
A Guide to Alaska
Child in Need of Aid Cases
November 1999

alaska judicial council

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A Guide to Alaska Child in Need of Aid Cases 1999

In 1996, the Alaska Court System received a major federal grant to study and improve the state's handling of child protection cases, including child abuse, neglect, foster care, and adoption litigation. These cases are called child in need of aid cases, or CINA cases (pronounced "China"). For the first part of the federal grant, the Alaska Judicial Council assessed CINA cases throughout the state, using interviews, observations, and study of case files. The Judicial Council concluded that the child protection system was complex, traumatic, too slow to achieve stability for children, and subject to significant regional variations. The court system then appointed a committee of judges, state agency employees, and child protection specialists to discuss and implement changes.

In the last three years, there have been major changes in federal and state statutes governing child protection cases. The new laws have provided a greater focus on physical safety for children, more stability in foster care placement, and quicker movement toward permanent homes. The governor and state legislature have taken an active interest in child protection issues and have increased funding for social workers and foster care programs. The courts and state agencies have initiated policy changes and pilot programs. Further changes can be expected as these initiatives take root. This guide is generally applicable to both old and new cases, but its primary focus is on the new laws and procedures.

The Alaska Judicial Council designed this guide to explain this important area of law. It was written by Marcia Vandercook in 1999. We hope it will prove useful to social workers, guardians ad litem, Court-Appointed Special Advocates (CASAs), attorneys, foster parents, tribes, family service providers, and the families themselves. We would like to thank the many people who contributed to it, including court masters, state attorneys, parent attorneys, guardians ad litem, social workers, Indian Child Welfare Act (ICWA) specialists, parent and foster parent groups, and others. We give particular thanks to the Office of Public Advocacy for generously sharing its training materials. The author takes responsibility for any mistakes or omissions. Because this is a fast-changing area, readers should check for subsequent changes in law and policy.

Additional copies of this report are available from the Alaska Judicial Council or can be downloaded from the Judicial Council web site.

Purpose of This Guide

This guide describes how abused, neglected, and runaway children (children in need of aid) are protected by the State of Alaska. It describes how child protection cases are handled by the state and the roles played by various individuals, agencies, and courts. It provides a general overview of the law and defines technical terms so that people who need to understand the system can follow the events in a particular case. It also offers resources to contact for more information.

The guide has seven sections:

- 1) **Child protection laws and responsible agencies:** purpose of the child protection system, federal, state, and tribal roles, sources of laws and procedures, federal and state child protection laws, Alaska state agencies and courts page 2
- 2) **Stages in the child protection process:** investigation and evaluation, emergency custody, child in need of aid petition, temporary custody and placement, reasonable and active efforts, adjudication and disposition, permanency plan, permanency options, settlement and mediation, appeals, other proceedings page 13
- 3) **Case illustration:** court pleading from a fictional case page 39
- 4) **Charts and statistics:** flow chart, roles and responsibilities, case statistics page 55
- 5) **Legal terms:** words and phrases commonly used in Alaska child protection cases page 73
- 6) **Resources:** state agencies, community organizations and Alaska Native organizations, national organizations page 79
- 7) **Index:** where to find specific topics page 89

This guide does not cover everything about Alaska child in need of aid cases. All cases are different, and laws and policies often change. If you are a parent, guardian, or custodian in a child protection case, this booklet is not a substitute for hiring a lawyer or working with a social worker. Look at the section on resources to find out how to contact lawyers, social workers, parent groups, tribes, and other organizations.

Laws Affecting Child in Need of Aid Cases

Purpose of the child protection system

The purpose of Alaska's child protection system is to identify, treat, and reduce child abuse and neglect. The child protection system tries to protect children under age 18 from many types of harm: neglect, abandonment, lack of medical treatment, risk of physical or mental injury, risk of sexual abuse, parental mental illness that places the child at risk, pressure from parents to commit delinquent acts, risky behavior by a runaway child, and lack of an appropriate and willing custodian. State social workers try to help families identify and resolve problems, find services like mental health counseling and substance abuse treatment, and create a safe home for their children.

Whenever possible, the state system tries to keep children in their own homes. Removing a child from the home may be necessary if the child is at risk of harm and conditions cannot be remedied right away. When a child is removed from home, the state works to find a permanent placement for the child. The most desirable permanent placement is with the child's own family. The state tries to help the family until it is safe for the child to be in the home without state supervision. However, if a parent is abusive, or is unwilling or unable to provide security, affection, and continuing care, the state has the right and the responsibility to find a new permanent home for the child.

Child protection cases have some unique dynamics, due to the complexity of the issues, the strong emotional components, and the large number of participants in the system. Families in these cases often have other problems that affect their ability to provide an adequate home for their children, such as substance abuse, domestic violence, divorce, psychological and medical problems, truancy, and juvenile delinquency. The family may be involved with many agencies, each with its own needs and expectations. There may be conflict between the interest of the parents in maintaining the family and the need of the children for a safe home. The complexity of these cases is reflected in the number of laws and agencies involved.

Roles of federal, state and tribal governments

Different governments handle different aspects of child protection. Each type of government has jurisdiction (control) over specific issues within the child protection system.

The **federal government** has three branches: Congress (the United States Senate and House of Representatives), the executive branch (the President and federal agencies), and the courts (the United States Supreme Court and federal courts). Congress has written a number of laws governing child protection, laws that the fifty states must comply with in order to receive federal funding. Congress also writes laws affecting Indian children, laws that must be applied

in every state. The executive branch includes the Department of Health and Human Services (DHHS), which administers federal funding and regulations for foster care, preventive programs, and family services. However, the federal government does not play a direct role in individual child protection cases.

The **state government** of Alaska also has three branches: the legislature (the Alaska Senate and House of Representatives), the executive branch (the governor and state agencies), and the Alaska Court System. The state legislature writes laws defining child abuse and neglect, creating reporting requirements, and requiring state intervention in certain cases. The legislature also decides how much money to spend each year for social workers, lawyers, guardians ad litem, parent support services, prevention programs, and foster care. The executive branch implements the child protection laws, and has the right and responsibility to take protective steps when children are at risk. The Division of Family and Youth Services (DFYS), part of the Department of Health and Social Services, is the agency primarily responsible for child protection. The state courts hear child protection cases when a determination of legal rights becomes necessary.

Municipal governments exist many places in Alaska. Most cities and boroughs have a mayor, assembly or council members, schools, and police, and some have social workers and family programs. Local police and teachers often report suspected cases of child abuse and neglect, but municipalities do not have direct responsibility for handling these cases once they are reported.

Tribal governments exist in many cities and villages across Alaska. Many tribal councils employ social workers to protect children from abuse and neglect and to work with troubled families. Sometimes the tribe will intervene (participate as a party to the lawsuit) when the state is handling the case in state court. Sometimes the tribal social worker will bring the case to the tribal council or tribal court for decision, and the case will be handled without the involvement of the state. Tribal jurisdiction over child protection cases is an unsettled area of law. The Metlakatla Court of Indian Affairs has exercised jurisdiction for some years over child protection cases arising on the Annette Island Indian Reservation. Recently, the Bureau of Indian Affairs has granted petitions for reassumption of jurisdiction by the villages of Chevak and Barrow. The Alaska Supreme Court recently has held that both tribes and state courts may have jurisdiction over child custody cases of tribal children. This guide covers the role of tribal social workers in state courts, but does not cover tribal court laws and procedures.

Sources of law and procedure

There are many sources of law and procedure to consider in child protection cases. Because this is dynamic area of law and policy, readers should keep in mind that statutes, case law, and agency procedures change frequently.

Constitutions set up the basic structure of government in the United States and in each of the fifty states. They describe the three branches of the government, the powers of the government, and the rights of citizens. Some tribal governments also have constitutions. The general provisions of United States and Alaska constitutions apply to child protection cases, but there are no sections written specifically for these cases.

Statutes are laws that Congress or the state legislatures write. Cities, boroughs, and tribal governments also adopt their own laws (often called codes or ordinances) to govern their citizens. Law-making bodies like legislatures define what the people of the area consider to be child abuse and neglect. Legislatures set some of the procedures that executive agencies follow in handling these cases. State and federal statutes form an important part of child protection law.

Case law (also known as common law) is written by the courts. Case law is based on earlier decisions by courts in similar situations, settled legal principles, existing statutes and regulations, and constitutions. Judges use these principles and laws to decide what to do in each new case. Courts interpret statutes and regulations, but they do not write them. The Alaska state courts have created a substantial body of case law in child protection cases. Federal courts rarely hear these cases.

Court rules are written by the Alaska Supreme Court to guide lower courts in procedural matters. Alaska has a set of court rules devoted specifically to child in need of aid cases, and another set for adoption cases. These rules help judges decide what hearings to hold, when to hold them, who should be notified, what evidence can be considered, and what types of findings should be made. These rules are based on the requirements of state and federal constitutions, statutes, case law, and proper court administration.

Regulations are written by executive branch agencies and approved by the Lieutenant Governor. They set out detailed rules to help executive branch employees carry out the law. The state Department of Health and Social Services has regulations that cover licensing and funding requirements for foster care and compliance with other federal programs.

Policy and procedures manuals are internal documents written by executive branch agencies to help their employees handle cases efficiently, consistently, ethically, and legally, according to agency policy. The Department of Health and Social Services has a policy and procedures manual that social workers use in child protection cases. Policies and procedures are not state laws, but provide guidance for agency employees.

Federal child protection laws

There are many federal statutes that tell states how to handle cases of child abuse and neglect in order to receive federal funding. This section provides a brief overview of these laws.

The **Child Abuse Prevention and Treatment Act of 1974** (CAPTA) places conditions on states that receive federal funding for child protection services. The state must define "child abuse and neglect" in accordance with federal statutes and regulations; must have a statute mandating the reporting of child abuse and neglect; must investigate reports promptly and take immediate steps to protect children; must educate the general public about prevention and treatment; must have specific procedures or programs for responding to reports of medical neglect; must provide needed social and medical services; must provide a guardian ad litem to every abused or neglected child whose case results in a judicial proceeding; must provide public with information about child fatalities and near-fatalities; and must maintain the confidentiality of child protection records. CAPTA (PL 93-247) is found at 42 U.S.C. §5101 et. seq. and §5116 et seq.

The **Indian Child Welfare Act of 1978** (ICWA) is designed to protect the best interests of Indian children and to promote the stability of Indian tribes and families, by establishing minimum federal standards for removing Indian children from their families. ICWA defines "Indian child" to include any unmarried person under the age of 18 who is a member of an Indian tribe, or who is eligible for membership and is the biological child of a member. "Indian tribe" means any Indian tribe, band, nation, or other organized group or community recognized as eligible for services by the U.S. Secretary of Interior, including recognized Alaska Native villages.

Congress found that Indian children were often removed from their families by non-tribal agencies that misunderstood Indian home life and child-rearing, and that these children suffered emotional harm when placed in non-Indian homes. In addition to harming individual children, the massive removal of children from Indian families seriously affected long-term tribal survival. To combat these problems, Congress established minimum standards for the removal of Indian children from their homes, for both voluntary relinquishment and child abuse and neglect proceedings. ICWA requires that the child's tribe or tribes be notified of many state court proceedings and be allowed to participate. The tribe's presence helps assure that there is cultural continuity for the child and that the family receives as much culturally appropriate support as possible.

ICWA applies higher standards of proof to some factual determinations in child protection cases, providing additional procedural protections for the parents and children. There are higher standards for removal from the home, higher standards for preventive and reunification measures, additional protections for parents voluntarily relinquishing their parental rights, and

additional findings necessary in termination proceedings. ICWA also requires testimony by an expert familiar with the issues in the case. When an Indian child is placed in foster care or released for adoption, ICWA expresses a preference for the child to live with an Indian family, as well as an order of preference for extended family members, other members of the child's tribe, and other Indian families. If the requirements of some sections of ICWA are not met, the child, parents, or tribe may request the court to vacate its orders and begin new proceedings. Subsequent federal and state laws may have created possible inconsistencies with ICWA. ICWA is found at 25 U.S.C. §§1901-1923, 1951.

The **Adoption Assistance and Child Welfare Act of 1980** (PL 96-272) requires states to adhere to certain requirements in order to receive federal funds for prevention, reunification, foster care maintenance, and adoption assistance. It provides financial incentives to prevent breakup of families, shorten time in foster care, and provide permanency for children. It requires states to make reasonable efforts to prevent removal of children from the home, make reasonable efforts to encourage return, have a case plan for every child, and have a case review system. It requires judges to evaluate the reasonableness of the state's efforts, assure that deadlines and procedural protections are met, and provide periodic review. PL 96-272 is found at 42 U.S.C. §§ 670-677.

The **Multiethnic Placement Act of 1994** (MEPA) prohibits denial or delay of placement for foster care or adoption because of the race, color or national origin of the child or the adoptive or foster parent. In order to receive federal funds, agencies must encourage transracial placements of children when appropriate same-race placements are not available. However, a court may consider the child's cultural or racial background and the ability of a potential foster parent to meet the child's related needs as one factor in determining the child's best interests. The Multiethnic Placement Act (PL 103-382) is found at 42 U.S.C. §5115a.

The **Adoption and Safe Families Act of 1997** (ASFA) is a recent amendment to PL 96-272. Congress believed that the existing system had become too biased in the direction of keeping children with their biological parents regardless of how harmful such environments might be. Congress found that children were frequently returned to unsafe families or were shuttled back and forth between their natural families and multiple foster homes for extended periods of time, rather than achieving permanent care arrangements. Accordingly, Congress sought to promote policies that make the child's health and safety paramount, shorten the time spent in foster care, and increase the number of children adopted.

In order to receive federal funding, states must make the health and safety of children the paramount concern. The new law states that reasonable efforts to reunify a family are not required when parental abuse has been aggravated (extreme) or when the parents have a pattern of abusive behavior or neglect. The

law calls for more active case management by judges and involves the court in continual monitoring of the case plan. ASFA requires that the child's permanent home be determined within one year, requires a permanency planning hearing, and requires states to initiate termination of parental rights petitions under certain circumstances. ASFA (PL 105-89) is found at 42 U.S.C. §1305.

Alaska child protection laws

Alaska revised its **child protection law** in 1998. The new law incorporates all of the changes required by the federal Adoption and Safe Families Act and makes other changes. Alaska law focuses on children's health and safety as the paramount concern. The legislature said that the state's policy is to strengthen families and protect children from abuse and neglect, ensure adequate care and treatment of the child if the child is a ward of the state, and provide family support services and visitation with parents and extended family.

Alaska law defines what conditions can justify the state's intervention in the family. A child can be put at risk by the acts or omissions of one or both parents, a custodian, or a guardian. If a judge declares a child to be a child in need of aid (CINA), the court will set further conditions for protecting the child and helping the family. A child will be declared in need of aid if the judge finds one or more of the following conditions, set out in A.S. 47.10.011:

- (1) One parent has **abandoned** the child and the other parent is absent or also neglects or abuses the child;
- (2) One parent is **incarcerated** and has failed to make adequate arrangements for the child, and the other parent is absent or neglects or abuses the child;
- (3) A parent has disappeared and left the child with an **unwilling custodian**;
- (4) A parent has knowingly failed to provide **medical treatment** to prevent substantial physical harm or mental injury;
- (5) The child **runs away** from home and refuses care, and the child is at risk of substantial physical or mental injury;
- (6) The child has suffered, or is at substantial risk of suffering, **substantial physical harm** based on a parent's conduct, home conditions, or lack of supervision;
- (7) The child has suffered, or is at substantial risk of suffering, **sexual abuse** based on a parent's conduct, home conditions, or lack of supervision;
- (8) The child has suffered, or is at substantial risk of suffering, **mental injury**, including exposure to domestic violence or a pattern of rejection, isolation, terror, or corruption;
- (9) A parent has **neglected** the child or another child in the household;

- (10) A parent's **substance abuse** substantially impairs the ability to parent and results in substantial risk of harm;
- (11) A parent's **mental illness**, serious emotional disturbance, or mental deficiency is of a nature and duration that places the child at substantial risk of physical or mental harm;
- (12) The child has committed **delinquent acts** as a result of pressure, guidance, or approval from a parent.

A child may not be found in need of aid solely because the child's family is poor, lacks adequate housing, or has a lifestyle different from the generally accepted lifestyle of the community where the child lives.

If the child is declared in need of aid, state statutes have many requirements. State social workers must place the child in a safe, stable environment, not move the child unnecessarily, plan for permanent placement, encourage psychological attachment between child and caretaker, encourage regular visitation with parents and family, and require parents to participate actively in family support services. The state social worker must make reasonable efforts to provide services to help reunify the family. If the parents make insufficient progress, or if reunification would threaten the physical or mental well-being of the child, the state social worker must try to arrange different permanent living arrangements for the child.

The new law establishes shorter timeframes for court hearings and appeals and requires DFYS to report to the court more frequently about permanent placement efforts. It enhances the opportunity for foster parents to participate in cases and provide important information. It changes the standards for termination of parental rights in cases involving emotional neglect, mental illness, or substance abuse, and speeds up termination in some serious cases. The law also created two new crimes of endangering child welfare. The new law applies to all cases after September 14, 1998, but many of its procedures and timelines are applied to older cases as well.

Child protection cases are also governed by **Alaska case law**, written opinions from the Alaska Supreme Court. The supreme court is an appellate court, which means that it does not hear evidence or take testimony. The five justices review the decisions of trial courts and issue written decisions. They decide whether the government met all procedural requirements, whether the trial judge properly applied statutes and case law, and whether the trial court's factual findings are supported by the evidence. Their decisions correct errors in individual cases and guide judges in future cases. Common issues include proper notice of proceedings, grounds for termination of parental rights, effect of a parent's incarceration, definition of statutory terms, and interpretation of the Indian Child Welfare Act. The court's decisions attempt to balance the right of parents to custody and control of their children with the interests of children in

an adequate home, within the requirements of state and federal law. Alaska case law is found in the Alaska and Pacific Reporter case reporting systems.

The Alaska Supreme Court has written **rules of court** governing the way child in need of aid cases are handled in court. These rules are designed to promote fairness, accurate fact-finding, quick decisions, and the best interests of the child. The rules detail the steps the court must take from beginning to end of a child protection case. The rules have recently been revised to incorporate most of the requirements of state and federal statutes. The CINA rules are found in the Alaska Rules of Court.

The **Interstate Compact on the Placement of Children** is an agreement between states to protect children placed across state lines. It applies to placements preliminary to a possible adoption, placements into foster care (including placements into parent or relative homes), and placements of adjudicated delinquents in institutions. It does not govern the placement of children on Indian reservations. The compact sets out formal requirements that DFYS must follow in making an out-of-state referral, including home studies of prospective placements. DFYS retains primary responsibility for permanency planning even after a placement out-of-state, and must assure that the receiving state provides the supervision and services requested. Finding, studying, and supervising an out-of-state placement can be a time-consuming process. All fifty states and the District of Columbia have enacted the compact, which appears in the Alaska statutes as A.S. 47.70.

