 CINA cases in Alaska, undertaken by the author; and 4) input from the CINA Court Improvement Committee and its Evaluation Subcommittee, which reviewed all information, data, and conclusions.

The case-specific analyses presented here are drawn from a total of 137 cases, of which 80 were from Anchorage, 25 from Fairbanks, 19 from Bethel, 5 from Ketchikan, and 8 from Kotzebue with new petitions filed in 2001 and 2004. The Anchorage cases were selected randomly from the list of case filings. The other cases were selected using a systematic sampling design with random start to select a 10 percent sample from each location. The overall sample size of 137 from a population of approximately 1,500 is adequate for discussions of overall representativeness of these cases, compared to the population, but is weaker for discussion of the specific impact of a single variable on the process.

Three written surveys were developed to collect qualitative information not readily apparent from the case files, to supplement the information in the case-file review, and to measure participants' attitudes. These surveys were sent to "ICWA workers" (tribal social workers), all judges who handled CINA cases in Alaska; attorneys; and GALs, all referred to here as "parties." The survey return rate for ICWA workers was 47.7 percent (116 completed surveys); for judges, 61 percent (38 completed surveys); and for attorneys and GALs, 38 completed surveys (54 percent). Surveys were returned by respondents who practice in each of the four judicial districts and at every superior-court location; however, parents' attorneys were underrepresented among respondents.

CHILDREN IN THIS STUDY

Before presenting the specific findings on performance areas, it is helpful to learn about the types of families and children involved in child protection cases in Alaska. Most of the children in this study began their court case with a stay in foster care, as measured by their placement status at the temporary custody hearing. In only about 13 percent of the cases was the child returned home at the temporary custody hearing.

What were the reasons that the judges found for not allowing the children to go home? Although the reasons that the social worker initially gave to justify the child's removal were not recorded in the study, the reason given by the judge in formally adjudicating the child as a child in need of aid was recorded. (The judge can and often does find that more than one of the statutory situations exist for each child.) The most common reason for adjudication was a finding that the child was harmed by a parent's alcohol or drug use. The next most common reason for adjudication was neglect, followed by a finding that the child had suffered a mental injury, physical harm, or the risk of harm, abandonment, and sexual abuse.

At the end of the litigation, what happened to the children? Most children eventually returned home. Of the forty-five cases that contained a release of custody, the most common scenario (44 percent) was for the child to be returned home. The

next most common outcome (33 percent) was adoption, sometimes by a relative. Other outcomes included placement with a legal guardian (4 percent), emancipation (6 percent), and placement with a relative (one case).

TIME I

This study examined the timeliness of CINA case processing and attempted to document some of the factors that work against timeliness in these cases. Timely case processing is important because it reduces children's and parents' uncertainty about their future. Based on written orders in court files, elapsed time between important case events was examined. The study also surveyed parties and judges about their perceptions of timeliness and delay. The frequency and length of judicial delays is important because of the emphasis on finding permanency for children, with permanency defined either as safely returning children to their homes or placing them in new, permanent homes.

The judge, attorney, and GAL survey responses suggested that the parties did not necessarily perceive delay, especially at the early stages of CINA cases, as negative. In fact, many of the parties had quite the opposite perspective. While judges, attorneys, and GALs also noticed delay at the late stages, such as 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.

Workload Associated with CINA Cases. Before we examine the elapsed time between various points in the process, it may be useful to explore the workload that CINA cases create for the courts. While child protection cases account for only a small percentage—about 6 percent—of the total annual filings in the Alaska superior courts, those cases consume disproportionately more judicial and clerical resources. Over a third (39 percent) of superior court judges surveyed reported holding more than ten CINA hearings in the previous month, and about 27 percent reported holding between three and nine CINA case hearings in the last month; only less than a third (32 percent) reported holding two or fewer CINA hearings in the previous month. Judges reported that CINA cases consume more time because they require more hearings, and more detailed findings, and involve more parties than other superior-court litigation.

In addition to time spent in hearings, 40 percent of the responding judges reported spending up to two additional hours per month preparing for hearings in CINA cases, while a quarter spent two to six additional preparation hours, and almost a third (32 percent) reported spending more than seven additional hours. In addition to bench time and preparation time, 38 percent of respondents reported spending one to three hours in a typical month for community, training, committee work, or other activities related to child welfare concerns. Interestingly, 14 percent reported spending more than three hours in a typical month on such community activities.