Alaska state agencies and courts

The **Division of Family and Youth Services (DFYS)** is part of the Alaska Department of Health and Social Services. It has four regional offices and 26 smaller offices. The northern region has its headquarters in Fairbanks, with offices in Aniak, Barrow, Bethel, Delta Junction, Fairbanks, Fort Yukon, Galena, Kotzebue, McGrath, Nome, and St. Mary's. The southeast region has its headquarters in Juneau, with offices in Craig, Haines, Juneau, Ketchikan, Petersburg, Sitka, and Wrangell. The southcentral region has its headquarters in Anchorage, with offices in Cordova, Dillingham, Homer, Kenai, King Salmon, Kodiak, Palmer, Seward, Valdez, and Unalaska. Anchorage has its own region, covering the area from Eagle River to Girdwood, and includes Tyonek.

DFYS has the primary responsibility for investigating and monitoring child protection cases. State social workers receive reports of abuse and neglect, investigate them, and try to work with the parents. Sometimes the social worker can help the parents make improvements in the home without removing the children or taking legal action. In more serious situations, the social worker may remove the children from the home on an emergency basis and file an action in state court. The judge decides if the children will be temporarily or permanently removed from the home.

DFYS is required to prepare monthly reports that are accessible on the Internet, summarizing child protection activities carried out during the previous month and the status of children in state custody. The monthly reports must include information on the number and type of reports of harm received, the outcome of investigations completed, the number of placements of children in state custody, and the number of foster homes licensed. The website is found at <http://www.hss.state.ak.us/dfys/>.

DFYS is developing multi disciplinary teams statewide to evaluate and investigate reports of harm and coordinate agency services. These teams review individual case records and make recommendations on case planning. Team members may include teachers, counselors, doctors, peace officers, state attorneys, ICWA specialists, guardians ad litem, and representatives from local child advocacy centers. The team's records, meetings, and recommendations are confidential and may not be used in court.

DFYS is responsible for licensing foster homes, therapeutic residential care facilities for children with special needs, and child placement agencies. It offers services for children with severe emotional or behavioral problems, protective day care for children at risk of abuse or neglect, children's residential facilities, programs for runaway children, and services for adoptive parents. Some services are provided by DFYS directly, and some are purchased through grants and contracts with cities, community organizations, Native health care organizations, and tribes. As of 1999, DFYS no longer has responsibility for juvenile delinquency cases and programs. A new Division of Juvenile Justice has assumed those responsibilities and works with DFYS where appropriate.

The **Alaska Court System** plays a major role in child in need of aid cases. Superior court judges are responsible for hearing children's cases. They decide whether the state may remove children from the home for temporary placement, what conditions parents must meet before their children are returned, whether the state has met its duty to provide help for the family, whether the parents' rights to their children should be terminated, who should be allowed to adopt the children, and other crucial questions. Some superior court judges appoint masters to hold hearings and make recommendations to the judge in children's cases, but the primary responsibility for each case remains with the superior court. Superior court decisions can be reviewed by the Alaska Supreme Court.

In 1996, the Alaska Court System began the **Court Improvement Program**, using a federal grant to improve the way state courts handle abuse, neglect, foster care, and adoption litigation. During the first year, the Alaska Judicial Council studied how well the court system and other state agencies met the needs of children in need of aid and their families. The study concluded that judges were insufficiently involved in the cases, cases dragged on too long, procedures were inconsistent across the state, not enough focus was placed on

the individual children, tribal notice and participation needed improvement, and there were significant disparities in the rates at which Native and non-Native children were found to be in need of aid. The study recommended that the court system form a CINA committee to review the study, recommend specific changes in court rules and policies, and oversee implementation of the changes.

The CINA committee was appointed by the supreme court in 1997. The committee arranged for the court system to sponsor a three-day ICWA training conference for southcentral ICWA workers, tribal court judges, state court judges, state social workers, Guardian Ad Litem (GALs), CASAs, and public and private lawyers. It also trained state court judges on the new state law and on the effects of abuse on children's brain development. The court has started a pilot project in Anchorage on the use of mediation in CINA cases, with plans to expand to other locations. The court system is upgrading its information systems to improve tracking of children's cases and to assess the timeliness of case dispositions.

The **Department of Law** represents the interest of the state in protecting its children. It consists of the Attorney General, many assistant attorneys general who handle civil cases, and district attorneys and assistant district attorneys who generally handle criminal cases. Assistant attorneys general represent DFYS in individual cases, by providing legal advice to the social worker, negotiating with other parties, presenting cases in court, and representing the state on appeal. In some locations, like Nome and Kodiak, DFYS is represented by an assistant district attorney rather than an assistant attorney general. The Department of Law also defends the actions of state employees, promotes statutory changes, defends the constitutionality of state laws, participates in law-related committees, and advises state agencies on policy questions.

The **Office of Public Advocacy (OPA)** is part of the state Department of Administration, but it operates independently of other state agencies. It provides guardians ad litem for children, public guardians and conservators for incapacitated adults, attorneys for indigent (low-income) people when the Public Defender Agency has a conflict of interest, and court-appointed attorneys in certain other civil cases. In CINA cases, OPA contracts with private guardians ad litem to represent the best interests of children and contracts with private attorneys to provide independent representation for parents. Guardian ad litem and attorney services are provided statewide. OPA also provides a training program for volunteers who wish to serve as court-appointed special advocates (CASAs), assisting the guardian ad litem. Currently the CASA program exists in Anchorage, the Mat-Su Valley, and Juneau, with plans to expand to other areas.

The **Public Defender Agency** also is part of the Department of Administration, but it operates independently of the Office of Public Advocacy and other state agencies. It provides lawyers at state expense for indigent people

who are involved in certain legal proceedings. The Public Defender represents indigent parents in CINA cases, criminal defendants, juveniles accused of crimes, and mentally ill persons facing involuntary commitment. It employs attorneys and investigators whose job is to represent individual clients to the best of their ability, even if the interests of the client are opposed to those of the state.

Stages in the Child Protection Process

Investigation and evaluation by DFYS

This section describes the general way child in need of aid cases will move through the child protection system under the new laws. However, cases differ greatly, especially among different court locations. Parents, foster parents, and especially children often find the overall process to be very slow. The new laws are designed to ensure that children do not remain in foster care and are moved to a permanent placement more quickly. Even so, the process represents an extended time of uncertainty, stress, and misery for most families.

Initial report: The first step in bringing child abuse or neglect to official attention is the initial report of suspected harm. Anyone may report suspected child abuse or neglect. Relatives, friends, and neighbors often report suspected abuse in order to protect the children involved. Certain professionals are required to report suspicions of harm, including teachers, child care providers, school administrators, medical professionals, social workers, parole and police officers, mental health providers, sexual assault counselors, and crisis intervention workers. State agencies and school districts are required to train their employees on reporting requirements.

DFYS social worker: Child protection social workers have a highly complex, responsible job. At the intake stage, social workers screen reports of child abuse and neglect, refer some families to counseling or other services, and identify cases where intervention might be required. At the investigation stage, social workers follow up on risky situations by gathering facts and referring the family to services.

If the social worker decides that the children cannot remain safely in their own homes, the social worker takes custody of the children and physically removes them from the house to a temporary placement. The social worker then begins legal proceedings with the help of the state Department of Law, and notifies the parents and other parties.

As the legal case proceeds, the social worker refers the family to services, monitors the family's progress, and works with the parents to develop a case plan. The social worker finds the initial placement and sometimes several later placements for the child. At the same time, the social worker may be gathering evidence and asking the court to terminate parental rights. The social worker usually is an important witness at trial. If parental rights are terminated, the social worker works to find a permanent home for the child.

In Alaska, the agency responsible for investigating such reports is the Division of Family and Youth Services (DFYS), part of the Department of Health and Social Services. **Suspected child abuse and neglect can be reported by calling DFYS at 1-800-478-4444.** These reports may be made anonymously. Abuse and neglect may be reported to local law enforcement agencies, but the law enforcement agency will refer the matter to DFYS and the Department of Law for investigation if a family member is the suspected abuser.

Screening: When a concerned person contacts DFYS, the caller initially talks with an intake screener who will try to assess the nature of the call. People often call DFYS with concerns about their own child or another child, but the concerns do not always fall under the child abuse and neglect statute. For example, a parent might call DFYS to talk about a child's behavior problems. The person screening the call might conclude that abuse or neglect is not evident and would most likely give the caller information about counseling agencies that could assist the family.

Parents: Parents have the right and responsibility to provide food, clothing, shelter, education, and medical care for their children; to protect, nurture, and train their children; to use reasonable corporal discipline; to direct medical care; to determine where and with whom the child lives; and to make legal and financial decisions for the child. Biological parents have these rights and responsibilities unless their parental rights have been terminated; adoptive parents assume these rights and responsibilities after adoption.

A child may be placed at risk by the acts or omissions of one or both parents. If the state files a CINA petition, parents have the right to contest the petition and to be represented by an attorney. If parents have concerns about the way their case is being handled by DFYS, they may file a grievance with the agency, complain to the ombudsman's office, or ask their legislator to review the file.

Parents must comply with court orders governing cooperation with DFYS, participation in treatment, contact with the children, and conditions in the home. When children are in state custody and placed out of the home, the court will require parents to pay child support according to their financial ability. In serious cases, if conditions do not improve, the court may terminate the rights of the parents in their child and free the child for adoption. As long as parental rights have not been terminated, parents have the right to reasonable visitation and the right to refuse consent to the child's marriage, military enlistment, or nonemergency major medical care.

Losing custody of one's children is a traumatic experience. Parents in this position often see the child protection system as inadequate or hostile. They may find it helpful to seek out parent support groups, family counseling, and support from their tribe or church. Many agencies with referral services are listed in the back of this guide.

If the report does indeed appear to be one of abuse or neglect, as defined by Alaska law, the screener gathers as much information as possible from the caller. Following agency policy, the screener assigns the case a priority 1, 2 or 3, depending on the risk of immediate harm to the child. The screener is trained to look for signs of domestic violence and sexual abuse. The case is passed to an investigating social worker for follow-up. In smaller offices, one social worker may perform both these functions.

Depending on the caseload of the local office, investigation of low priority cases may be delayed, sometimes until a subsequent report is received. DFYS caseloads are high, and social workers sometimes have difficulty responding to all the concerns and needs presented.

Investigation: The investigating social worker begins by talking with the child, the parents, the reporter of the abuse, and any other individual who may have information. The social worker weighs the risk to the child based on factors like family history, substance abuse, domestic violence, and sexual abuse, family strengths, and sources of outside support. The social worker will rate the reported abuse or neglect as substantiated (the child clearly suffered from abuse or neglect), unconfirmed (the evidence is unclear, but the social worker strongly believes the child was maltreated), or invalid (the evidence demonstrates the child did not suffer from abuse or neglect). The social worker also will consider the risk to other children in the home.

Confidentiality: Most information in a child protection case is closed to the public, to protect the privacy of the family and safeguard the interests of the children. Parties to the case have the right to examine all relevant reports or other documents, and a tribe intervening in the action has the same rights as other parties. Current and proposed foster parents may view those parts of the record that relate to a foster child or a child proposed for placement.

DFYS records may be inspected by certain individuals who need the information to carry out their responsibilities to the child or to law enforcement, with the court's permission. Those who may inspect DFYS records include GALs, CASAs, counselors, school officials, law enforcement, members of the multi disciplinary team, the state medical examiner, the state child support enforcement agency, and legislators who have been asked by the parents to review a particular case. A child's name or picture may not be made publicly available without a court order justifying the release.

Guardians and custodians: A guardian is a person who is legally appointed to have most of the rights and responsibilities of a parent for a child. Guardians may be appointed by parents (such as through their wills) or by the court. Because they act as parents, guardians can be held responsible under the CINA statutes for abuse and neglect of their wards.

A custodian is an adult to whom the parent has transferred temporary custody, care, and control of the child. An Indian custodian is an Indian person with legal custody of a child under tribal law or custom, or under state law, or to whom temporary physical custody has been given by the parent. Custodians and Indian custodians are subject to most provisions of the CINA statutes. Indian custodians sometimes appear in place of the parents in child abuse and neglect cases.

Most references in this guide to "parents" apply to guardians, custodians, and Indian custodians as well.

Court proceedings are closed to everyone except parties. The court may exclude the parent or child during parts of the proceedings if necessary to protect the child from psychological harm. Witnesses sometimes are limited to attendance only when they are testifying. Foster parents may be excluded from portions of the proceedings if it is necessary to protect the privacy of the parties and or the best interests of the child. Court records may be inspected only by

persons having a legitimate interest in them, and only with the court's permission.

Despite confidentiality requirements, DFYS is required to forward reports of harm under some circumstances. Reports alleging physical or sexual abuse committed by a person not responsible for the child's welfare will be forwarded to the nearest law enforcement agency. All reports, whether committed within the family or by an outsider, are reported to the Department of Law. Reports of harm in a licensed foster care home or regulated program must be reported to the licensing supervisor or regulatory agency. Persons required by law to report a suspicion of child abuse and neglect may be told whether the investigation has been completed and what actions were taken to protect the child.

Emergency custody

Emergency custody: If a report of harm is substantiated, and the child is in immediate danger of serious harm, the social worker may take emergency custody of the child and place the child in a foster home or emergency shelter. The social worker can request law enforcement assistance if necessary. DFYS may take emergency custody of a child, without prior authorization from a court, in five situations:

- ▶ if the child has been abandoned;
- ▶ if the child has been neglected and immediate removal is necessary to protect the child's life or provide medical attention;
- ▶ if the child has been physically harmed by a person responsible for the child's welfare and immediate removal is necessary to protect the child's life or provide medical attention;
- ▶ if the child or a sibling has been sexually abused by the parent or through the fault of the parent; or
- ▶ if the child has run away from home and state custody is necessary to protect the child.

In all other situations, DFYS must have a court order before removing a child from the home. Emergency custody is a short-term measure to keep the child safe until the first court hearing can be held. If the parents, guardian, or custodian are not present when the child is removed, they must be notified as soon as possible. Within 24 hours of taking custody, the social worker must file a petition for temporary custody with the state court.

In the case of an Alaska Native or Indian child covered by the Indian Child Welfare Act, DFYS may remove the child from the home only to prevent imminent physical damage or harm to the child. If the child lives in a tribal village, DFYS procedure requires the social worker to notify the tribe before

removing the child from the village and to make every effort to place the child in the village. If the tribe disagrees with the removal, the DFYS social worker is to meet with the tribe to discuss it. If the child does not live in a tribal village, DFYS must notify the tribe by phone or fax within 24 hours of the emergency removal, with written notice to follow by mail. DFYS will try to place a child within the child's extended family or tribal community where possible, or in proximity to the parent.

Remaining in the home: DFYS must make reasonable efforts to help parents participate in family support services in order to prevent out-of-home placement. These services may include counseling, substance abuse treatment, mental health services, parenting classes, in-home services, respite child care, and transportation. DFYS may go forward with a CINA petition, seeking state custody of the child, even if the child remains in the home.

A child may not be taken out of the home if the child can remain safely at home with one parent. DFYS has screening procedures to assess whether there has been **domestic violence** in the family. If so, DFYS can help the victim obtain a restraining order, refer the victim to service providers, and help remove the perpetrator from the home.

Informal proceedings: Most state interventions do not result in court proceedings. If the child remains at home or if the parents agree to a voluntary foster home placement, DFYS has the option of proceeding informally without involving the judicial system. In circumstances that do not reflect abuse or neglect, DFYS may provide services to the family and monitor the case without court involvement. If the family makes sufficient progress, DFYS may end its supervision without ever filing a court petition. DFYS does not enter voluntary placement agreements when protective issues are present.

Child in need of aid petition

A court case begins when DFYS files a petition seeking state protection of the child. A case may involve many types of hearings: advisement, probable cause, adjudication, disposition, review, permanency planning, extension of custody, voluntary relinquishment of parental rights, termination of parental rights, and guardianship.

Child in need of aid petition: If the social worker substantiates the report of abuse or neglect, the state may file a petition for adjudication outlining the circumstances that have hurt the child or placed the child at risk. The petition presents the allegations (claims) of abuse, neglect, or refusal to accept care. It asks the court to adjudicate (declare) the child in need of aid. A finding that the child is in need of aid justifies the state's intervention in the family. A petition for adjudication often is referred to informally as a CINA petition.

If the child has been removed from the parent's home, a petition for adjudication must be filed within 24 hours of the removal, and a temporary custody hearing must be held before the court within 48 hours after the petition has been filed (a total of no more than three days). If the child has remained in the home, the hearing may be scheduled at a later date.

Assistant attorney general: Assistant attorneys general work for the state Department of Law, representing the state's interest in protecting Alaskan children. An assistant attorney general may provide legal advice to the social worker, assist the social worker with court filings, negotiate with other parties, draw up or review paperwork, write legal briefs, present the case in court, and represent the state on appeal if necessary. In some locations, like Nome and Kodiak, DFYS is represented by an assistant district attorney rather than an assistant attorney general. The Department of Law also provides legal training for other agencies and outside organizations, and represents the Department of Health and Social Services in licensing actions.

Notice: When DFYS files a petition for adjudication, it must give a copy of the petition, notice of the time and place of the hearing, and notice of right to counsel to the child's parents, guardian, or Indian custodian. If these parties are not easily located, DFYS must make diligent efforts to find them. DFYS must serve a summons on the child, parents, Indian custodian, guardian, and guardian ad litem. Foster parents and out-of-home care providers must be given notice of the proceedings within a reasonable time.

In the case of an Indian child, DFYS must try to provide the child's tribe with telephonic notice before the first hearing. This notice is an essential underpinning to the tribe's right to intervene in the case. The Department of Law follows up the telephonic notice by providing the parents, Indian custodian, and tribe with written notice of their rights under the Indian Child Welfare Act. The tribe must be given a copy of the petition and notice of the next hearing. If the identity or location of the parents, Indian custodian, or tribe cannot be determined, notice is served on the Bureau of Indian Affairs.

Appointment of parent's attorney: The CINA summons must tell parents, guardians, and custodians of their right to counsel. Indigent (low-income) parents are represented at state expense, usually by an attorney from the Public Defender Agency or the Office of Public Advocacy (OPA in turn may hire a private attorney to handle the case). Indigent parents become eligible for an attorney as soon as they receive the petition for adjudication or the child is removed from the home. Court appointment of attorneys works a little differently in each court location. In Anchorage parents contact the children's court; in Fairbanks they go to the pretrial services office; in many other locations they contact the clerk of court. If the parents are separated or have conflicting interests, they will be represented by separate attorneys.

Parent’s attorney: The parent’s attorney provides legal counsel to one or both parents and tries to achieve the results the parents desire. The right of parents to be represented by counsel is a fundamental protection. The child protection system is complicated, and parents need help to challenge the state’s assertion of authority over the family. In this way, the child in need of aid system seeks to protect children while minimizing the state’s intrusion in family matters.

If a parent meets certain low-income guidelines, an attorney will be appointed at state expense. If parents do not fall within these limits, they must pay the cost of an attorney or represent themselves.

The parent’s attorney works with the parents to understand their side of the story and to help them understand the state’s concerns about the family. The parent’s attorney insists that the facts presented in the petition be proven or negotiates a reasonable settlement. The parent’s attorney may help to develop a meaningful case plan that takes the parent’s capabilities and desires into account.

The parent’s attorney tries to ensure that information used in the case is correct, that the state makes reasonable efforts to reunify the family and prevent prolonged out-of-home placement, that the parent’s cultural values are respected and ICWA is complied with, that visitation is appropriate, that the state pays for appropriate services, that child support sought from the parents is fair, and that the parents are kept informed of court dates and case status. The parent’s attorney also works to reduce the parent’s exposure to criminal charges and civil liability.

Parents who do not meet the income criteria may hire a private attorney at their own expense. The *Women’s Legal Rights Handbook*, published by the Alaska Network on Domestic Violence and Sexual Assault Legal Advocacy Project, discusses how to hire and work with an attorney.

Temporary custody & placement

Temporary custody hearing (also called a **probable cause** hearing): In most locations, the temporary custody hearing is held within 48 hours after the petition for adjudication is filed, and is usually fairly brief. Occasionally, if the hearing is contested, it may be more like a trial and last several days.

At the first hearing, the court reviews the petition for adjudication to determine whether there is “probable cause” to believe that the facts in the petition are true. **Probable cause** is established where reasonably trustworthy information would justify a prudent person’s belief that the child is in need of aid, as defined by Alaska law. It requires a fair probability or substantial chance that the child is in need of aid. This is a preliminary finding that justifies further state intervention and control over the family.

At the hearing, the court will attempt to determine who the parties to the case are, by addressing questions of paternity, tribal membership, and the roles of step-parents, guardians, custodians, and foster parents. The court will ask if DFYS has tried to contact any absent parties. Parties at remote locations may participate by telephone. The master or judge makes sure that the parents have received a copy of the petition for adjudication, advises the parents of their right to representation by an attorney, and appoints counsel for indigent parents if it has not already done so. The child may or may not be present, depending upon the child's age and preferences and the guardian ad litem's assessment of the child's best interests. Members of the public and press are excluded from this and all court CINA hearings.

The court: Alaska has several types of judicial officers to hear children's cases. **Superior court judges** are the primary court officers responsible for child abuse and neglect matters. Outside of Anchorage, judges preside over most children's proceedings. **Masters** may be appointed to hear evidence and make findings and recommendations for the superior court judge. The judge makes the final decision. The masters employed by the Alaska Court System are lawyers or have special expertise in the area. Masters hear most children's cases in Anchorage, although lengthy or contested hearings may be held before the judge. **Magistrates** are judicial officers with a limited range of authority. Most magistrates in the larger communities are law-trained, while those in the smaller towns often are not. Magistrates can hold emergency CINA and delinquency hearings, and may be appointed by the judge to act as special masters.

Sometimes the parents stipulate (agree) that there is probable cause to believe that the child is a child in need of aid. Other times the parties may present evidence and make arguments about the facts of the case. The court then makes a finding as to whether probable cause has been established that the child is in need of aid. If the court finds that there is no probable cause, the petition is dismissed, the child returns home, and state intervention ends.

If the court finds probable cause, it then determines who should have **temporary legal custody** of the child, either DFYS or the parent, guardian, custodian, or Indian custodian. Whoever is awarded legal custody assumes most of the rights and responsibilities of a parent: physical care and control of the child; deciding where and with whom the child shall live; protecting, nurturing, training, and disciplining the child; providing food, shelter, education, and medical care; and making financial decisions for the child.

Temporary custody is different from emergency custody: emergency custody protects the child only from abandonment, immediate physical harm, or sexual abuse, and lasts only a few days until the first court hearing. Temporary custody has a broader protective function and lasts from the first hearing until disposition, sometimes four months or more.

If the court gives temporary custody to the parents, the child ordinarily will remain at home or with a custodian of the parent's choosing. The court will set certain conditions for the parents to follow, such as no alcohol consumption, no physical abuse, restrictions on who may be present in the home, participation in treatment, and regular school attendance and medical care for the child. The court may order the child to participate in treatment as well. DFYS will monitor the court-ordered conditions. If the parents violate the court's conditions, DFYS may apply to have the child removed from the home at any time.

If the court gives temporary custody to DFYS, then DFYS (not the court) decides where the child will be placed. The placement decision is subject to court review, but DFYS has the primary authority. Even when DFYS has legal custody, it will still place the child at home if it can safely do so. If the child is Alaska Native or American Indian, DFYS may work with the child's tribe to make a placement decision.

As soon as the court finds probable cause to believe that the child is in need of aid, the court must set a time for the next proceedings, including the meeting of the parties, the pretrial conference, and the adjudication hearing. The court may set dates for motions, discovery, and witness and exhibit lists. The court may schedule the disposition hearing for the same time as the adjudication hearing and set a due date for the

Guardian ad litem: A guardian ad litem (GAL) is a person appointed by the court in a legal action to represent the best interests of a child or an incapacitated person. In a CINA case, the guardian ad litem works with the child, the parents, the social workers, the child's tribes, and others to figure out what course of action will best serve the physical and emotional well-being of the child. The guardian ad litem makes recommendations to the court at each step in the proceedings based on the child's needs and prospects. The guardian ad litem participates in every hearing and may present witnesses and write reports. The guardian ad litem is appointed by the court when a CINA petition is filed or at the time of the first hearing.

In some cases, the child's opinions about placement and family reunification may differ substantially from the judgment of the guardian ad litem. In those situations, if the child is mature enough to formulate an opinion, the guardian ad litem will request the appointment of an attorney to represent the child. The attorney will advocate for the expressed wishes of the child, while the guardian ad litem will continue to recommend the course of action that the GAL thinks is in the child's best interests.

CASA: CASA stands for "court-appointed special advocate." In Alaska, CASAs are community volunteers who are screened, trained, and supervised by guardians ad litem from the Office of Public Advocacy. CASAs are matched with the family and usually handle only two or three cases at a time. The CASA maintains frequent contact with the child, gathers information, keeps in contact with parents, social workers, counselors, foster parents, and tribes, and assists the guardian ad litem in advocating for the child's best interests. CASAs are not available in all parts of the state. A group called Alaska Tribal CASAs is working with OPA to recruit and train Alaska Native volunteers who wish to serve as CASAs in state and tribal courts.

predisposition report. If the parents are absent at the probable cause hearing, an **advisement hearing** may be set later to have the court inform the parents of their legal rights in the case. The court may appoint counsel for an absent parent.

Out-of-home placement:

DFYS may ask to remove the child from the home or may request continuing out-of-home placement for a child it has already removed. The court will ask if DFYS has made reasonable efforts to improve the home and prevent removal. The court may approve removal only if it finds that return home would be contrary to the welfare of the child. If removal is approved, DFYS will be given temporary legal custody and will be responsible for finding an appropriate placement. The court will provide conditions for parents to follow, to improve the home and help the parents regain custody. The court will issue guidelines or orders for visitation between the child and parents, and set a date for the interim case conference. The court also will order the parents to pay child support based on their financial ability. Parents must provide DFYS with names, addresses, and telephone numbers of the child's medical providers, psychologists, schools, and child care providers.

Child: Children are considered full parties to a CINA proceeding. Their interests usually are represented by the guardian ad litem, whose job is to advocate for the best interests of the child. Young children need not be present in court unless the judge so orders, and their wishes are usually presented by the guardian ad litem. The judge may excuse the presence of older children if it would be detrimental for them to attend or if they waive their right to be present. The court may appoint an attorney to advocate for the expressed wishes of the child, particularly if there is a conflict between what a child wants and what the guardian ad litem thinks would be in the child's best interests.

Under the Indian Child Welfare Act, the state must make “active efforts” to provide remedial services and rehabilitative programs. DFYS must show that it has made active efforts to provide services designed to prevent the breakup of the Indian family, but that these efforts have been unsuccessful. The court must return the child home except in two circumstances: (1) if removal still is necessary to prevent imminent physical damage or harm to the child (the emergency standard), or (2) if a return home would likely result in serious emotional or physical harm to the child. In non-emergency situations, the state must prove the likelihood of damage by “clear and convincing evidence,” a fairly high standard of proof, and must include testimony by an expert witness. Any party may ask the court to let the Indian child return home after the danger of physical or emotional harm has passed.

Children with emotional problems requiring close supervision and on-site counseling may be placed in residential care facilities if no less restrictive alternative is available. If the child suffers from a serious mental illness, DFYS may request the court to place the child in a secure residential psychiatric facility. The court may do so if the child meets the standards for civil

commitment of a child and if the commitment is supported by the testimony of a mental health professional. This placement is subject to periodic review. In the case of Indian children, ICWA expresses a preference for institutions approved by the child's tribe or an Indian institution with programs suited to the Indian child's needs.

Placement preferences for non-Indian children: If the child cannot safely return home, state law requires DFYS to place a child with willing relatives rather than in a foster home. To help ensure the child's safety, DFYS must first conduct a criminal background check of the proposed relatives and may require fingerprints for members of the household over age 12. DFYS is not required to place the child with a relative if placement will result in physical or mental injury, or if the relative has a history of child abuse, sex offenses, or other

serious criminal behavior. DFYS will try to place sibling groups together, and will place teen parents with their own children. Out-of-state foster care may be arranged to place a child near the parents.

Placement preferences for Indian children: If an Indian child is to be placed in foster care, ICWA expresses a preference for placement with extended family members, then in a foster home licensed or selected by the child's tribe, then with other Indian families, then in an Indian institution or other institution approved by the tribe. The law requires that a child be placed within a reasonable proximity of home, depending on the special needs of the child. Social workers from the child's tribe may help find a foster parent among relatives or in the child's village. The child's tribe may intervene to defend the placement preference system, may establish a

Indian tribes: An Indian tribe is a band, nation, or other organized group of Indians (including Alaska Native villages) recognized as eligible for services by the U.S. Department of Interior. Under the Indian Child Welfare Act, a child's Indian tribe may intervene (participate) as a party to a child custody proceeding, including child abuse and neglect, termination of parental rights, guardianship, and adoption. If a child is a member or eligible for membership in more than one tribe, the tribe with the more significant contacts is the tribe with the right to intervene. The tribe's presence helps assure that the child's cultural values are considered, Indian placement preferences are met, and appropriate support is provided for the Indian parents. The tribe has the right to intervene at any point.

Most tribes have tribal social workers (often called ICWA workers) who fulfill many of the same functions as DFYS social workers. Tribal social workers often investigate reports of child abuse and neglect, sometimes taking emergency custody of the child. The tribal social worker then presents the case to the tribal council (the tribe's main governing body) or sometimes to a separate tribal court. Some tribal courts and tribal councils handle children's cases through their own courts and foster care programs, without the involvement of the state.

Often, the tribe will decide to report the case to DFYS and ask the state to handle the matter, and the tribe will intervene in the state court proceedings. In state court, the tribe's position generally is presented by the tribal social worker or by the social services department of the regional nonprofit corporation. DFYS policy recognizes the importance of including the child's tribe in decision-making. DFYS and the tribe may cooperate to work out family services, home visits, placement, and permanency plans.

different order of preference, or may approve a placement that would not otherwise comply with ICWA. The court may place a child outside the preferences if it finds there is good cause to do so. A background check is required for relative placements.

Visitation: Visitation is an important parental right and responsibility. It also is important to the child, to lessen the trauma of removal and to maintain the bond with parents and siblings. For children placed out of the home, DFYS is required to provide reasonable visitation between the child and the child's parents, siblings, extended family, guardian, or Indian custodian. In determining whether to provide visitation with extended family, DFYS considers the nature and quality of the relationship that existed between the child and the family members before state custody began. DFYS can deny parental visitation only if it concludes that visits are not in the child's best interests, based on proof by clear and convincing evidence. In some situations, denial of parental visitation may be the equivalent of a termination of parental rights, and the state will need to make the showing needed for termination. A parent or guardian denied visitation may request court review of the DFYS decision.

Changes in placement: Except in emergency situations, DFYS must notify parties, tribes, and foster parents in advance of any change in a child's placement. Advance notice gives the parties the opportunity to request a hearing to prove that the transfer would be contrary to the child's best interests. Foster parents also must provide advance notice to DFYS of a non-emergency change in placement. These provisions were included in the new law to help minimize unnecessary placement changes for children.

Any party may ask the court to review the temporary custody order if circumstances change. Parents seeking return of the child before adjudication or disposition must show that out-of-home placement is no longer necessary. DFYS then has the burden of proof to show that a return home would be contrary to the welfare of the child. In the case of an Indian child, DFYS must show that removal still is necessary to prevent imminent physical harm or damage, or that the child is likely to suffer serious emotional or physical harm if returned home.

Reasonable and active efforts

Case plan: After investigation, DFYS will work with the parents to develop a case plan. The case plan outlines the permanent goal of the case, the changes the parents must make to improve the home, and the services to which the state will refer the family. The social worker will assess the family’s concrete needs like housing and food, their psychological well-being, the nature of their relationships, their strengths and skills, their problems, and their values and goals. The case plan covers only the factors that relate to abuse or neglect of the child. Depending on the parent’s needs, the social worker may arrange counseling, parenting classes, financial assistance, housing, transportation, health care, or other services. The social worker also arranges services to meet the child's needs, including counseling, medical treatment, protective day care, and out-of-home placement. The plan may rely on other sources of support like extended family, church, and tribe.

DFYS social workers will have a certain number of face-to-face contacts and home visits with the family, but the level of service varies by family needs, the remoteness of the home from the DFYS office, and the services provided by other agencies. The service plan is time-limited, meaning that parental improvement must be shown within a limited time, or the social worker will look at other permanent placements. The case plan should be written within 30-60 days of the temporary custody hearing and reviewed by all the parties and the court. The social worker and the family periodically review the plan to see if goals are being met, if the services provided are appropriate, and if any concerns for the child’s safety need to be addressed. Sometimes the case plan will include concurrent planning, identifying an alternative placement early on in case attempts at reunification do not work.

Reasonable efforts: Because one of the goals of the child protection system is to keep families together, DFYS must make “reasonable efforts” to assist the parents in finding services that will prevent removal of the child or will remedy the situation enough to allow the child to return home. The case plan identifies the efforts the DFYS social worker will make with the child, parents, and other parties to resolve the difficulties that led to the CINA petition. If the parents improve and correct the conditions that brought the child before the court, the child may be returned home.

Active efforts: In the case of an Indian child, ICWA requires that “active efforts” be made to provide remedial services and rehabilitative programs designed to prevent the breakup of the child’s family or to promote reunification. The active efforts requirement of ICWA is different from the reasonable efforts standard of the state statute. According to Alaska case law, the state must do more in ICWA cases than simply require certain changes. The social worker must actively help the parent through the steps of the plan and help the parent develop the skills necessary to retain custody.

Failure to make reasonable or active efforts: At various stages in the CINA proceedings, the court will determine whether DFYS is making reasonable or active efforts. If the court finds that DFYS has failed to make these efforts, it can order DFYS to make the efforts and can fine the agency if it shows no improvement. The fact that DFYS failed to make these efforts does not mean that the child must be returned to the home or that the petition for adjudication should be dismissed. However, the case may not proceed past the disposition phase until DFYS shows that the necessary efforts have been made.

Discontinuation of reasonable efforts: Although family reunification is one important goal of the child protection system, the system also seeks to achieve a permanent placement for the child as quickly as possible. In some cases, the law allows DFYS to discontinue its efforts and move toward an alternate permanent placement. DFYS usually makes this showing at the adjudication or permanency hearing. DFYS must prove to the court that one or more of the following circumstances exist, under A.S. 47.10.086:

- ▶ the parent has subjected the child to substantial risk to the child's health or safety, including abandonment, sexual abuse, torture, chronic mental injury, or chronic physical harm;
- ▶ one parent has killed the other parent or has attempted to do so, or has committed a felony assault on the child resulting in serious physical injury;
- ▶ the parent has failed to participate in court-ordered family support services;
- ▶ the parent cannot be located after a diligent search by DFYS;
- ▶ a parent who is a sole caregiver has a mental illness or deficiency that will place the child at risk even with family support services;
- ▶ the parent was previously convicted of a crime against the child, followed by a later substantiated report of physical or sexual abuse;
- ▶ the parent knew another person was physically abusing or neglecting the child and failed to stop the abuse;
- ▶ the parent lost parental rights to another child under conditions that still exist and the parent has demonstrated an inability to protect the child from substantial harm;
- ▶ the child has been removed from the home on at least two previous occasions and family services were offered, but the child is still at risk;
- ▶ the parent is incarcerated and unavailable to care for the child for a significant period, considering the child's age and need for care by an adult.

In deciding whether DFYS can discontinue making reasonable efforts, the court is to be guided by the child's best interests. DFYS must prove these circumstances by a preponderance of the evidence. If the court allows reasonable efforts to be discontinued, the case proceeds directly to the permanency hearing, within thirty days.

Discontinuation of active efforts: ICWA contains no exceptions that would allow the state to discontinue its rehabilitative efforts to Indian families and proceed directly to finding an alternate permanent placement. It differs from the new state statute and the federal Adoption and Safe Families Act in this respect. The new court rules note that it is an open question whether a trial court may conclude that active efforts are not required in a case involving an Indian child or that active efforts may be discontinued.

Adjudication & disposition

Pretrial conference: After the temporary custody hearing, the court will issue an order setting a time for the adjudication hearing and for a pretrial conference to help prepare for trial. Under the new rules, the parties must hold a meeting to prepare for the pretrial conference. The parties make sure that a reasonable case plan has been developed and discuss the topics to be covered at the pretrial conference. The parties submit a report about the meeting to the judge.

At the pretrial conference, the court may consider efforts to locate and serve all parties, try to simplify the issues, resolve legal questions, resolve evidence questions, discuss settlement and mediation, decide whether the child will testify at adjudication and under what conditions, establish a reasonable time limit for presenting evidence, and consider any other matters that may help resolve the case.

Adjudication hearing: The adjudication hearing is the main fact-finding proceeding or trial of a CINA case. Under the new law, the adjudication hearing must be completed within 120 days of the finding of probable cause, unless the court finds good reason for delay. Its purpose is to determine whether the child is a child in need of aid, as defined by state and federal law, and therefore in need of state protection. DFYS, represented by an assistant attorney general, must prove the facts in the CINA petition. The facts must be proven by “a preponderance of the evidence,” meaning it is more likely than not that the child has been abused or neglected. DFYS usually presents its case through the testimony of witnesses like social workers, counselors, health care workers, teachers, and others. If DFYS is requesting out-of-home placement, it must show that it made reasonable or active efforts to provide appropriate family services designed to prevent out-of-home placement.

If the parents contest the adjudication, their attorney presents evidence and cross-examines the state’s witnesses. The guardian ad litem and the child’s tribe participate in the hearing and may call witnesses, cross-examine them, or present other evidence. If the judge decides that the allegations are true, the child is adjudicated (declared) a child in need of aid. If the judge rules that the allegations have not been proven, the case is dismissed, the child is returned to the family, and state intervention ends.