A quick look at calendaring practices in CINA cases lends further support to the hypothesis that these cases consume considerable resources. 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 cases.

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 than others, hearings are comparatively frequent, telephonic participation is high, and coordination of calendars among the court and the parties is time-consuming. Additionally, this area of the law is comparatively complex because of 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.

From Filing to Temporary-Custody Finding. After OCS removes a child from the home without a court order and files a petition, the court must hold a temporary-custody hearing within forty-eight hours (including weekends and holidays). While the temporary-custody hearing must be started within forty-eight hours after the petition is filed, 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. 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-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 (see Table 1).

When practitioners on the CINA Court Improvement Committee reviewed the findings about temporary-custody hearings, 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 to obtain services so that 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-

Table 1
Days from Filing of Petition to Date of Temporary Custody Order

N = 109				
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

Table 2
Days from Temporary-Custody Order to Adjudication Order

N = 89				
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

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, as the number of cases in this sample containing a temporary-custody order of supervision or return home was relatively small (child was returned home in about 13 percent of temporary-custody hearings; an additional 17 percent resulted in a supervision order).

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. The Alaska Court System's time standard is that 98 percent of cases will be adjudicated within 120 days. Of the 89 cases with an adjudication order, just over half (51 percent) of those orders had been entered within the 120-day time frame. However, the average number of days to adjudication varied by court location (see Table 2).

Court rules allow the adjudication to be delayed past 120 days based on the judge's finding of "good cause"; the court must take into account the age of the child and the potential adverse effect that the delay might have on the child. If we assume

that all cases exceeding the 120-day limit had "good-cause" findings, the numbers suggest that lawyers and judges in different locations may use differing interpretations of that standard. For some rural courts, such as the one in Kotzebue, "good-cause" delays could have been related to the fact that CINA attorneys practicing there do not live in the community. These rural courts have to wait for the attorneys to schedule a trip, which can be delayed by limited travel budgets, weather, and conflicting calendars.

From Adjudication Order to the Disposition Order. The disposition is an important step to determining the future progress of the case. Guidelines created by the National Council of Juvenile and Family Court Judges (1995) recommend that disposition be completed within thirty 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. Alaska's court rules require the disposition hearing to take place either at the adjudication or within a "reasonable time" after the adjudication. Disposition determinations are handled differently in different courts; for example, in Anchorage, a separate disposition hearing takes place after adjudication. In Fairbanks, adjudication and disposition are routinely combined, whether by stipulation or because it is decided at a hearing to do so.

Only Fairbanks, Bethel, and Ketchikan appeared regularly to be completing the disposition within the recommended thirty days. Delays in the disposition decision could have been 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 twenty-one 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.

From Temporary-Custody Order to the First Permanency Order. State law requires a permanency hearing to take place within twelve months after the date a child enters foster care. Court rules require the permanency hearing to be set at the disposition hearing. Anecdotal information and information from the federal Child and Family Service Review suggested that in some cases permanency hearings were not being scheduled in a timely manner, perhaps because agency case-management systems lacked the capability of tracking that requirement; however, the new systems are anticipated to have that capability.

While sixty cases in the sample had at least one permanency order, only forty-three of the sixty had enough information in the file to allow calculation of the elapsed time from the temporary-custody order to the first permanency order. The case-file review suggested that some permanency hearings may have been delayed beyond the 365-day limit, although firm conclusions on this item are prevented by possible gaps in the data, which arose from parties' failure in some instances to desig-

nate permanency findings clearly in the case-file documents. In Anchorage, and perhaps in other locations, permanency findings and orders sometimes were made during other hearings, for example, disposition hearings, and then the written permanency findings were embedded in those other documents without including "permanency" in the title. In addition, the court case files did not include enough information for one to learn how long a child had spent out of home rather than being placed in the home under agency supervision. Thus, some of the cases that appeared to take a long time could have involved children who spent significant amounts of time placed at home. 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.

Taking into account some of these problems with the data, 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.

From Filing of Case to Termination Order. One way to examine the goal of achieving permanency is to determine, for those cases that ended in a termination of parental rights, how much time elapsed in a case before that outcome was achieved. The case-file sample contained twenty 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 = 776), the minimum number of days was 82 and the maximum was 1,304. In Fairbanks, the average was 807 days (median = 729), with a minimum of 589 and a maximum of 1,251.