An adjudication hearing may not be necessary if the parents do not contest the allegations in the petition. The parties may stipulate (agree) to certain findings or recommendations. Disposition may occur at the same time as the adjudication hearing or at a later proceeding. If the disposition hearing is not held immediately, the court may place the child in the temporary custody of DFYS or order the child returned home under DFYS supervision.

Predisposition reports: Before the disposition hearing, the DFYS social worker and the GAL/CASA prepare written reports to help the court understand the family situation. DFYS may consult with the child's tribe to obtain family information, discuss the case plan, and explore potential placements. Tribes and parents also may submit reports. These reports discuss family background and educational history, the child's medical and psychological history, and past contacts with DFYS. The reports recommend where the child should be placed, what services should be offered, and what the parents should do to regain full custody of their child. For Indian children, the reports must discuss how the proposed placement fits with the placement preferences of the Indian Child Welfare Act. Written reports can be waived by agreement of the parties, but only if the judge will have enough information to proceed.

Disposition hearing: At the disposition hearing, the court determines who will have custody of a child in need of aid and under what conditions. In reaching a decision, the court must view the health and safety of the child as the paramount concern, while also considering the best interests of the child, the ability of the state to take custody and care for the child, and the potential harm to the child caused by removal from home. The goal is to place the child in the most family-like setting close to home, consistent with the best interests and special needs of the child.

At the disposition hearing, the court must decide if DFYS has made reasonable efforts to provide services. If the reasonable efforts are insufficient, the court may not enter a disposition order until reasonable efforts have been made or until the court determines that they are not required.

If the court finds that placement in the home would be contrary to the best interests of the child, it will commit the child to the custody of DFYS for placement until the parents meet certain conditions. While a child is in DFYS custody, DFYS is responsible for making placement decisions. A party may ask the court to review a DFYS placement by showing good cause for the review. The original disposition decision may give DFYS custody for a maximum of two years, subject to later extensions. If the court gives custody to DFYS and the child is placed out of the home, the court must set a date for the permanency hearing. If the court gives custody to the parents, it must set a date for an annual review hearing. If the court decides that the child can safely be released to the parents, it will set conditions for placement at home, with or without the supervision of DFYS.

Foster parents: Foster parents provide a temporary home for an abused or neglected child who cannot safely remain with parents. The foster family is screened and trained by DFYS. The family then provides the child with care and supervision for an indefinite length of time. Some foster parents eventually adopt their foster children, but the goal of the program is temporary care. Foster families are often relatives or extended family.

DFYS licenses foster homes to certify that they meet basic safety standards and regularly monitors them. Licensed homes are eligible for payments (not a salary) to help with the normal costs of caring for a child. Payments are available through a federally funded program, Title IV-E, administered by the state. Relatives can become licensed foster care providers and receive foster care payments, or may be eligible for payments under the Alaska temporary assistance program.

Foster parents have certain rights in the court process. DFYS must provide the foster parent with enough information to provide appropriate care, protect the safety of the child, and protect the safety and property of the foster family. DFYS must provide the foster parent with all case plans, court orders, and reports (medical, psychological, and educational) relating to the child. DFYS must notify foster parents and other out-of-home care providers of court hearings. Foster parents and out-of-home care providers are entitled to participate in the hearings, but the court may limit their presence to the time during which they are testifying if necessary to protect the child's best interests or the privacy interests of the parties.

In addition to care, foster parents are required to maintain records of services provided to the child, provide those records to DFYS when the child leaves the foster home, and maintain confidentiality of the records. Foster parents are expected to support the case plan for the child.

For Indian children, the court must make additional findings before removing the child from the parents or an Indian custodian. The court must find that failure to remove the child is likely to result in serious physical or emotional damage to the child. Continued out-of-home placement must be justified by "clear and convincing evidence," a fairly high standard of proof, including testimony of an expert witness. The court also must find that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family, and that these efforts have been unsuccessful. If the court finds that DFYS has failed to make active efforts, it may not enter a disposition order until this requirement has been met. When DFYS is given custody of an Indian child, it must place the child according to the ICWA placement preferences unless there is good cause to do otherwise.

In some cases, the disposition hearing may be combined with a hearing on a petition for termination of parental rights. For non-Indian children, if the court finds that conditions in the home are not likely to improve, the court may terminate the rights of the parents and commit the child to DFYS or to a legal guardian. For Indian children, the court must find that conditions in the home continue to put the child at risk of serious physical or emotional harm. If parental rights are terminated, DFYS may consent to the child's adoption at this point.

Permanency plan

Permanency hearing: The purpose of the permanency hearing is to decide on a permanent placement for the child and to determine the future direction of the case. Among the court's options are reunification with the parents, permanent foster care, guardianship, adoption, and emancipation. Before the hearing, DFYS must prepare a proposed permanency plan, with a detailed explanation of why the placement is recommended. The court must make written findings supporting its decision. For children who are 16 or older, the court must determine what services are needed to help the child make the transition from foster care to adulthood. The court again must find that DFYS has made reasonable or active efforts to help the family.

A permanency hearing must be held: 1) twelve months after a child enters foster care (calculated from the first judicial finding of abuse or neglect or 60 days after removal, whichever is earlier); 2) thirty days after a court finding that reasonable efforts do not have to be provided or should be discontinued; or 3) upon the request of a party for good cause. The court will continue to review the permanent plan until it has been completely implemented. The court may issue orders to assure that the plan is implemented as quickly as possible.

Annual review: For children placed at home at the time of disposition, an annual review is required twelve months after disposition, to determine whether continued supervision is in the best interest of the child. DFYS must file a written report with the court twenty days prior to the annual review hearing. The GAL, CASA, parents, and tribes also may submit reports or other evidence to supplement or contradict the social worker's report. The court may hold a hearing or may continue supervision based on the written reports.

Review hearings: Any party may request a review hearing to bring disputed matters before the court, based on a showing of good cause. The court has the discretion (choice) to schedule a hearing, take evidence, and resolve the dispute. Review hearings also may be scheduled periodically to update the court on the status of the parents and child. The court may review issues such as the parents' progress, the appropriateness of the current placement, plans for reunification or other permanent placement, or the need for further services that require orders of the court.

Extension of custody or supervision: As part of the disposition order, DFYS may be given legal custody of the child for up to two years. If DFYS or the GAL believes that the child should continue in state custody beyond the time ordered, either may file a separate petition for an extension of custody. The parties may stipulate to the extension of custody or may have contested proceedings. They can petition for one-year extensions until the child's 19th birthday. If the child consents in writing, a further extension may be granted until the child's 20th birthday.

Permanency options

Reunification with parents: The state will seek to reunify the family as long as reunification is consistent with protection of the children. If the family makes sufficient progress within a reasonable time, DFYS will provide family support services until the child can return home safely. Reunification can be accomplished in gradual stages if necessary, with additional services after the child's return. If the return of the child appears to be successful, any party may file a motion to dismiss the CINA petition (before the adjudication) or a request for release of custody (after the adjudication). If granted, legal custody will be returned to the parents, DFYS supervision will be discontinued, DFYS will be released from further responsibility, and the court's jurisdiction is ended.

Voluntary relinquishment of parental rights: Some parents reach the conclusion that they are not able to meet their child's needs and want the child to have a permanent home elsewhere. These parents may tell the court that they voluntarily relinquish (give up) their parental rights. This decision is extremely difficult for any parent to make and is treated very seriously. If the court accepts the voluntary relinquishment, the child becomes available for adoption or other permanent placement. Under state law, a parent has ten days to reconsider this decision. After that, a parent may rescind the relinquishment only if the child is not yet in an adoptive placement and DFYS consents to the rescission.

The Indian Child Welfare Act provides additional protections for parents of Indian children who voluntarily relinquish parental rights. The judge must explain the terms and consequences of the relinquishment in detail in whatever language is most appropriate, certify that the explanation was understood, and take the relinquishment in writing and in open court. Signatures obtained outside the presence of the court are not valid. The parent may withdraw a relinquishment until an order for termination of parental rights or adoption is signed. A relinquishment signed by either parent before the child is ten days old is not valid.

Termination of parental rights: Termination of parental rights (TPR) is an involuntary severing of the relationship between parent and child. It is a significant measure and is taken very seriously. The termination hearing is sometimes combined with the adjudication hearing, but a separate petition must be filed clearly indicating that termination is requested. Trial on termination of parental rights must begin within 180 days after DFYS files the termination petition, and the judge must issue a decision within 90 days of the last day of trial. The Alaska Supreme Court hears appeals from this decision on an expedited (faster) schedule.

Under some circumstances, the law requires DFYS to file a petition for termination of parental rights, in order to move the case along more quickly. DFYS must file a petition if the child has been in foster care 15 of the most recent 22 months; if the child is abandoned and is under the age of six; if the

court has found that further reasonable efforts are not required; if the parents have made repeated attempts to remedy the problems without lasting change; or if the parents have made no attempt to remedy their conduct or home conditions by the time of the permanency hearing. The goal of the statute is to force these cases to completion more quickly, so that the child can be moved to a permanent placement. DFYS must file the petition unless there is a compelling reason why termination would not be in the child's best interests, or unless DFYS recognizes that it has failed to make reasonable efforts.

At the termination trial, the court will decide if the parent or parents are capable of providing a safe, permanent home for the child. DFYS presents evidence showing that in spite of efforts to assist the family, the parents have failed to remedy the situation within a reasonable time, so that a return home would place the child at substantial risk of harm. The rights of one parent can be terminated without affecting the rights of the other parent. The parents may decide to contest the termination. The GAL is present to represent the best interests of the child. Social workers, foster parents, service providers, and expert witnesses may testify. The state must prove its case by "clear and convincing evidence," a fairly high standard of proof. After hearing all the evidence, the court may terminate the rights of one or both parents and commit the child to the custody of DFYS. If known, DFYS will identify a prospective adoptive family for approval at the time of the termination proceeding. If a permanent placement is not approved at the termination hearing, DFYS must report to the court in 30 days on efforts to find a permanent home for the child. Alternately, termination may be denied and DFYS may be ordered to make further efforts to help family reunification.

There are additional burdens of proof in ICWA cases. To terminate parental rights, the state must show that continued custody by the parent is likely to cause serious physical or emotional damage to the Indian child. The state must prove the likelihood of this damage "beyond a reasonable doubt," the highest standard of legal proof, and the evidence must be supported by the testimony of an expert witness. The state also must show, by a preponderance of the evidence, that the home continues to be dangerous despite active efforts to help the family rehabilitate itself.

Adoption: Adoption is the most common option when reunification is not possible. Children become free for adoption if their parents consent, if parental rights have been terminated or relinquished, or under other limited circumstances. Through the permanency plan, the DFYS social worker will try to identify the best type of situation for the child, search for an adoptive home, and prepare the child and adoptive family for the placement. Relatives are the preferred adoptive placement if they can meet the child's needs. Foster families may adopt their foster children when a bond has been established and the family is suitable. Occasionally, private social service agencies may be used to find an adoptive placement for a child. Although children may be placed with a

prospective adoptive family before termination of parental rights, the adoptive family takes the legal risk that the adoption may not be completed.

In the case of an Indian child, social workers from the child's tribe or tribes may help find an adoptive family among relatives or in the child's village or tribal community. When an Indian child is released for adoption, ICWA expresses a preference for placement with extended family members (including non-Indian relatives), then other members of the child's tribe, then other Indian families. The child's tribe may intervene to defend the placement preference system or may establish a different order of preference. If the court finds there is good cause to deviate from the ICWA preference, the child may be placed elsewhere. If the adoption fails, a new family may be found or the biological parent or Indian custodian may petition for return of custody.

Adoption is a separate proceeding from the CINA case. The prospective adoptive parents file a petition for adoption with the superior court. DFYS or the parents must consent to the adoption if they have custody. Once granted, the child becomes the legal son or daughter of the adoptive parents. Sometimes open adoptions are arranged, which allow for ongoing contact between the child and the birth family.

Children who have been adjudicated in need of aid often have special needs requiring psychological care, extra medical care, or services relating to disabilities. Sometimes a large number of siblings are to be adopted together. DFYS can provide financial and medical subsidies to help prospective parents or guardians afford to adopt the children. DFYS and tribes also can help arrange for certain benefits to continue through the biological parents, such as social security, SSI, veteran's benefits, ANCSA benefits, and tribal benefits.

Legal guardianship: Legal guardianship is another type of permanent placement for a child, giving the guardian most of the legal powers and responsibilities of a parent. The court must find that the person seeking to be a guardian is well-qualified and that appointment is in the best interests of the child. Guardianship is a separate proceeding from the CINA proceeding, but the petition may be prepared and filed by DFYS or the guardian ad litem.

Guardianships often are used for older children who do not want to be adopted. Tribes sometimes support guardianship rather than adoption as more consistent with cultural practices and more conducive to an ongoing relationship with the parents. Unlike an adoption, a legal guardianship can be overturned if the parents become able to care for their child and if the judge determines that overturning the guardianship is in the child's best interests. Guardianships for children with special needs may be subsidized by DFYS.

Permanent foster care: On occasion, it may be difficult to find desirable permanent placement for a child. Formalized permanent foster care

may be appropriate if reunification, adoption, and legal guardianship cannot be worked out. Hard-to-place children may be placed in permanent foster care, in a residential facility, or in a group home.

Emancipation: The permanency plan may provide for services to help an older child make the transition from foster care to independent living or to adult protective services. A child of 16 or 17 may seek emancipation, a legal proceeding removing the disabilities of a minor and giving a child the duties, privileges and responsibilities of adulthood. A petition for emancipation may be filed by the child, the child's parent, guardian, or custodian, or the guardian ad litem. If a child is living apart from parents and is capable of self-support and managing financial affairs, the court may emancipate the child rather than place the child in the custody of another. The consent of the child's parent or guardian generally is required. The age restrictions for voting, smoking, and drinking remain in effect.

Settlement & mediation

Settlement: It is not always necessary to go into court to obtain a judicial order. All parties can meet to discuss the case and try to work out an agreement on how part or all of the case should be handled. These discussions often occur right before court hearings. If an agreement is reached out of court, the assistant attorney general will prepare a written stipulation that reflects the outcome of the negotiations. The stipulated agreement may be reviewed in court or may be circulated to all parties for signatures and presented to the court without a hearing. In ICWA cases, any stipulation or settlement must be signed in front of the judge by the parent or Indian custodian. If an agreement is not reached, all the parties to the case may proceed to court and present their varying concerns and recommendations. Sometimes judges conduct formal settlement conferences to help the parties reach agreement about part or all of a case.

Mediation: Sometimes professional mediators help parties reach an agreement out of court. A mediator is not a decision-maker like a judge, but instead acts as a neutral facilitator to help the parties discuss the important issues and reach agreements where possible. Mediators help parties identify what kind of information they need, identify which decisions need to be made, express their needs and interests, generate options, explore common ground, manage feelings, identify power imbalances, and keep in mind the best interests of the child. Parties to a child protection mediation may include the parent, parent's attorney, guardian, Indian custodian, GAL, CASA, social worker, assistant attorney general, tribal representative, and family members or other support system for the parents. Although foster parents are not parties, they may be allowed to participate and contribute in some way.

The court system is currently developing a mediation pilot project to assist families in CINA cases. Mediators will help parents and DFYS address

important CINA issues, including adjudication, disposition, and termination. This project will be set in Anchorage, beginning in 1999. It may be expanded later to other court locations.

Appeals

Appeal of trial court and DFYS decisions: Child in need of aid cases involve a series of factual findings and legal conclusions by the court. If a master is involved, the master will make findings and recommendations for the superior court to approve. The court's rulings on probable cause, temporary custody, visitation, adjudication, disposition, and termination of parental rights all have a significant and immediate effect on the lives of the children, parents, and foster parents.

Dissatisfied parties can ask the Alaska Supreme Court to review some decisions, like temporary custody, while the case is still going on. The appellate court has the discretion (choice) to hear these petitions or deny them without a hearing. After the case is over, parties may appeal some of the trial court's final orders, such as disposition and termination of parental rights. The appellate court will review a case to see if the trial court has followed court rules and interpreted statutes correctly. The appellate court will overturn a trial court's findings about the facts of the case only if it is firmly convinced that the trial court has made a mistake. Appeals in CINA cases are heard on an expedited (faster) basis.

DFYS also makes decisions throughout the case that affect the rights of the parents and children, particularly with respect to placement and denial of visitation. Parties may appeal these decisions to the trial court.

ICWA contains provisions for court review in addition to those provided by state law. The parent, child, or child's tribe may petition any competent court to invalidate actions that violate certain provisions of ICWA. ICWA also provides that if any petitioner in a child custody proceeding has improperly removed a child from the home, the court should decline jurisdiction over the petition and return the child home, unless to do so would put the child in immediate danger.

Other proceedings

Criminal proceedings: CINA proceedings are confidential civil matters that do not address criminal liability for parental behavior. Certain parental actions, such as sexual abuse or serious physical abuse, are criminal acts. These allegations are investigated by law enforcement authorities and referred to the municipal prosecutor or state district attorney's office. Criminal prosecutions against parents are separate from CINA proceedings and may be held in front of a different judge. For an overview of how criminal cases are handled in Alaska courts, see *A Guide to Alaska's Criminal Justice System*, published by the Alaska Judicial Council.

Delinquency proceedings: Some children in CINA proceedings also are involved in separate delinquency proceedings. When a child commits a violation of criminal law, the state may file a petition asking the court to find that the child is delinquent and therefore subject to state supervision and punishment. The new Juvenile Justice Division of the Department of Health and Social Services handles these cases. For an overview of how juvenile delinquency cases are handled by state agencies and courts, see *A Guide to Alaska's Criminal Justice System*, published by the Alaska Judicial Council. Further information is available in the *DFYS Youth Corrections 1998 Annual Report* and the *Alaska Juvenile Justice Advisory Committee 1998 Annual Report*.

Children's cases in tribal court: In many Alaska villages, tribal governments handle children's matters such as children in need of aid, custody, traditional adoptions, and guardianships. Most of these villages have written ordinances covering child in need of aid cases, while some handle them under the provisions of the Indian Child Welfare Act. In some villages the tribal council acts as a court, while others have a separate tribal court. Many tribes have their own social workers (sometimes called ICWA workers or TFYS), while others use social workers provided by their regional nonprofit corporation.

Tribal social workers may investigate a reported problem, take emergency custody of the child, provide services to the family, and bring the case to the tribal council or court. The tribal court may award temporary custody to the tribe, make a foster care placement, or approve an adoption. Dispositions often are followed with home visits and continued monitoring. Tribal social workers may report the case to DFYS and ask the state to handle the matter if they believe the state is in a better position to do so.

Tribal court jurisdiction over children's cases is an unsettled area of the law in Alaska. However, the Alaska Supreme Court recently has held that both tribes and state courts may have jurisdiction over child custody cases of tribal children. For a description of Alaska tribal courts and councils that hear legal cases, see *A Directory of Dispute Resolution in Alaska Outside Federal and State Courts*, published by the Alaska Judicial Council. This directory provides addresses and phone numbers for all 226 tribes in Alaska. DFYS maintains a list of tribal addresses, phone numbers, council presidents, and social workers, available by calling DFYS or checking the DFYS website. The Bureau of Indian Affairs maintains a directory of tribal council presidents, addresses, and phone numbers.

A Case Example

This chapter presents sample court documents designed to show how a typical case might proceed under the new statutes and rules. The people and events it describes are fictional, but the family's problems are common ones. Child protection cases, especially those involving Indian children, can be very complicated, and the facts and court documents here are simplified to show just the general outline of events. Because this example was developed by child protection practitioners in Anchorage, readers may find that practices in other regions vary somewhat. Although this case ends in relinquishment and termination of parental rights, it is important to note that in most cases children are able to return safely to their families.

The following pleadings and court orders are presented here:

- a) petition for adjudication of child in need of aid and for temporary placement;
- b) findings and order for temporary custody;
- c) stipulation and order for adjudication as child in need of aid and interim disposition;
- d) order of disposition upon a finding of child in need of aid;
- e) relinquishment of parental rights; and
- f) petition for termination of parental rights.

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT

In the Matter of:)
CHARLES ATLAS,)
)
A Child Under the Age)
of Eighteen (18) Years.)
Date of Birth: 08/02/92)
_____) Case No. _____

**EMERGENCY PETITION FOR ADJUDICATION OF CHILD IN NEED
OF AID AND FOR TEMPORARY PLACEMENT**

The State of Alaska, Department of Health and Social Services, Division of Family and Youth Services, through Ida S. Wilkens, Social Worker, whose address is 550 West Eighth Avenue, Suite 100, Anchorage, Alaska 99501, alleges that the child named above is a child in need of aid, and in support of its petition states as follows:

1. The court has jurisdiction over this proceeding under AS 47.10.010(a).
2. Charles Atlas is under eighteen years of age. His address is Intermission, 3745 Community Park Loop, Anchorage, Alaska 99508.
3. The mother of the child is Mary Adams. Her address is 1234 W Street, Anchorage, Alaska 99508.
4. The father of the child is John Atlas. His address is 1234 W Street, Anchorage, Alaska 99508.
5. The child is believed to be an Indian child within the meaning of the Indian Child Welfare Act of 1978. The tribal affiliation (through the mother) may be with the Native Village of Arnak.
6. The Department of Health and Social Services took emergency custody of the child on October 18, 1999 at 3:00 p.m., pursuant to AS 47.10.142(c). The father was notified at that time.
7. The child is a child in need of aid based on the following facts, which bring the child under AS 47.10.011(4), (6), (8), and (10):

On Friday, October 15, 1999, at 10:00 p.m., the Anchorage Police Department (APD) received a phone call from a neighbor of the parents. The neighbor reported that he could hear Mr. Atlas and Ms. Adams yelling at each other and could hear the child screaming. The neighbor said this is a common occurrence.

APD went to the home. The parents had both been drinking, and Ms. Adams was quite drunk. The child was crying, and had welts on his back with some bleeding.

Mr. Atlas told the officer that Ms. Adams had used a belt on the child. APD arrested Ms. Adams for child abuse and transported her to the 6th Avenue jail. APD determined that Mr. Atlas was not too drunk to care for the child and left the child with him. APD faxed a report of harm to DFYS at 11:00 p.m. that night.

On Monday, October 18, 1999, at 10:00 a.m. I went to Charles' school to interview him. The welts on his back were still visible and beginning to scab over. The welts also looked infected. Charles told me that both his parents use a belt to discipline him. He also said that his parents drink a lot of beer and that they fight a lot. Once he remembers his mother having to go to the hospital after Mr. Atlas punched her in the face. Charles said that he is afraid when they start drinking and that he usually goes into his bedroom and locks the door.

I also interviewed Charles' first grade teacher, Ms. Reader. Ms. Reader told me that Charles has been very distracted in school lately; that he sometimes cries quietly at his seat; that he has very few friends; that he has been violent toward other children in the classroom; and that he has not been completing his assignments.

I went to the home at noon on Monday. Mr. Atlas told me that Ms. Adams often uses a belt on the child. Mr. Atlas also admitted that both he and his wife have drinking problems and that they have physical fights when they are drunk. Mr. Atlas said he was going to the court hearing that day to bail Ms. Adams out of jail.

A records check reveals that there have been four prior reports of harm involving this family. All of the reports were for neglect due to the parents' substance abuse problems. Three of the four reports were substantiated and one was unconfirmed. A check of the Anchorage court records reveals that Mr. Atlas has two convictions for domestic violence assault against Ms. Adams and that each parent has obtained domestic violence restraining orders against the other.

8. The child must be removed from the custody of his parents to prevent imminent physical damage or harm. The best interest of the child would be promoted by his temporary placement with the Department of Health and Social Services.
9. Under the circumstances it was not reasonable for preventive services to be provided.
10. In accordance with the placement preferences of U.S.C. §1915(b), the child has been placed in the home of a relative.

WHEREFORE, the petitioner requests the following relief:

1. For the court to conduct a hearing within 48 hours following notice of the assumption of emergency custody, to determine whether probable cause exists to believe that the child is a child in need of aid, and to commit the child to the temporary custody of the Department of Health and Social Services.

2. For an adjudication and order of disposition committing the child to the custody of the Department of Health and Social Services for a period not to exceed two years.
3. For an order requiring the parents to (a) participate in the development of a case plan, and (b) participate in family support services as set forth in that case plan.
4. For an order to serve as a release of information between any persons or programs providing services to family members, the Division of Family and Youth Services, and the court.
5. For an order that the Department of Health and Social Services is authorized to consent to any minor or emergency medical treatment for the child named above.
6. For an order requiring the parents to send a completed parent's financial statement form to the Child Support Enforcement Division, 550 W. 7th Avenue, 4th Floor, Anchorage, Alaska 99501, within 30 days of the temporary custody hearing.
7. For such other and further relief as this court deems just.

Date: October 19, 1999

 Ida S. Wilkens, SW III
 Alaska Department of Health & Social Services

STATE OF ALASKA)
 THIRD JUDICIAL DISTRICT) ss.

I, Ida S. Wilkens, being under oath, state: I am the social worker who signed the above petition. The allegations therein are true upon information and belief.

 Ida S. Wilkens, SW III

SUBSCRIBED AND SWORN to before me this 19th day of October, 1999.

 NOTARY PUBLIC IN AND FOR ALASKA
 My Commission Expires: _____

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT

In the Matter of:)
CHARLES ATLAS,)
)
A Child Under the Age)
of Eighteen (18) Years.)
Date of Birth: 08/02/92)
_____)

Case No. 3AN 98-4444A CP

**FINDINGS AND ORDER FOR TEMPORARY CUSTODY
AS A CHILD IN NEED OF AID**

This matter came before the court for a temporary custody hearing on October 21, 1999. Present were: Amy Gentry, assistant attorney general; Sandra Williams, social worker; Gary Little, guardian ad litem; John Atlas, father; Paul Deter, assistant public defender, attorney for father; Mary Adams, mother; Alice Martin, attorney for mother; and Teresa Ridley, tribal representative from Village of Arnak (telephonic).

Having considered the allegations in the petition and having heard the testimony of social worker Ida B. Wilkens and APD officer Robert Martin, the court makes the following FINDINGS OF FACT:

1. Probable cause exists to believe that the child named above is a child in need of aid under AS 47.10.011(4), (6), (8), and (10);
2. Removal from the parents' care is necessary to prevent imminent physical harm or damage to the child. Continued placement in the home is contrary to the child's best interests.
3. Active efforts under the circumstances were made to prevent the need for removal of the child from the child's home.
4. The department is attempting to comply with the placement requirements of 25 U.S.C. § 1915(b).

THEREFORE, IT IS ORDERED THAT:

1. The child named above is committed to the temporary custody of the Department of Health and Social Services for a period of time not to exceed 90 days.
2. The department is authorized to place the child in a home deemed suitable, which it indicates at the present time to be licensed foster care.
3. The parents shall have supervised visitation with the child at the discretion of the department.

4. The department is authorized to consent to any minor or emergency medical treatment for the child.
5. This matter is set for a case conference on November 21, 1999, at 2:00 p.m., at the Office of Public Advocacy. A pretrial conference is scheduled for January 3, 2000, at 1:30 p.m. Adjudication is scheduled for the week of February 7, 2000.
6. The effective date of this order is October 21, 1999.

SUPERIOR COURT JUDGE

Recommended for approval:

Standing Master

Dated: _____

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT

In the Matter of:)
CHARLES ATLAS,)
)
A Child Under the Age)
of Eighteen (18) Years.)
Date of Birth: 08/02/92)
_____)

Case No. 3AN 98-4444A CP

**STIPULATION AND ORDER TO ADJUDICATION
AS CHILD IN NEED OF AID AND INTERIM DISPOSITION**

Amy Gentry, assistant attorney general; Sandra Williams, social worker; Gary Little, guardian ad litem; John Atlas, father; Paul Deter, attorney for father; Mary Adams, mother; Alice Martin, attorney for mother; and Teresa Ridley, tribal representative, agree as follows:

1. All parties have read the petition in this matter and understand its contents;
2. The parties are aware that they have a right to an attorney to represent them in this matter;
3. Each party is aware of the right to a hearing on the petition within a reasonable time before a judge, and that s/he would have at that hearing the following rights:
 - a. the right to be represented by a lawyer;
 - b. the right to remain silent on any matter which is a crime;
 - c. the right to listen to and cross-examine any witnesses who may testify;
 - d. the right to present witnesses;
 - e. the right to have petitioner prove the allegations made in the petition.Knowing the above rights, each party waives the right to a hearing.
4. Each party, without admitting any criminal act, admits that the child is a child in need of aid under AS 47.10.011(4), (6), (8), and (10), on the basis of the facts alleged in the petition filed in this case.
5. Active efforts have been made to promote reunification of the family, but it is contrary to the welfare of the child to return home at this time. Continued removal from the home is necessary to prevent imminent physical harm or damage. It is in the child's best interests to remain in the temporary custody of the Department of Health and Social Services pending disposition in this case.
6. The child is an Indian child within the meaning of the Indian Child Welfare Act.

7. The parties agree to the following case plan:
 - a. Mary Adams and John Atlas will obtain substance abuse assessments and follow treatment recommendations.
 - b. John Atlas will attend domestic violence counseling through the Male Awareness Program in Anchorage. John Atlas also will attend individual counseling.
 - c. Mary Adams will attend domestic violence counseling through the AWAIC program.
 - d. Each parent will attend parenting classes.
 - e. Each parent will maintain regular visitation with Charles.

8. At trial, DHSS will present clear and convincing evidence, including expert testimony, that Charles would be likely to suffer serious physical or emotional damage if returned to the care of either parent at this time.

9. This matter is set for disposition hearing on March 24, 2000. The department's report is due March 14, 2000, and the guardian ad litem's report is due March 20, 2000.

DATED: _____ Amy Gentry, Assistant A.G.

DATED: _____ Sandra Williams, Social Worker

DATED: _____ Mary Adams, Mother

DATED: _____ Alice Martin, Attorney for Mother

DATED: _____ John Atlas, Father

DATED: _____ Paul Deter, Attorney for Father

DATED: _____ Gary Little, Guardian ad litem

DATED: _____ Teresa Ridley, Native Village of Arnak

ORDER

IT IS HEREBY ORDERED that the stipulation of the parties is adopted as the findings and order of the court.

Dated: _____

 SUPERIOR COURT JUDGE

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT

In the Matter of:)
CHARLES ATLAS,)
)
A Child Under the Age)
of Eighteen (18) Years.)
Date of Birth: 08/02/92)
_____)

Case No. 3AN 98-4444A CP

**ORDER OF DISPOSITION UPON
A FINDING OF CHILD IN NEED OF AID**

This matter came before the court for disposition on March 24, 2000. Present were Amy Gentry, assistant attorney general; Sandra Williams, social worker; Gary Little, guardian ad litem; John Atlas, father; Paul Deter, assistant public defender, attorney for father; Mary Adams, mother; Alice Martin, attorney for mother; and Teresa Ridley, tribal representative from Village of Arnak (telephonic).

Having previously adjudged Charles Atlas a child in need of aid on February 7, 2000, having reviewed the reports of the department and the guardian ad litem, and having considered the parties' stipulation to the facts and the recommendations presented, the court finds:

1. The best interests of the minor will be promoted by entry of a disposition order as set forth below.
2. The child is an Indian child within the meaning of the Indian Child Welfare Act.
3. Active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the family and to return the child to the home, but these efforts have proved unsuccessful.
4. The evidence shows by clear and convincing evidence, including the testimony of qualified expert witnesses, that custody of the child by the parents is likely to result in serious emotional or physical damage to the child.
5. The department's treatment plan, as supplemented by the recommendations of the guardian ad litem, is in the best interest of the child.

IT IS ORDERED:

1. The child named above is committed to the custody of the Department of Health and Social Services under AS 47.10.080(c)(1) for a period of time not to exceed two years.

2. The Department of Health and Social Services is authorized to place the minor in a home deemed suitable, which it indicates at the present time to be with the child's aunt.
3. Custody ordered herein will end on March 24, 2002, unless ordered otherwise by this court.
4. The parents must complete substance abuse treatment and all other requirements of the department's case plan contained in the stipulation to disposition.
5. Each parent shall contribute \$50.00 per month toward the cost of care of the child in any out-of-home placement, under terms set forth in a separate child support order (CP 440). The parents also shall be responsible for health insurance on behalf of the child if available at reasonable cost.
6. The Department of Health and Social Services is authorized to consent to transporting the child inside or outside the State of Alaska for a temporary trip or vacation without any further application to the court.
7. This matter shall be brought before the court for a permanency hearing on December 18, 2000, at 2:30 p.m. The Department of Health and Social Services shall file a permanency report by December 8, 2000.
8. The effective date of this order is March 24, 2000.

SUPERIOR COURT JUDGE

Recommended for approval:

Standing Master

Dated: _____

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT

In the Matter of:)
CHARLES ATLAS,)
)
A Minor Under the Age)
of Eighteen (18) Years.)
Date of Birth: 08/02/92)
_____)

Case No. 3AN 98-4444A CP

RELINQUISHMENT OF PARENTAL RIGHTS
AS 25.23.180

I, Mary Adams, an adult, am the mother of Charles Atlas, a male child born on August 2, 1992. The child is an Indian child as defined by the Indian Child Welfare Act. The father's name is John Atlas. His last known address is San Jose, California.

1. This relinquishment is given in accordance with A.S. 25.23.180 and in the presence of the court. I voluntarily relinquish to the Department of Health and Social Services any and all rights and responsibilities of a parent with respect to this child, except that I will be allowed to visit this child subsequent to a decree of adoption at the discretion of the adoptive parents, based on the child's best interests.
2. I understand that by this relinquishment:
 - a. I am waiving my right to withhold my consent to an adoption of this child (A.S. 25.23.040(a)(4)); and
 - b. I am waiving the right to notice of a hearing on a petition for adoption of this child (A.S. 25.23.050(b)).
3. I further understand that under state law I have the right to withdraw this relinquishment only under the following circumstances:
 - a. within ten (10) days after it is signed (A.S. 25.23.180(b)(1)); or
 - b. at a later time only if the child is not then placed for adoption and the Department of Health and Social Services consents in writing to the withdrawal (A.S. 25.23.180(g)).
4. In order to withdraw this relinquishment, I understand I must notify the court in writing. I understand the notification will be timely if received or postmarked on or before the last day of this time period. The court accepting this relinquishment is located at 303 K Street, Courtroom 28, Anchorage, Alaska 99501, (907) 264-0420.
5. I understand that, because my child is an Indian child as defined in the Indian Child Welfare Act of 1978, I may withdraw this relinquishment at any time prior to an entry of a final order of termination, for any reason. A final order of termination, if entered, will be entered no sooner than ten days from the date on which I signed this relinquishment. After a final order

of termination is entered, I can only withdraw my relinquishment if I can prove that my relinquishment was obtained as a result of fraud or duress. My right to withdraw the relinquishment on the basis of fraud or duress will cease two years after an adoption decree is entered.

6. I understand that the child's tribe is entitled to notice of my relinquishment and the proposed termination of my parental rights. The child's tribal affiliation is with the Village of Arnak.
7. I understand that I have the right to have counsel of my own choice represent me, or to have counsel at public expense if I am indigent. I am presently represented by counsel.
8. I agree not to interfere with the custody or supervision of this child in any way and will not encourage or permit anyone else to do so. I have received a copy of this document.

DATED this 15th day of June, 2000.

Mary Adams

JUDICIAL CERTIFICATION OF VOLUNTARY CONSENT

This matter came before the court on June 15, 2000, pursuant to 25 U.S.C. Sec. 1913. The undersigned judicial officer of the Alaska Court System certifies that the terms and consequences of the relinquishment of parental rights were fully explained to Mary Adams in English, that they were fully understood by her, and that the relinquishment was freely consented to in open court after this explanation was given.

DATED: _____

SUPERIOR COURT JUDGE

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT

In the Matter of:)
CHARLES ATLAS,)
)
A Child Under the Age)
of Eighteen (18) Years.)
Date of Birth: 08/02/92)
_____)

Case No. 3AN 98-4444A CP

PETITION FOR TERMINATION OF PARENTAL RIGHTS

The State of Alaska, Department of Health and Social Services, Division of Family and Youth Services, through Ida S. Wilkins, social worker, alleges as follows:

1. Charles Atlas, who resides in licensed foster care in the State of Alaska, is under the age of 18 and is within the jurisdiction of this court.
2. The mother of the child is Mary Adams, whose address is 1234 W Street, Anchorage, Alaska 99508.
3. The father of the child is John Atlas, whose address is unknown.
4. Charles Atlas is an Indian child, as defined by the Indian Child Welfare Act. His tribal affiliation is with the Native Village of Arnak.
5. The child was adjudicated a child in need of aid by this court on February 7, 2000, and is in the custody of the Department of Health and Social Services pursuant to order of the court.
6. The child has been subjected to conduct or conditions described in AS 47.10.011(4), (6), (8), and (10), as follows:

The Division of Family and Youth Services (DFYS) assumed emergency custody of Charles Atlas on October 18, 1999, because of physical abuse by his mother, medical neglect by his father, intoxication of both parents and related neglect, and repeated exposure to domestic violence between both parents. The parents stipulated to adjudication in January 2000. They agreed to a case plan that required them to obtain substance abuse treatment, attend parenting classes, and attend domestic violence counseling.

Mr. Atlas began outpatient substance abuse treatment in February of 2000, but was discharged from the program after missing three consecutive sessions. Mr. Atlas began attending the Male Awareness Program in March of 2000, but discontinued after the first month. Mr. Atlas successfully completed parenting classes at the Anchorage Center for Families in February.

Mr. Atlas and Ms. Adams separated in April of 2000, and Mr. Atlas moved out of state. Mr. Atlas since then has made no attempt to contact DFYS. His last visit or contact with Charles was in early March of 2000. Mr. Atlas' current whereabouts are unknown.