Another way of looking at termination of rights is to measure the amount of time between the filing of the termination petition and the termination trial. Once a petition to terminate parental rights is filed, the court is required to hold the trial within six months (about 180 days). 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. Although some cases in Anchorage took significantly longer than 180 days, on average the courts were doing a good job of bringing those trials to a timely beginning.

Why Permanency Was Delayed. Judges and parties were surveyed about reasons for delays in achieving permanency. About 44 percent of judges reported that they had held a permanency hearing in the past year at which they were unable to make the required permanency findings. They most often identified untimely reports from the parties and unclear permanency plans as the reasons they were unable to make the findings at the hearing. Judges and parties also were surveyed about how many of their cases had achieved permanency in twelve months. Only four of the thirty-eight party

respondents and six of the thirty-three judge 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, followed by lack of a home study, delayed mental-health assessment/treatment, and delayed substance-abuse assessment/treatment. The most common reason cited by judges who had cases in which permanency was delayed was lack of mental-health assessment or treatment, followed by lack of substance-abuse assessment or treatment, difficulty in placing the child because of special needs and costs, difficulty in identifying a permanent plan, and delayed home study. Other factors mentioned were difficulties coordinating the parties' schedules with the court's calendar, turnover among the parties, workload, lack of time on the court's calendar for contested hearings, and transfer of a case from one area of the state to another.

TIME II: CONTINUANCES

The case-file data showed hearing continuances to be a common occurrence in CINA cases; this was one finding that did not seem to vary by location. Neither the court system rules nor Alaska statutes set standards for how many continuances should be granted in a case; however, accepted principles of caseflow management encourage the trial court to exercise "early and continuous control" over cases to ensure that matters will be heard when scheduled. National standards also strongly encourage judges and administrators to schedule credible trial dates (See Bureau of Justice Assistance, 1997). In Alaska, continuance decisions in specific cases are left up to the judge based on the parties' showing of "good cause" why a hearing should be continued, and "good cause" is not defined.

At least one study has attempted to quantify the consequences of continuances. A Washington State study found that courts increased the duration of dependency and termination cases filed in that state by 31.8 days and 26 days, respectively (Washington State Institute for Public Policy, 2004). These delays increased the time children spent in foster care. The 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. Interestingly, further analysis showed that continuances *early* in the case, that is, pre-adjudication continuances, accounted for most of the effects of continuances on foster care. The study calculated the additional cost of foster care associated with continuances to be \$772 per case.

Information was collected from the case files about the number and frequency of continuances of hearings in CINA cases, with information collected on ten types of hearings that are held in such cases. Of the 768 hearings recorded in the case file database, 329 were continued—about 43 percent of all hearings. Another way of looking at this data is that about 90 percent of the cases in the sample had at least one hearing that was continued ($N = 123$). Most CINA cases containing at least one continuance were characterized by multiple continuances (see Table 3).

Table 3
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	4.0	4	1	8
Ketchikan	6.6	5	5	10

An attempt was made to ascertain in the case-file log notes the reason cited for the continuance. The most common scenario for continuances, accounting for 30 percent of them, occurred when the parties asked to defer a hearing in the hopes that they could settle the matter without further litigation. This type of delay might often be within the parties' control, as they could have started their settlement negotiations earlier. The second most common reason, cited in case files 24 percent of the time, was an attorney's often-unopposed request. The third most common reason from the files (16 percent) was that a parent did not have an attorney (see Table 4).

Judges and practitioners agreed that the most common reasons cited in requests for continuances, other than those requested at the initial temporary custody hearing, were that the parties were close to a resolution and that there had been lack of discovery from OCS; these perceptions are consistent with the case-file data.

Relatively few continuances (N = 11) in the case-file data were initiated by the court, which, the data showed, did so in only five instances; and the cases were continued because of inadequate court time in only six instances. These data are consistent with practitioners' perceptions, with 58 percent of parties characterizing court delays as a problem in "very few" cases, and an additional 24 percent saying court delay was a problem only in "some" cases.

Most Commonly Continued Hearings. Some hearings were continued more often than others. Many of the hearing continuances occurred at the temporary-custody stage, where there were 44 cases with one or more continued temporary-custody hearings. This finding is not surprising given some of the courts' policies of routinely granting continuances at the temporary-custody hearing to allow parents to consult counsel.