Ms. Adams began outpatient substance abuse treatment in February of 2000 and was discharged after she relapsed. She then entered a 30-day inpatient program in March, which she successfully completed. Ms. Adams maintained her sobriety until May, when she again had a relapse. She reentered inpatient treatment, but left against medical advice after two weeks. Ms. Adams has been seen drinking on many occasions since she left treatment. Ms. Adams continued to visit with Charles on a regular basis when she was sober. Ms. Adams relinquished her parental rights on June 15, 2000.

Charles has been in foster care with his aunt Fran Carter since October 25, 1999. He has blossomed in the home, and is getting all As and Bs in school. He was in individual counseling for approximately six months, but is no longer in need of this service. He has said on numerous occasions that he would like to be adopted by Ms. Carter, although he wants to be able to see his mother. He would like to see his father, too, and is sad that he does not know how to get in touch with Mr. Atlas.

7. The mother and father have failed within a reasonable time to remedy the conduct or conditions within the home, so that returning the child to the parent would place the child at substantial risk of physical or mental injury. The mother has subjected Charles to physical abuse, intoxication, and related neglect, and has failed to maintain sobriety and to comply with the treatment conditions of the case plan. The father has subjected Charles to medical neglect, has failed to visit Charles since March 2000, and has failed to complete the treatment conditions of the case plan. Active efforts have been made to assist the parents in fulfilling the case plan, but these efforts have been unsuccessful.
8. The child is likely to suffer serious physical or emotional damage if placed with either parent.
9. The best interests of the child would be promoted by terminating the parental rights of Mary Adams and John Atlas.

WHEREFORE, petitioner requests the court to terminate the parental rights and responsibilities of Mary Adams and John Atlas, pursuant to AS 47.10.080 (c)(3), and to commit the child to the custody of the Department of Health and Social Services for the purpose of finding the child a permanent placement.

Dated: _____

ALASKA DEPARTMENT OF HEALTH
AND SOCIAL SERVICES,
Division of Family and Youth Services

By: _____
Sandra Williams, Social Worker

Charts and Statistics

This chapter presents charts and statistics designed to give a picture of how the child protection system works in Alaska and what types of cases it commonly handles. Readers should keep in mind that procedures and caseloads will vary from year to year.

Figure 1 is a flow chart showing how a typical case might proceed under the new statutes and rules. The chart is simplified to show the general outline of events in an ordinary case, although there may be regional or case-specific variations. This chart is adapted from flow charts provided by DFYS, the Office of Public Advocacy, and the Department of Law.

Figure 2 is a chart showing the roles of the participants at each stage of court proceedings in child protection cases. It covers the roles of the DFYS social worker, the assistant attorney general representing the state, the guardian ad litem and CASA, the parents and their attorneys, the child and the child's attorney, the child's tribe, and the foster parents. This chart is adapted from a chart prepared by the Family Services Training Academy, University of Alaska, Anchorage.

Figures 3-8 show preliminary caseload statistics for Alaska child protection cases arising in fiscal year 1999 (July 1998-June 1999). These statistics were provided by the Department of Health and Social Services from their centralized client management information system. Updated statistics are available on the DHSS website at <http://www.hss.state.ak.us>.

Figure 3 is a chart showing the types of child abuse and neglect reported to DFYS during FY99, giving the incidence of neglect, physical abuse, sexual abuse, mental injury, and abandonment.

Figure 4 is a map showing the percentage of cases coming from each region and from the offices with high case volumes. DFYS has since created a separate regional office for Anchorage because of the high case volume there.

Figure 5 is a chart showing reports of harm according to the race of the child: Caucasian, Alaska Native, African-American, Hispanic, or Asian/Pacific Islander.

Figure 6 is a chart showing reports of harm by the type of family involved: mother and father, single mother, single father, mother and partner, father and partner.

Figure 7 is a chart showing the outcome of each investigation: whether the report was classified as substantiated, unconfirmed, invalid, or whether the child could be located.

Figure 8 is a chart showing the type of placement for children in state custody on October 1, 1999: foster home, relative home, residential facility, medical facility, or detention facility.

Figure 1
Flow Chart for Alaska Child Protection Cases

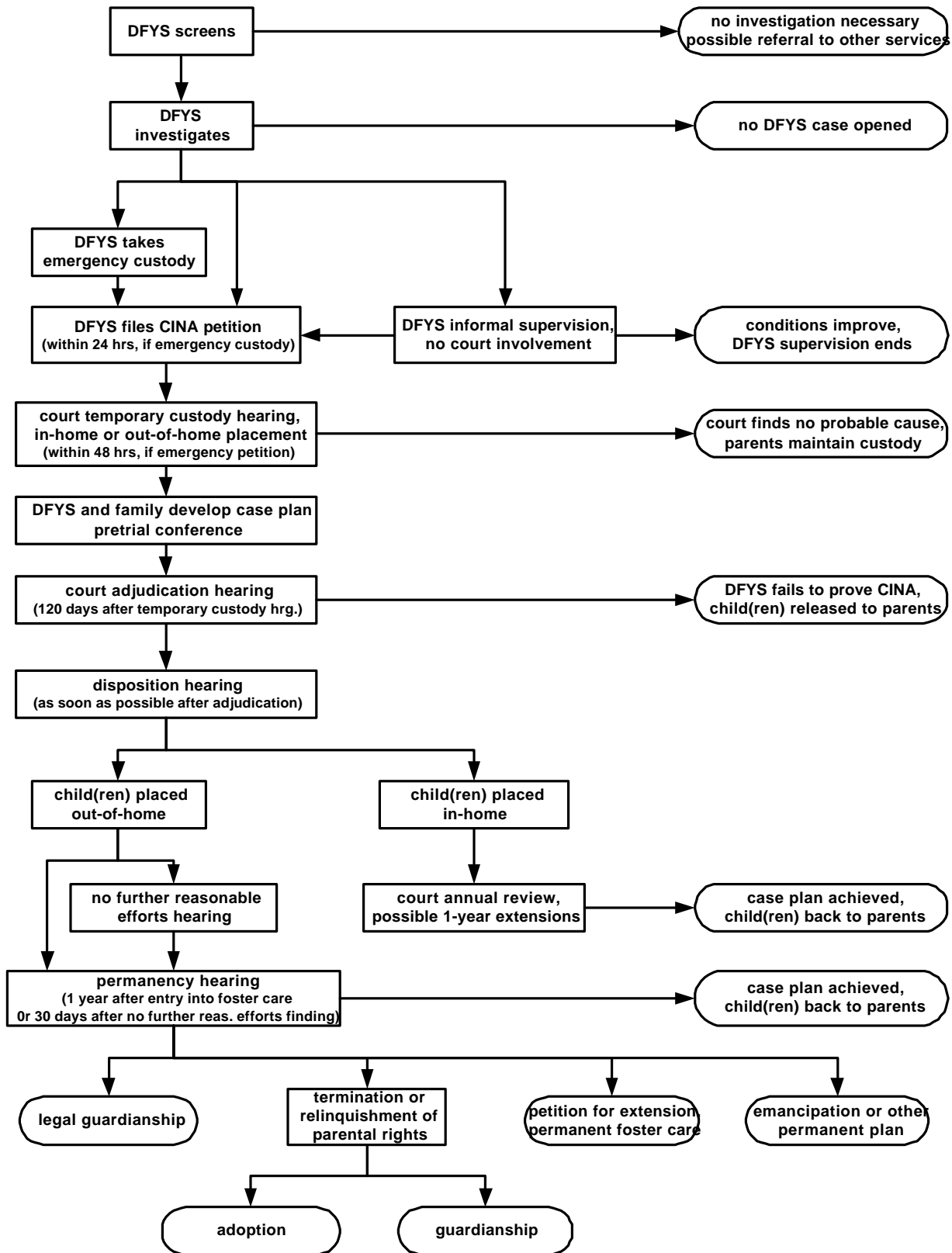


Figure 2: Roles of the Parties in Alaska Child in Need of Aid Cases

Chart adapted from Family Services Training Academy, University of Alaska Anchorage

Petition for Adjudication of a Child in Need of Aid - filed within 24 hours of emergency custody	
DFYS Worker	Prepares petition stating the facts of the case and showing that the child is in need of aid as defined by law. Makes sure the parents receive a copy of the petition. Shows reasonable or active efforts to avoid custody or removal. May prepare discovery for delivery to AG. In the case of an Indian child, obtains tribal information from parents and notifies tribe by phone prior to temporary custody hearing.
Assistant AG	Reviews petition and prepares for temporary custody hearing. May review and distribute discovery to all parties. For Indian child, obtains tribal information from DFYS worker, notifies parents and tribes of their rights under the Indian Child Welfare Act, sends notice of ICWA compliance to other parties.
GAL/CASA	Guardian ad litem (GAL) reviews petition, interviews witnesses, prepares for temporary custody hearing. Forms initial position to present to the court on behalf of the best interests of the child. May provide own witnesses and cross-examine other witnesses.
Parent's Attorney	Reviews petition, interviews witnesses, prepares for temporary custody hearing. Forms initial position to present to court on behalf of one or both of the parents.
Parent(s)	Requests a court-appointed attorney, if eligible, or finds a private attorney. Mother and father may have separate attorneys. With attorney, parent reviews petition and forms initial position to present to court. Provides DFYS with information regarding school, medical care, relatives who might serve as foster parents. In the case of an Indian child, parents provides tribal information to social worker. On this chart, the category of "parents" may include natural parents, adoptive parents, legal guardians, custodians, or Indian custodians.
Child(ren)	The guardian ad litem (GAL) is served on behalf of the child or children. If the child's expressed wishes conflict with the child's best interests, the court may appoint an attorney for the child.
Court	Reviews petition. Assigns case numbers. Schedules hearings.
Tribe	Receives notification and reviews petition. May formally intervene in the case as a party, as provided by ICWA. May act as an information resource to DFYS worker.
Child's Attorney	Attorney for child is appointed when the interest of justice is served, usually when the child's position is in opposition to the recommendations of the GAL. Reviews petition and forms initial position to present to court on behalf of the child.
Foster Parent	Must be notified of hearings.
Temporary Custody Hearing - must occur within 48 hours of filing petition	
DFYS Worker	Provides discovery. Attends hearing. May assist AG with arranging witnesses. For most hearings, DFYS worker must prepare to testify or address the court on all aspects of the case and to clearly state the position of the Department of Health and Social Services.
Assistant AG	Attends and orchestrates hearing. Represents the position of the Department. Responsible for arranging testimony to support the facts alleged in the petition.
GAL/CASA	Attends hearing. Offers the court an initial recommendation about best interests of child. Cross-examines witnesses and may provide own witnesses to support the parent's position.
Parent's Attorney	Interviews parents and witnesses. Investigates case and reviews discovery. Attends hearing and represents the parent's position to the court. Cross-examines witnesses and may provide own witnesses to support the parent's position.
Parent	Helps attorney prepare for hearing. Attends and participates in hearing.
Child	Attends, if appropriate. GAL or child's attorney may waive the child's appearance in court.

Figure 2: Roles of the Parties in Alaska Child in Need of Aid Cases

Chart adapted from Family Services Training Academy, University of Alaska Anchorage

Temporary Custody Hearing - must occur within 48 hours of filing petition	
Court	Advises parties of their rights. Makes sure all parties have been notified. Appoints counsel if needed. Hears evidence and determines if there is probable cause to believe the child is in need of aid. If court determines there is probable cause, it may award the Department up to 90 days of temporary custody or supervision. Court considers if reasonable or active efforts were made to prevent removal and makes findings to justify out-of-home placement. For an Indian child, court considers ICWA removal standards and placement preferences. Sets dates for discovery, meeting of parties, pretrial conference, and adjudication hearing. May set date for disposition hearing. If court finds no probable cause, it must dismiss the petition.
Tribe	May attend and participate in hearing. Tribe commonly is represented by a tribal social worker, often called an ICWA worker, or a social worker from a regional Native nonprofit. The ICWA worker represents the position of the tribe and argues for the tribal child's best interests. Occasionally a lawyer for the tribe will attend.
Child's Attorney	Attends hearing. Represents the position of the child to the court. Cross-examines witnesses and may provide own witnesses to support the child's position.
Foster Parent	May attend hearing. The court may limit foster parent's attendance at hearing if it is not in the best interest of the child or if significant issues of privacy are at stake.
Development of Case Plan - within 30-60 days of temporary custody hearing	
DFYS Worker	Works with parents to develop case plan, outlining services needed and goals to be met. Makes reasonable efforts to provide referral to services. In the case of an Indian child, the social worker must make active efforts to help parents follow the plan.
Assistant AG	Prepares and serves formal written notice to tribes. Reviews copy of case plan.
GAL/CASA	Provides input for the case plan and works with child and family.
Parent's Attorney	Reviews and discusses case plan with parents.
Parent	Works with DFYS worker to develop case plan, outlining services needed and goals to be met. Participates in required programs such as substance abuse treatment, parenting classes, and counseling. Works to implement the plan.
Child	Receives copy of case plan, if appropriate. May participate in services.
Court	Receives copy of case plan.
Tribe	May provide input for case plan. May provide services to parents and/or children. May assist DFYS with monitoring family situation.
Child's Attorney	Reviews copy of case plan and discusses with child.
Foster Parent	Reviews copy of case plan. Works to help support case plan.
Discovery and Pretrial Conference - parties meet 30 days before pretrial conference to prepare	
DFYS Worker	Sends file to AG for review. Attends meeting of the parties and pretrial conference. Updates court and parties on progress of the case plan. Addresses the court on all aspects of the case and explains the Department's position.
Assistant AG	Attends meeting of the parties and pretrial conference. If there are contested matters, AG is responsible for arranging testimony and providing written motions and briefs.
GAL/CASA	Attends meeting of the parties and pretrial conference. May provide own legal briefs and witnesses to support the GAL's recommendations.
Parent's Attorney	Attends meeting of the parties and pretrial conference. May provide own legal briefs and witnesses to support parent's position.

Figure 2: Roles of the Parties in Alaska Child in Need of Aid Cases

Chart adapted from Family Services Training Academy, University of Alaska Anchorage

Discovery and Pretrial Conference - parties meet 30 days before pretrial conference to prepare	
Parent	Provides information. Reviews discovery and assists parent's attorney with preparation for trial. Attends and participates in meeting of the parties and pretrial conference.
Child	Attends, if appropriate. GAL or child's attorney receives discovery on behalf of the child.
Court	Orders discovery to be provided among the parties. At pretrial conference, the court simplifies issues, decides evidentiary and legal questions, makes sure all parties have been notified. May discuss mediation or settlement.
Tribe	ICWA worker or other representative attends and participates in meeting of the parties and pretrial conference. May provide own legal briefs and witnesses to support the tribe's position.
Child's Attorney	Attends and participates in meeting of the parties and pretrial conference. May provide own legal briefs and witnesses.
Foster Parent	May provide information. May attend pretrial conference unless limited by the court. May view the court file as it relates to the child in foster care.
Adjudication Hearing - within 120 days of temporary custody hearing	
DFYS Worker	Attends hearing. Updates court and parties on all aspects of progress on the case plan. May testify or explain the Department's position.
Assistant AG	Attends and orchestrates hearing. Represents the position of the Department. If hearing is contested, AG is responsible for arranging testimony to support the facts alleged in the petition showing that the child is in need of aid.
GAL/CASA	Attends and participates in hearing to represent the best interests of the child. May provide own witnesses.
Parent's Attorney	Attends and participates in hearing to represent the parent's position. May provide own witnesses to dispute Department's petition.
Parent	Attends and participates in hearing.
Child	Attends and participates, if appropriate.
Court	Makes finding about facts alleged in petition and determines if child is in need of aid as defined by law. Considers whether DFYS has made reasonable or active efforts to prevent removal. Determines interim custody pending disposition. Sets time for disposition hearing.
Tribe	Attends and participates in hearing. Represents the position of the tribe and argues for the best interests of the tribal child. May provide own witnesses.
Child's Attorney	Attends and participates in hearing. May provide own witnesses.
Foster Parent	May attend hearing unless limited by the court.
Disposition Report and Hearing - may occur at same time as adjudication or other hearing	
DFYS Worker	Prepares predisposition report 10 days prior to disposition hearing. At hearing, social worker updates court and parties on progress of the case plan. May testify or explain the Department's position. Testifies to the Department's reasonable or active efforts to prevent removal.
Assistant AG	Attends and participates in hearing. May present witnesses.
GAL/CASA	Writes predisposition report to the court based on independent investigation and recommendations for the child's best interests. Attends and participates in hearing. May provide own witnesses.

Figure 2: Roles of the Parties in Alaska Child in Need of Aid Cases

Chart adapted from Family Services Training Academy, University of Alaska Anchorage

Disposition Report and Hearing - may occur at same time as adjudication or other hearing	
Parent's Attorney	Reviews predisposition reports and may file report on behalf of parents. Attends and participates in hearing. May provide own witnesses.
Parent	Reviews predisposition reports; helps attorney prepare for disposition hearing. Attends and participates in hearing.
Child	Reviews report and attends, if appropriate.
Court	Must require a predisposition report unless there is enough evidence to make an informed disposition without it. Decides if child should remain in custody or supervision of DFYS for a period not to exceed two years. For an Indian child, court considers ICWA standards for removal and placement preferences. Court may not enter a disposition order unless it finds that the Department has made reasonable or active efforts or finds that no further efforts are necessary. Sets date for permanency hearing (for out-of-home placements) or annual review (for in-home placements).
Tribe	Reviews reports and may file own report. Attends and participates in hearing. May provide own witnesses.
Child's Attorney	Attends and participates in hearing and may present own witnesses.
Foster Parent	May review disposition report as it relates to the child. May attend hearing unless limited by the court.
No Further Reasonable Efforts Hearing - under circumstances provided by statute; may not be applicable in ICWA cases	
DFYS Worker	Prepares evidence that DFYS has made reasonable efforts to prevent removal or enable return home, and that continuing efforts are not in the best interests of the child. Updates court and parties on progress of the case plan. Testifies and explains the Department's position.
Assistant AG	Prepares motion to request a finding that reasonable efforts are no longer necessary under the terms of the statute. Presents witnesses.
GAL/CASA	Attends and participates in hearing. May provide own witnesses.
Parent's Attorney	Attends and participates in hearing. May provide own witnesses to dispute the Department's position.
Parent	Attends and participates in hearing.
Child	Attends, if appropriate.
Court	Makes finding regarding the Department's request. Schedules a permanency hearing within 30 days if it finds that no further efforts are required.
Tribe	It is an open question whether federal law allows the Department to discontinue making active efforts to reunify the family of an Indian child. If hearing occurs, tribe participates as a party.
Child's Attorney	Attends and participates in hearing. May provide own witnesses.
Foster Parent	May attend hearing unless limited by the court.
Annual Review - for children placed in their own homes	
DFYS Worker	Prepares annual report, due 20 days before the anniversary date of the disposition order. Updates court and parties on progress of the case plan and services offered. May request 1-year extensions, supported by an annual report, if continuing supervision necessary.
Assistant AG	Reviews report. Prepares motion and order for court to sign to continue supervision. May present witnesses if hearing contested.