Anecdotal accounts in the federal Child and Family Service Review report suggested that permanency hearings were often untimely because of continuances granted by the judge, and the case file data showed that 18 percent of permanency hearings were continued, a rate that is significantly lower than the overall continuance rate of 43 percent. Thus, the case-file data cannot be said to support a conclusion that continuances of permanency hearings are a regular occurrence.

Table 4
Reasons for Hearing Continuances

N = 329 Hearings

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

The judges' perceptions of frequently continued hearings seemed to differ from the case-file data. When asked in which types of hearings over the past year a party had asked for a continuance, judges identified the termination-of-parental-rights trial as the hearing at which a request for a continuance occurred either "often" (51 to 75 percent of cases) or "very often" (76 percent or more of cases). However, relatively few of the judges recalled requests for continuances being made at the initial temporary-custody hearing: 56 percent said continuance requests at this hearing were "not very often," but six said they received those requests "often" or "very often." The judges' perceptions may have been colored by the fact that superior court judges at many locations do not routinely handle the initial temporary-custody hearings, which are handled by masters. 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, but rather may have resulted from waiting until after adjudication to set the hearings, setting the hearing too far out, or producing untimely disposition reports.

Perceptions About Delay. In addition to specifics about the frequency of continued hearings, the judges and parties were asked whether they perceived delay generally to be a problem in their cases. Only thirteen of the judges said that they thought delay was a problem in their cases, while fifteen said "no," four did not know, and five did not answer. Similar attitudes were expressed by the practitioners, with 58 percent of parties saying that court delays were a problem in "very few" cases, and an additional 24 percent calling it a problem in "some" cases. The judges and parties cited caseloads carried by attorneys and guardians ad litem in Alaska as a major factor contributing

to delays, along with failure to prepare adequately for hearings, difficulty coordinating schedules, and inefficiency because of last-minute preparation.

Despite the data that hearing continuances were most common during the early stages of the case, judges and practitioners both perceived delay as more problematic at the later stages of the litigation. Thus, judges identified the termination-of-parental-rights trial, and to a lesser degree the adjudication hearing, as stages at which delay was “often” or “very often” a problem, with “often” meaning 51 to 75 percent of cases and “very often” meaning 76 to 100 percent of cases. The judges further reported that delay was “not very often” or “never” a problem at the pre-adjudication stage, with “not very often” meaning 1 to 25 percent of cases. The parties identified the termination-of-parental-rights stage as the most problematic for delays.

MORE ON EFFICIENCY

One aspect of efficient treatment of cases is the time that transpires between one point and another—the elements discussed in the previous section. We now turn to other aspects of efficiency, and look at such matters as pretrial practices, hearing scheduling and interruption, multiple hearings, use of telephonic hearings, and frequency of contested hearings.

Pretrial Practices. As almost all decisions in CINA cases are arrived at through stipulation of the parties, it is important for court scheduling to know which hearings will be contested. An important way for judges to learn that is to hold pretrial conferences, and Alaska court rules require the judge to hold a pretrial conference before the adjudication trial. The present study contained an assessment of how often judges held pretrial conferences as required, and whether parties found them helpful. Most judges (eighteen out of twenty-seven who answered) said they conduct a pretrial conference with the parties before the adjudication hearing; the nine who said they did not may have been the Anchorage judges because there the masters generally hold the pretrial conference for the judges. Parties generally said the pretrial conferences were helpful, with twenty-seven out of thirty-eight saying 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 judges at their locations required this “meeting of the parties”; however, seven said their local judges did not require it. Most parties (N = 28) said that the meeting of the parties was “useful” or “very useful.”

Just as forcing parties to wait for cases to be called wastes their time, interrupted hearings are inefficient and may contribute to delay. Although no standards exist for such gaps in hearing completion, a goal of this study was to learn how often interrupted proceedings occurred and whether stakeholders perceived them as being a problem. Judges were asked how often in the past year they had presided over hearings that were interrupted for more than forty-eight hours. Seventy-one percent said that “very few” hearings were interrupted, and the remainder said that “some” hearings were interrupted; similar responses came from the parties. According to the

judges, interrupted hearings most commonly occurred at the temporary-custody hearing; they occurred less often, but equally, at the adjudication and termination-of-parental-rights hearings. 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; the parties echoed this statement. The other two reasons cited most often by the judges 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, while the parties said it was because a party or witness was not prepared to proceed.