Figure 2: Roles of the Parties in Alaska Child in Need of Aid Cases

Chart adapted from Family Services Training Academy, University of Alaska Anchorage

Annual Review - for children placed in their own homes	
GAL/CASA	Reviews report. May submit own report. May agree or object to continuing supervision.
Parent's Attorney	Reviews report. May agree or object to continuing supervision. May submit own report. May present witnesses if hearing contested.
Parent	Reviews report. May submit own report.
Child	Reviews reports, if appropriate.
Court	Reviews report. Determines if continued supervision is in the best interests of the child and may conduct hearing if contested. Signs order continuing supervision or releases child from supervision.
Tribe	Reviews report. May agree or object to continuing supervision. May submit own report .
Child's Attorney	Reviews report. May agree or object to continuing supervision. May submit own report.
Foster Parent	Not applicable.
Permanency Staffing and Hearing - for children in out-of-home care, held within 12 months of entry into foster care, within 30 days of a no further reasonable efforts finding, or on request	
DFYS Worker	Worker must schedule a permanency plan staffing (internal review) if child has been in out of the home more than one year, if reunification is no longer the goal, or if child has been removed from home a second time. Prepares report explaining the facts supporting the proposed plan, due 10 days before hearing. At permanency hearing, explains the facts and circumstances supporting the proposed permanent plan.
Assistant AG	May be invited to staffing. Orchestrates permanency hearing and examines witnesses.
GAL/CASA	May be invited to staffing. Attends hearing and may provide own witnesses.
Parent's Attorney	May be invited to staffing. Attends hearing and may provide own witnesses.
Parent	May be invited to staffing. Attends and participates in hearing.
Child	May be invited to staffing. Attends hearing, if appropriate.
Court	Decides future direction of the case. Makes findings whether child continues to be in need of aid, whether and when child should be returned to parent or guardian, whether child should be placed for adoption or guardianship, and what other steps are necessary to achieve the planned permanent placement or transition to independent living. Court must decide if DFYS has made the necessary reasonable or active efforts, whether parents have made adequate progress, and whether out-of-home placement continues to be appropriate and in the best interests of the child.
Tribe	Must be invited to staffing. Attends hearing and may provide own witnesses.
Child's Attorney	Attends hearing and may provide own witnesses.
Foster Parent	Reviews permanency plan. May attend hearing unless limited by the court. Works to support permanent plan.
Termination of Parental Rights Hearing - within 6 months of filing petition to terminate parental rights	
DFYS Worker	Assembles facts showing that termination is appropriate under state statute. Attends hearing. Updates court and parties on the progress of the case plan. Testifies and explains the Department's position. If parental rights are terminated, worker must prepare a report within 30 days on efforts to find a permanent placement. Worker must prepare quarterly report until permanent placement achieved.
Assistant AG	Drafts and serves petition. Prepares social worker and witnesses, orchestrates hearing.

Figure 2: Roles of the Parties in Alaska Child in Need of Aid Cases

Chart adapted from Family Services Training Academy, University of Alaska Anchorage

Termination of Parental Rights Hearing - within 6 months of filing petition to terminate parental rights	
GAL/CASA	Attends and participates in hearing. May provide own witnesses.
Parent's Attorney	Attends and participates in hearing. May provide own witnesses to contest the Department's position.
Parent	Reviews reports. Assists attorney in preparing for trial. Attends and participates in hearing.
Child	Attends hearing, if appropriate.
Court	Determines if parental rights should be terminated under standards set by law. Determines if reasonable or active efforts have been made. Determines if state has met its burden of proof under ICWA. Must issue final order within 90 days following the last day of trial.
Tribe	Attends and participates in hearing. May provide own witnesses.
Child's Attorney	Attends and participates in hearing. May provide own witnesses.
Foster Parent	May attend hearing unless limited by the court.
Voluntary Relinquishment - may occur at any time	
DFYS Worker	Asks if parent is willing to give up parental rights. Attends the signing of the relinquishment. If parental rights are relinquished, worker must prepare a report within 30 days on efforts to find a permanent placement. Worker must prepare quarterly report until permanent placement achieved.
Assistant AG	May prepare relinquishment for DFYS worker.
GAL/CASA	May prepare the relinquishment.
Parent's Attorney	May prepare the relinquishment.
Parent	Decides whether to sign relinquishment. May request certain conditions such as visitation.
Child	Not applicable.
Court	Accepts relinquishment and issues order terminating parental rights. For ICWA cases, relinquishment must occur at a court hearing and meet other ICWA standards.
Tribe	May prepare relinquishment. May help child maintain tribal benefits through natural parent.
Child's Attorney	Not applicable.
Foster Parent	Not applicable.
Extension of Custody - petition due 30 days prior to the end of custody	
DFYS Worker	May prepare petition, or review petition prepared by the GAL, requesting extension of state custody or supervision for up to one year. Files a detailed report supporting the petition. At hearing, DFYS worker may testify or explain the Department's position regarding the extension.
Assistant AG	Reviews petition. Attends hearing and examines witnesses.
GAL/CASA	May prepare and file petition, or review petition prepared by DFYS. May file own report and present own witnesses.
Parent's Attorney	Reviews petition. May agree or object to extension of custody. May submit own report and present own witnesses.
Parent	Reviews petition. Attends and participates in hearing.
Child	Reviews petition and attends hearing, if appropriate.

Figure 2: Roles of the Parties in Alaska Child in Need of Aid Cases

Chart adapted from Family Services Training Academy, University of Alaska Anchorage

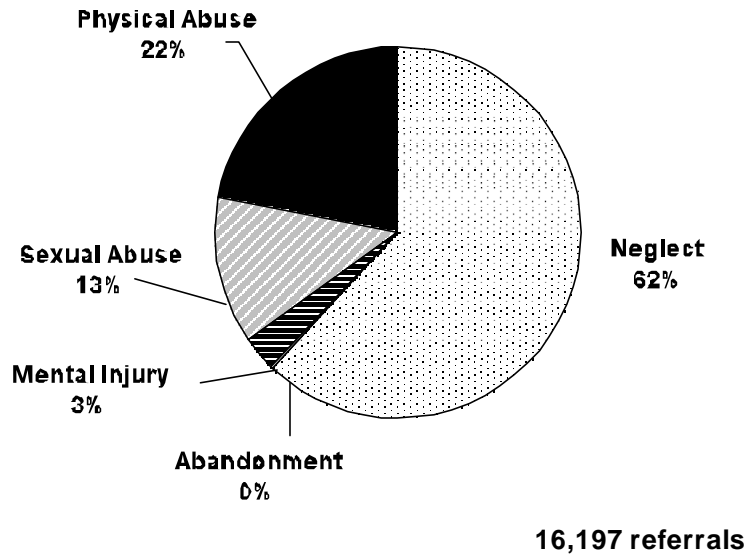
Extension of Custody - petition due 30 days prior to the end of custody	
Court	Reviews petition. Makes determination if child continues to be CINA and if the extension of custody is in the best interest of the child.
Tribe	Reviews petition. May submit own report and present own witnesses.
Child's Attorney	Reviews petition. May submit own report and present own witnesses.
Foster Parent	May review the court record as it relates to the child. May attend hearing unless limited by the court.
Dismissal - may be requested at any time, by any party	
DFYS Worker	Prepares report or affidavit requesting dismissal of custody when the facts of the case no longer warrant court intervention.
Assistant AG	Prepares stipulation for the parties or motion and order for the court to sign.
GAL/CASA	May request dismissal. May agree or object to release of custody. May attend hearing, if any.
Parent's Attorney	May request dismissal. May attend hearing.
Parent	Reviews reports. May request dismissal. May attend hearing.
Child	Reviews reports and attends hearing if appropriate.
Court	Decides if child continues to be in need of aid and if continuing state custody is appropriate.
Tribe	May request dismissal. May attend hearing.
Child's Attorney	May request dismissal. May attend hearing.
Foster Parent	May attend hearing unless limited by the court.
Review Hearing - may be requested at any time by any party for good cause. May cover denial of visitation, transfer of placement, motion to return child home, and other matters	
DFYS Worker	Attends hearing. Updates court and parties on progress of the case plan. May testify or explain the Department's position.
Assistant AG	Coordinates testimony and represents Department's position.
GAL/CASA	Attends and participates in hearing. May present own witnesses and reports.
Parent's Attorney	Attends and participates in hearing. May present own witnesses and reports.
Parent	Reviews reports. Participates in hearing. May move to ask the court to review the case at any time, and to invalidate previous orders if certain ICWA provisions have been violated.
Child	Attends hearing, if appropriate.
Court	Makes determination regarding issues presented to the court. If certain ICWA provisions have been violated, court may take appropriate action, including an order returning the child home.
Tribe	Attends and participates in hearing. May petition the court to invalidate previous orders if certain ICWA provisions have been violated.
Child's Attorney	Attends and participates in hearing. May present own witnesses and reports.
Foster Parent	May attend hearing unless limited by the court.

Figure 2: Roles of the Parties in Alaska Child in Need of Aid Cases

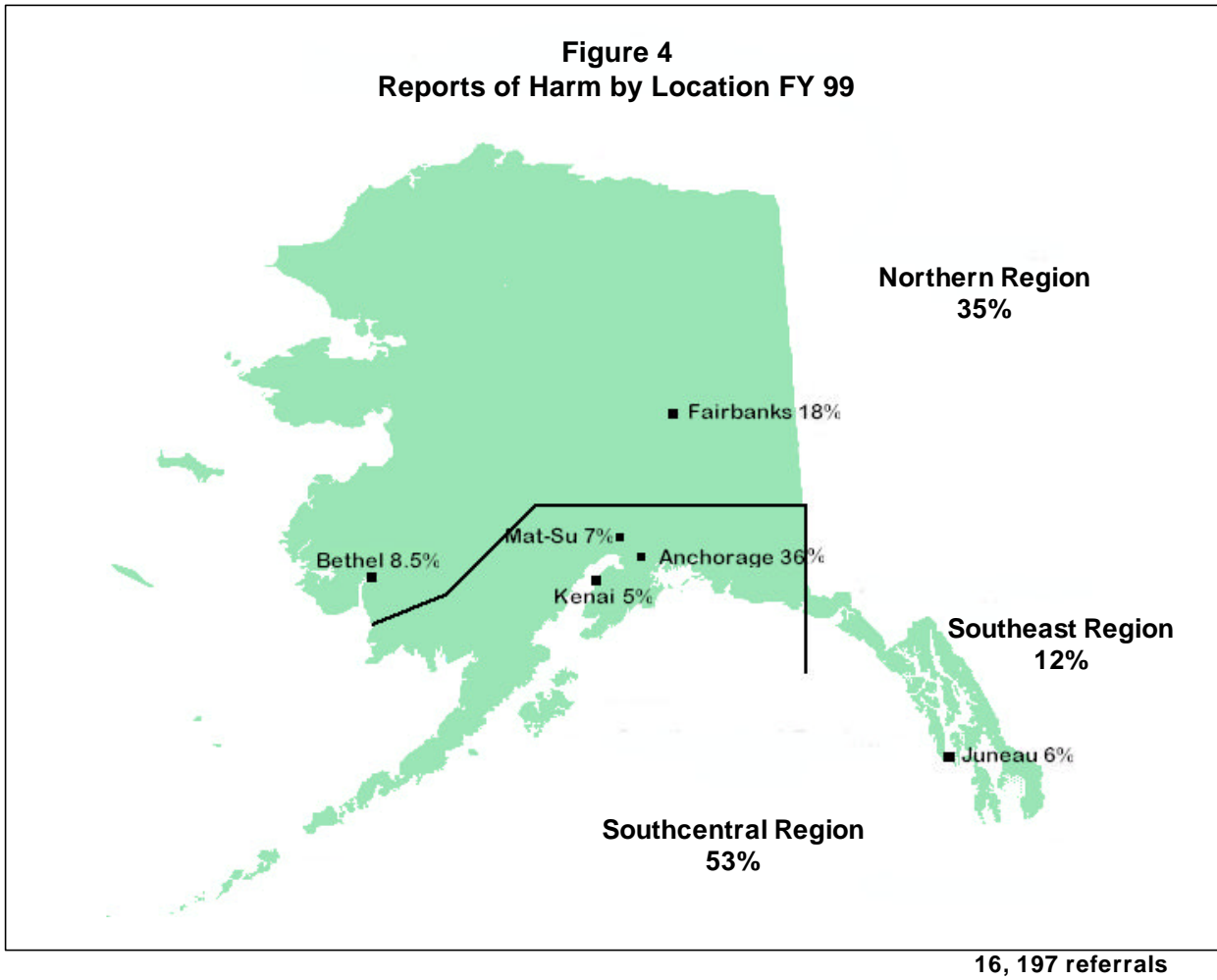
Chart adapted from Family Services Training Academy, University of Alaska Anchorage

Appeal - a final order like dismissal, disposition, or termination may be appealed to the Alaska Supreme Court	
DFYS Worker	Generally does not assist or participate.
Assistant AG	Files brief. Argues position to Supreme Court.
GAL/CASA	Files brief. Argues position to Supreme Court.
Parent's Attorney	Files brief. Argues position to Supreme Court.
Parent	May attend oral argument.
Child	May attend if appropriate.
Supreme Court	Hears argument. Writes opinion. Must issue a decision within 90 days of oral argument.
Tribe	May file brief. Argues position to Supreme Court.
Child's Attorney	May file brief. Argues position to Supreme Court.
Foster Parent	May attend oral argument.

Figure 3
Type of Harm Reported FY 99

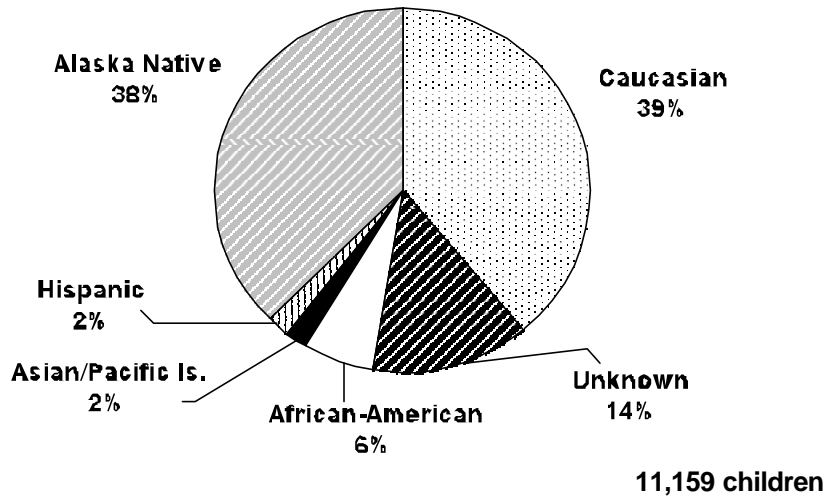


DFYS child protective services received 16,197 reports of harm during fiscal year 1999 (July 1, 1998 to June 30, 1999). Different callers and different types of harm generally are counted separately, so some children are reported more than once. More than half the reports suggested child neglect, 22% suggested physical abuse, and 13% suggested sexual abuse. The total number of reports has doubled in the last ten years.



In FY 99, DFYS had 31 local offices administered in three regions. A little over half the cases were reported in the southcentral region, two-thirds of those in Anchorage. The northern region received 35% of the reports, while the southeast region received 12%. The northern region received a relatively high number of reports compared to the number of children in the region. In 1999, DFYS reorganized to create a separate region for Anchorage cases.

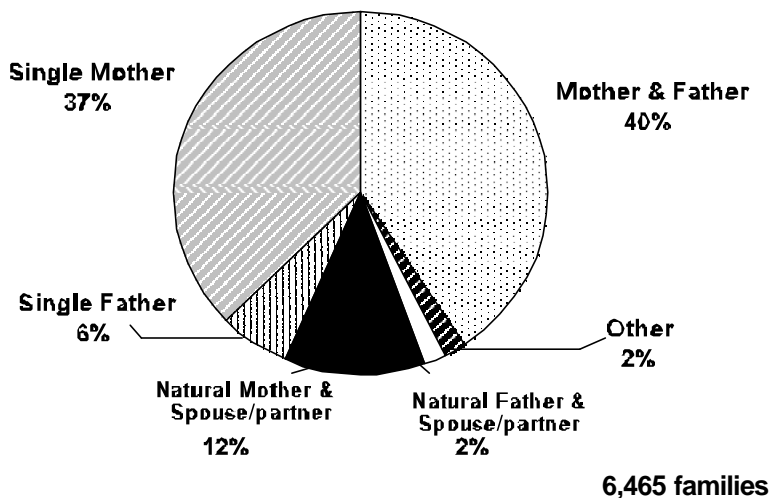
Figure 5
Reports of Harm by Child's Race FY 99



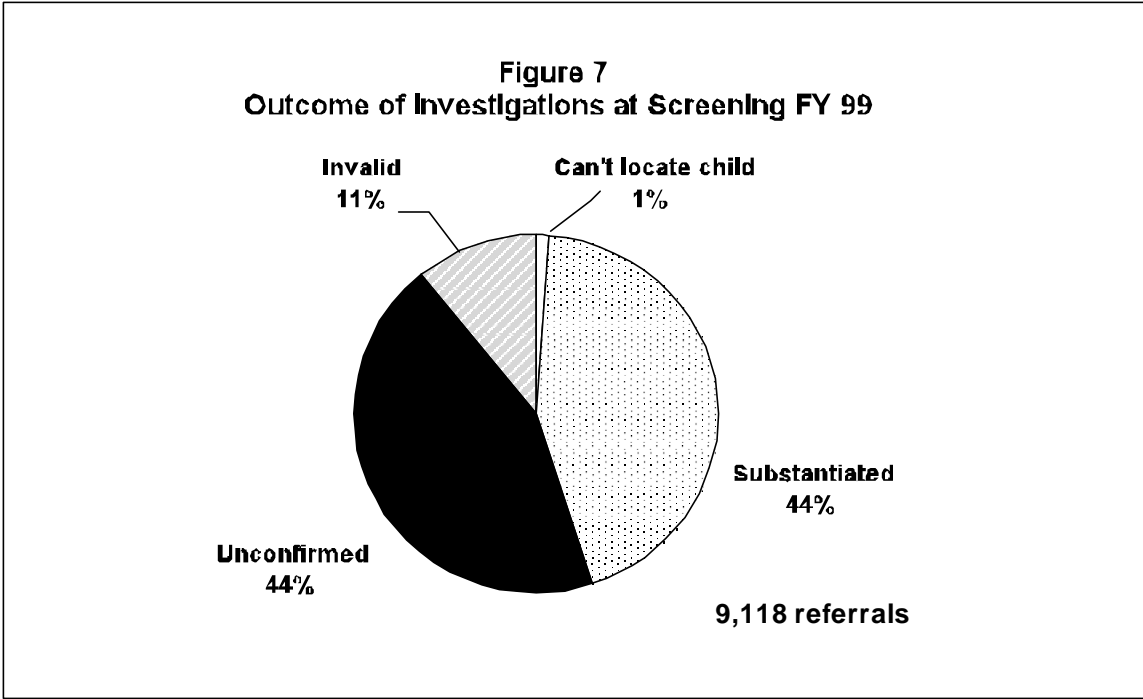
This chart shows the racial distribution of children who were the subjects of a report of harm. Each child has been counted only once regardless of the number or nature of the reports received. Alaska Native children are involved in 38% of the reports of harm, while they represent 22% of the youth population.