Hearing Scheduling and Interruptions. Another element, touching on the question of whether a process that may be very efficient from the court's perspective is in fact inefficient for court customers, is the practice of "stacking" multiple hearings for one time, requiring the parties to waste time in court waiting for their case to be called. Parties were asked to estimate how many of their hearings within the last six months had not started on time because the judge was not ready or not available. About two-thirds (67 percent) said "very few" (0-25 percent) hearings started late. About a fourth (26 percent) said "some" (26-50 percent) did, and two said "most" (51-75 percent) hearings started late. However, about a third (36 percent) of those 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. It thus 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. The parties were also asked whether their local courts handled expedited hearings in a timely fashion and did the same with scheduled contested adjudication and disposition hearings and scheduled visitation and placement hearings. As to each of these proceedings, most parties (71-79 percent) said "yes."

Beyond the matters of timely starts to hearings and interrupted hearings is whether there are multiple hearings on the same issue. This study examined whether courts commonly held multiple disposition hearings. The disposition hearing may not be held before adequate information is available upon which to enter an informed disposition, or if OCS has failed to make reasonable or active efforts. Thus, that there are multiple disposition hearings in a case might indicate that the parties were not prepared to present the necessary information to the judge. Out of the fifty-six cases with at least one disposition hearing, seventeen (30 percent) had more than one such hearing. This suggests that the majority of disposition decisions are made without needing more than one hearing.

Telephonic Hearings. Because of the vast geographical distances in Alaska and the expense of travel, telephonic participation in court hearings is common; indeed, telephonic participation in CINA cases is the norm in Alaska. About 70 percent of

judges and 89 percent the parties reported that “most” or “almost all” of their CINA hearings involve telephonic participation by one or more parties. Over half (57 percent) of judges and half of the parties who had participated in telephonic hearings thought that it affected the quality or efficiency of the hearing. Some of the problems associated with telephonic hearings were technical in nature—dropped calls, poor sound quality—while others involved difficulty in providing notice of rescheduled hearings, having telephonic participants available at the time of the hearing, and efficiently managing a hearing at which multiple parties are appearing telephonically. 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. Twenty-nine percent of ICWA workers reported that when they participated telephonically the judge asked whether they wanted to question witnesses in “few” or “no” cases.

QUALITY OF TREATMENT

A recurring theme 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; and praise for attorneys’ skill at protecting their clients’ rights, caring, committed judges, and judges who make CINA cases a priority. Conversely, two recurring themes in the category of challenges to the system were turnover of social workers and other parties and the participation of nonresident attorneys. Both were thought to have negative effects on quality and efficiency because a person new to a case takes longer to get up to speed and also lacks the pre-existing relationship with the other parties necessary to manage and resolve the case effectively.

Thirty-four of the thirty-eight party survey respondents agreed or strongly agreed that they were treated with courtesy and respect. Thirty agreed or strongly agreed that their client was treated with courtesy and respect. However, an area where improvement could be made was revealed by responses to this statement, “As we left the court, my client knew what to do next about the case.” Only about half the respondents agreed or strongly agreed with that statement, and about 22 percent disagreed.

The parties were asked several questions related to fairness. 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.” Thirty-two agreed or strongly agreed that the judge was fair.

Adequate Notice and Time to Present. A fundamental aspect of fairness is notice of court hearings. The 1996 Alaska Judicial Council study concluded that notice practices, mainly with respect to tribes, could be improved, and the 2002 Alaska Court System follow-up study found that notice had improved. In the current study, judges

and tribal representatives were asked about timely notice of hearings, particularly rescheduled or continued hearings. The judges did not perceive lack of timely notice of hearings as a significant problem in their CINA cases, but this perception was not shared by ICWA workers who were asked how often they receive notice of rescheduled, delayed, continued, or canceled hearings before the hearing began. About a third (32 percent) said they received such notice in "some" cases, while 22 percent said they received that notice in "none" or "few" cases. Only 31 percent said they received timely notice of hearing changes "most," "all," or "almost all" the time.

Fifty-nine percent of ICWA workers reported being informed of the pretrial conference before it occurs in most or almost all cases. However, 29 percent said they were informed in "none" or "few" of their cases. Fifty-seven percent 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 percent 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.

The parties were asked to remember over the past year when they had participated in contested hearings or trials and to report, for those instances, how often the court had not provided them adequate time to present necessary evidence and arguments. Most respondents (60 percent) said that the time was inadequate at only "very few" hearings (0-25 percent of hearings), while 21 percent said the time was inadequate at "some" hearings (26-50 percent of hearings). The most common reason cited by the parties for the inadequate time was that someone had underestimated the time needed to present or cross-examine witnesses.

Quality of Representation. If court proceedings are to be fair, it is necessary to have competent counsel representing the parties. 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 guardians ad litem received the most positive evaluations, the judges also praised the work of parents' attorneys and assistant attorneys general. Social workers are not lawyers, but judges identified a problem with them related to quality of representation: frequent social-worker turnover.

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 parents' attorneys 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.

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, and all the judges agreed that GALs were prepared to participate at "most" or "almost all" adjudication, disposition,

permanency and termination hearings, and that they 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.

About 58 percent of judges reported that the same assistant attorney general had represented OCS at all stages of the same case "most" or "almost all" the time, and most judges reported that the assistant attorney general was prepared to represent OCS at "most" or "almost all" hearings. The judges also reported that the assistant attorney general timely filed proposed court orders in "most" or "almost all" of their cases over the past two years. The judges reported that the same social worker does not often stay assigned during the life of the case. In fact, 40 percent 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. Fewer than half (about 46 percent) 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.

ICWA CASES

One goal of this study was to look for any disparities between ICWA and non-ICWA cases. Because ICWA, in addition to state law, applies to cases involving Native children, one would not expect these cases to be handled in exactly the same way as those involving non-Native children. Yet in 1996 the Alaska Judicial Council found that Native children were adjudicated children in need of aid disproportionately more often than non-Native children and that there did not seem to be a legal justification for this disparate treatment. However, a follow-up study of case files performed by the Alaska Court System after a change in the law with respect to adjudications found that this disparity had disappeared.

The latter study compared the proportion of cases involving Native children that had an adjudication order with other cases. Forty-five of the 137 cases (one-third) sampled for this study involved a Native child, a smaller percentage than found in earlier studies, although it is not clear why the percentage is smaller. The average amount of time for Native children's cases to be adjudicated was measured and compared with those involving non-Native children. Cases involving Native children reached adjudication on average about 159 days after filing, but for non-Native children the time was 169 days, so cases involving Native children were being adjudicated somewhat more swiftly.

The study also examined outcomes involving Native children. Of the forty-five ICWA cases, thirty-nine contained a final status or resolution, and of those, the most

common outcome (64 percent) was for the child to be returned home. The second most common outcome (28 percent) was adoption or placement with a legal guardian. The child was placed with a relative in 5 percent of cases and emancipated in 2 percent. These outcomes seem no worse than outcomes for non-Native cases, in which the most common result (45 percent) was to return home and the second most common (36 percent) was to be adopted.

Whether to intervene as a party in a state-court CINA case is a decision left 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 attempted to measure rates of tribal intervention and tribal representatives' perceptions of the court process. The 1996 Judicial Council study found that formal documents were filed on behalf of the tribe in only 35 percent 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 Alaska Court System follow-up study, which found that Tribes intervened in roughly 75 percent of ICWA cases. The current study reaffirms the trend toward high rates of tribal participation in state-court litigation: There was evidence of intervention in forty-three of the forty-five cases involving Native children (95 percent of cases). Comments from the ICWA worker survey supported the case-file data. ICWA workers reported that their tribes have adopted policies 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 from the federal government.

The survey also 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 percent) of ICWA workers reported that the court gave them time to speak at hearings in "most," "all," or "almost all" cases, 11 percent said that happened in "few" or "no" cases.

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 1996 Alaska Judicial Council Study. Survey results suggested that judges generally welcome tribal involvement and would like tribal representatives to become even more actively involved in hearings. 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. The Alaska Court System also 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.



Approximately ten 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. 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 endeavor. jsj

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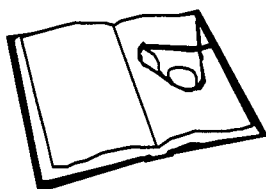
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