With respect to age, reports of harm are fairly evenly distributed by age for younger children, tapering off after age 14. Roughly half the reports of harm are for boys and half are for girls.

Figure 6
Reports of Harm by Family Type FY 99

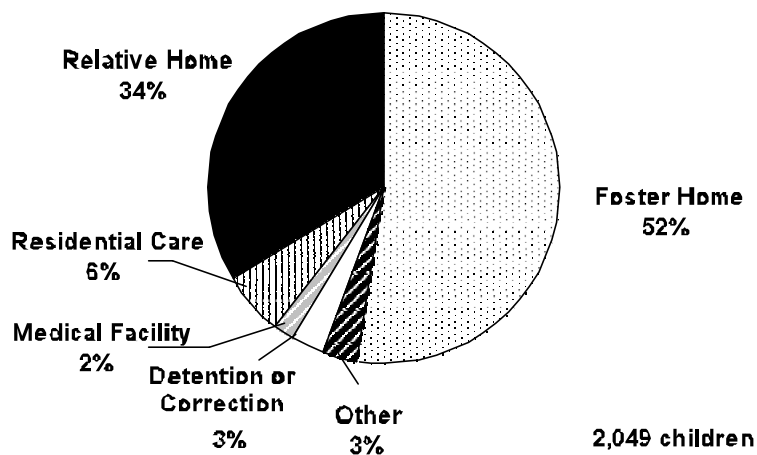


This chart illustrates the composition of families who had at least one child reported to DFYS. Each family was counted only once regardless of the number of reports or the number of children. Of the 6,465 families, 40% had both a mother and father living in the home, 37% had a single mother, 6% had a single father, and 14% had stepparents or new partners.



When a report of harm is received, DFYS screens it to assess the immediate risk to the child and to determine if there is enough evidence to pursue the matter. The social worker will investigate and make one of four findings. For a substantiated report, the facts must clearly indicate that the child suffered abuse or neglect. A report is found unconfirmed if the social worker strongly suspects that abuse or neglect has occurred, but the evidence is unclear. Invalid reports are those where the social worker finds that the child did not suffer abuse or neglect as defined by state law. In a few cases, the social worker simply cannot locate the family or child. Overall, reports are substantiated 44% of the time and unconfirmed 44% of the time. Eleven percent of the reports are closed as invalid.

Figure 8
Type of Placement for Children
In State Custody on October 1, 1999



DFYS keeps monthly counts showing where children in state custody are placed. On October 1, 1999, there were 2,049 children in state custody. About half the children were placed in foster homes, one-third were placed with relatives (some of whom were also licensed as foster parents), and the rest were in various residential, medical, or detention facilities.

LEGAL TERMS

A

ABANDONMENT: the conscious disregard of parental responsibilities by failure to provide reasonable support, maintain regular contact, or provide normal supervision, considering the child's age. Also includes failure to participate in a reunification plan or child protection proceedings.

ABUSE: maltreatment of a child that causes or threatens to cause physical or mental harm to a child.

ACTIVE EFFORTS: under the Indian Child Welfare Act, the state must make active efforts to provide remedial services and rehabilitation programs designed to prevent breakup of the Indian family. The social worker must actively help the parent through the steps of the plan and help the parent develop the skills necessary to retain custody.

ADJUDICATION: judge's decision about whether the facts proven make the child a child in need of aid, as defined by statute. The adjudication hearing is one trial phase of a CINA proceeding.

ADOPTION: a legal proceeding in which an adult becomes the legal parent of a child who is not the adult's biological offspring.

AFFIDAVIT: sworn written statement signed in the presence of a notary public.

ALLEGATION: a statement made by a person in the case who claims it can be proved as a fact.

ANNUAL REVIEW: for a child placed in a parent's custody, a court review is held one year after disposition. This review determines whether the child continues to be a child in need of aid, what progress is being made, and whether continued supervision is necessary.

APPEAL: the legal procedure by which a party asks a higher court to review the decision of a lower court.

APPELLATE COURT: a court that reviews decisions made by a lower court on questions of law and procedure. The appellate court can affirm, reverse, or remand the original decision for more proceedings. CINA appeals are heard by the Alaska Supreme Court.

ATTORNEY: a graduate of a law school, admitted to practice before the courts of a jurisdiction. The attorney advises, represents, and acts for the client.

ATTORNEY GENERAL: the chief lawyer for the State of Alaska, Department of Law. Assistant attorneys general and district attorneys represent DFYS, a state agency, in CINA proceedings.

B

BEYOND A REASONABLE DOUBT: proof so conclusive as to remove all reasonable doubts; the highest burden of proof required.

BRIEF: a written statement of the facts and legal arguments governing an issue, presented from the perspective of one party.

BURDEN OF PROOF: the responsibility for proving a fact or facts in dispute in a case. For instance, at adjudication DFYS has the burden of proving the allegations in its CINA petition.

C

CALENDAR: a daily list of cases to appear before the court. Some courts call this list a docket. At "calendar call," the court sets trial dates for a large number of cases.

CASA: court-appointed special advocate, a volunteer trained to investigate and report on child abuse and neglect matters, focusing on the best interests of the child. CASAs work with a small number of families and children, under the supervision of a guardian ad litem.

CHILD: a unmarried person who is under age 18 when a CINA action is filed.

CHILD ABUSE OR NEGLECT: physical injury or neglect, mental injury, sexual abuse or exploitation, or maltreatment of a child that harms or threatens the child's health or welfare.

CHILD IN NEED OF AID (CINA): the legal term for a child who comes within the jurisdiction of state court because of child abuse or neglect, as defined in the state statutes. Pronounced "China."

CHILD PROTECTION SYSTEM: the combination of social workers, courts and legal agencies that act collectively to prevent child abuse and neglect, intervene in families to protect children from harm, and find new homes if necessary.

CITIZEN'S FOSTER CARE REVIEW BOARD: in 1990, the state legislature created a statewide panel of citizens to help make recommendations about CINA policy, as well as local panels to review individual cases. A local panel operated in Anchorage for a while, but the legislature ended funding for all panels in 1999.

CLEAR AND CONVINCING EVIDENCE: a standard of proof requiring a firm belief in the facts shown; a standard higher than preponderance of the evidence and lower than beyond a reasonable doubt.

CONTINUANCE: the postponement of legal proceedings until some future time or date.

COURT: a room where trials and other judicial hearings take place. A judge presides over the court. Sometimes "the court" refers to the judge rather than to the room or building.

COURT CLERK: an individual who keeps a record of court proceedings each day and records future dates for the judge's calendar. This person takes charge of all case files, tapes, and paperwork each day.

CUSTODY: legal authority to determine the care and supervision of a child, including the ability to decide where a child will be physically placed.

CUSTODIAN: an adult to whom a parent has transferred temporary care, custody, and control of a child.

D

DELINQUENT: a child found guilty of violating the criminal law.

DEPOSITION: sworn testimony taken from a witness outside of court, usually transcribed or taped.

DFYS: the Division of Family and Youth Services, part of the Alaska Department of Health and Social Services. DFYS handles child protection cases and foster care licensing.

DISCOVERY: pretrial procedures to reveal the evidence that will be offered by the parties.

DISPOSITION: court hearing at which the judge decides who should have custody and control of a child in need of aid, under what conditions, and whether the state has made reasonable and/or active efforts to help the family.

DOMESTIC VIOLENCE: physical abuse, sexual abuse, threats, or stalking, done by a present or former spouse, sexual partner, household member, or relative.

DUE PROCESS OF LAW: the constitutional and common law principles that protect fairness and justice in the courts.

E

EMANCIPATION: a legal proceeding where a child of 16 or older receives the duties, privileges, and responsibilities of adulthood.

EMERGENCY CUSTODY: physical custody taken to protect a child from abandonment, immediate physical harm, or sexual abuse. Emergency custody lasts only until a court hearing can be held.

EVIDENCE: information offered to the court to prove something. Evidence often takes the form of physical objects, documents, witness testimony, and expert testimony.

EXCLUSION OF WITNESSES: an order requiring witnesses to stay out of the courtroom until they are called to testify.

EXHIBITS: documents, charts, weapons, or other objects used in a court case.

EX PARTE: a judicial proceeding or action that involves only one of the parties in a case.

EXPERT TESTIMONY: evidence given in relation to some scientific, technical, or professional matter by a qualified person. Experts are asked to testify on matters that are beyond the experience of ordinary citizens.

F

FELONY: in Alaska, any criminal offense that carries a possible sentence of more than one year in jail.

FILING: submitting a document to court to become part of the official record.

FY 1999: fiscal year 1999; in Alaska, from July 1, 1998, to June 30, 1999. State agencies receive their budgets and often issue reports to cover a fiscal year.

FOSTER CARE: care provided by a person or household for children not living with their own families, licensed, paid for, and supervised by the state. Some tribes also handle foster care.

G

GUARDIAN: a natural person who is legally appointed to have most of the rights and responsibilities of a parent for a child or a legally incapacitated person.

GUARDIAN AD LITEM: a person appointed by the court to represent the best interests of a child in a legal matter. Under some circumstances, the child also may have a lawyer to represent the child's wishes.

H

HEARING: a court proceeding presided over by a judge, master, or magistrate.

HEARSAY: evidence not based upon a witness's personal knowledge, but on information the

witness got from someone else. Hearsay evidence often is admissible in CINA cases.

I

INDIAN: any member of an Indian tribe, or any Alaska Native who is a member of an ANCSA regional corporation.

INDIAN CHILD: an unmarried person under the age of 18 who is a member of an Indian tribe, or is eligible for membership and is the biological child of a member.

INDIAN CHILD WELFARE ACT (ICWA): a federal law governing how states handle child protection cases, guardianships, and adoptions of Indian children.

INDIAN CUSTODIAN: an Indian person with legal custody of a child under tribal law or custom, or under state law, or to whom temporary custody has been given by the parent.

INDIAN TRIBE: any Indian tribe or other organized Indian community recognized as eligible for services by the U.S. Department of Interior, including recognized Alaska Native villages.

INDIGENT: a person who cannot afford an attorney. The State of Alaska has set income and asset limitations to identify which litigants are entitled to a court-appointed lawyer at public expense.

INTAKE: a process occurring early in children's matters, when a DFYS intake worker gathers information and decides how to proceed with the case.

INTERVENTION: the process for allowing additional parties to participate in a case; for instance, an Indian child's tribe has a right to intervene in a CINA case. Intervention also can describe the decision to become involved with a family to protect a child.

J

JUDGE: a public official appointed to hear and decide cases in a court of law.

JURISDICTION: the legal authority of a court over the parties or the subject matter of the dispute. Also, the legal authority of a government for the people of the area.

M

MAGISTRATE: a judicial officer with less authority than a judge. Magistrates may hold emergency CINA and delinquency hearings, and may be appointed to act as masters in children's, domestic relations, and probate matters.

MASTER: an attorney appointed in children's cases and other proceedings to hear the facts of a case and make recommendations to the judge.

MEDIATION: a process where a trained neutral person assists all of the parties to identify issues, discuss their interests, and reach an agreement about some or all of the issues.

MENTAL INJURY: serious injury evidenced by an observable and substantial impairment in the child's ability to function in a developmentally appropriate manner.

N

NEGLECT: failure to provide necessary food, care, clothing, shelter, or medical attention for a child, by a person responsible for the child's welfare, although having or offered the means to do so.

NOTICE: official notification of a court proceeding.

NUNC PRO TUNC: for court orders, made effective as of an earlier date.

O

OBJECTION: opposition to a question asked or evidence offered by opposing counsel.

OPINION OF THE COURT: a written or oral statement by a judge explaining the reasons for a decision.

OVERRULED: the term used when the judge denies a point raised by one of the parties.

P

PARENT: a biological or adoptive parent whose parental rights have not been terminated. For Indian children, parent means any biological parent of an Indian child or any Indian person who has lawfully adopted an Indian child, including adoptions under tribal laws or custom.

PARTY: a person legally entitled to participate in a case. In a CINA case, parties include the child, parents, guardian, guardian ad litem, DFYS, intervening tribe, and intervening Indian custodian.

PATERNITY: identification of who a child's biological father is.

PERMANENCY HEARING: a hearing at which the best plan for permanent placement of the child and the future direction of the case are decided.

PERSON RESPONSIBLE FOR A CHILD'S WELFARE: the child's parent, guardian, custodian, Indian custodian, foster parent, person responsible at the time of the abuse or neglect, or person responsible at a residential care institution.

PETITION: document setting out allegations and requesting court action. Also, a type of appeal to the supreme court from temporary orders of the superior court.

PHYSICAL INJURY: a physical pain or an impairment of physical condition.

PHYSICAL HARM: when a negligent act or omission by a parent, guardian or custodian causes substantial risk of injury to a child, or when assault, attempted murder, kidnapping, sexual abuse of a minor, or endangering the welfare of a child occurs as a result of parental conduct or conditions created by the parent.

PLACEMENT: where a child is physically placed by the adult or agency having legal custody of the child.

PREPONDERANCE OF THE EVIDENCE: proof that would lead a judge to find that the existence of the contested fact is more probable than not.

PRO SE: a Latin expression for a party who acts as his or her own attorney. Also known as "pro per."

PROBABLE CAUSE: the legal standard of proof that asks whether the state has presented reasonably trustworthy information that would justify a prudent person's belief that a child has been abused or neglected as defined by Alaska law. Probable cause is the standard that justifies the early stages of the state's intervention in the case. It requires only a fair probability or substantial chance that the child is in need of aid.

PUBLIC ADVOCATE: the Office of Public Advocacy (OPA). This office provides guardians ad litem and CASAs in CINA cases, contracts with private GALs, and contracts with private attorneys to represent indigent parents.

PUBLIC DEFENDER: an attorney working for the Public Defender Agency who represents indigent parents or children.

Q

QUALIFIED EXPERT WITNESS: In ICWA cases, a person with expertise in a specialty, or a person with extensive knowledge about cultural standards and childrearing practices within the child's tribe or ethnic group.

QUESTION OF FACT: a fact about which the parties disagree. The judge in a CINA case decides whether the parties have proven the fact.

QUESTION OF LAW: a legal question about which the parties disagree. The judge decides the proper interpretation of the law in the case.

R

REASONABLE EFFORTS: DFYS efforts to provide family support services designed to make the home safer and reunify the family. Reasonable efforts must be made consistently, but for a limited period of time.

RELINQUISHMENT: voluntarily giving up parental rights to a child.

S

SEXUAL ABUSE OF A MINOR: sexual conduct by an adult with a child.

SEXUAL EXPLOITATION: allowing or encouraging a child to participate in child pornography or prostitution, by a person responsible for the child's welfare.

STATUTE: a law passed by the state legislature or U.S. Congress.

STIPULATION: an agreement by the parties in a case about facts or procedures. It does not bind any party unless that party agrees and the judge approves it.

SUBPOENA: a court order requiring a witness to appear and give testimony before the judge.

SUMMONS: a written order from a judge telling a person to appear at a certain time and place to answer a petition.

T

TEMPORARY CUSTODY: legal custody of a child from the first court hearing until disposition or other court order.

TERMINATION OF PARENTAL RIGHTS: a legal proceeding that involuntarily ends a parent's rights to a child and frees the child for adoption without the parent's consent.

TESTIMONY: evidence given by a witness who took an oath to tell the truth.

TRIAL: a formal judicial proceeding through which the court decides a civil or criminal dispute.

TRIBE: any Indian tribe recognized by the U.S. Department of Interior, including recognized Alaska Native villages.

V

VENUE: the city or court where a court case can be brought, depending on where the events occurred. Venue can be changed if more convenient for the parties and witnesses.

W

WAIVER: the intentional and voluntary giving up of a known right. A person can waive a right by agreeing to give it up, or the judge can infer the waiver from circumstances.

WITNESS: person called upon to testify in court to what the person has learned or observed.

Resources

State agencies

Alaska Commission on Judicial Conduct

907-272-1033 Anchorage

1-800-478-1033 statewide

<http://www.ajc.state.ak.us/CONDUCT.htm>

--individual complaints about judges

Alaska Court System

907-274-8611 Anchorage

<http://www.alaska.net/~akctlib/homepage.htm>

--courts in Anchorage, Barrow, Bethel, Dillingham, Fairbanks, Homer, Juneau, Kenai, Ketchikan, Kodiak, Kotzebue, Nome, Palmer, Sitka, and Valdez; magistrates in other locations

--pamphlets on court-appointed attorneys, appeals, guardians ad litem, and legal resources

Alaska Judicial Council

907-279-2526 Anchorage

<http://www.ajc.state.ak.us>

--evaluation of judicial applicants and judges

--research and assessments on family law, mediation, and other legal topics

--website includes guide to the criminal justice system and pamphlet on victim's rights (also available in Spanish), a comprehensive evaluation of the Alaska child in need of aid process, a guide to selecting a mediator, and a directory of tribal courts; links to other state agencies and legal resources

Alaska Ombudsman

907-269-5290 Anchorage

1-800-478-2624 southcentral & northern Alaska

1-800-478-3257 interior

1-800-478-4970 southeast

<http://www.local.akpages/LEGISLATURE/ombud/home.htm>

--complaints about state agencies and employees

Alaska State Troopers

907-269-5641 Anchorage for information (not an emergency number)

<http://www.dps.state.ak.us>

--detachments in Anchorage, Fairbanks, Ketchikan, Palmer and Soldotna; posts across the state

--emergency assistance, crime investigation and reporting

Child Support Enforcement Division

907-269-6800 Anchorage

1-800-478-3300 statewide

--child support payment calculations and enforcement

Department of Health and Social Services

907-465-3030 Juneau

<http://www.hss.state.ak.us>

--mental health services, public health services, alcohol and drug abuse treatment and referral, suicide prevention, child and youth programs, health aide programs in communities across the state

Department of Law

907-465-3600 Juneau

907-269-5100 Anchorage

907-451-2811 Fairbanks

<http://www.law.state.ak.us>

--offices in Anchorage, Barrow, Bethel, Dillingham, Fairbanks, Juneau, Kenai, Ketchikan, Kodiak, Kotzebue, Nome, Palmer, and Sitka

--attorneys for DFYS, representing the interest of the state in child protection

--pamphlets on sexual assault, domestic violence, safety planning, and victims' rights

Division of Family and Youth Services

1-800-478-4444 child abuse hotline

907-465-3235 southeast region

907-269-3900 southcentral region

907-451-2650 northern region

907-269-3900 Anchorage region

<http://www.hss.state.ak.us/dfys>

--social workers for abused, neglected, and runaway children

--investigation, referral, case management, foster care licensing, internal review

--offices in Anchorage, Aniak, Barrow, Bethel, Cordova, Craig, Delta Junction, Dillingham, Fairbanks, Fort Yukon, Galena, Haines, Homer, Juneau, Kenai, Ketchikan, King Salmon, Kodiak, Kotzebue, Mat-Su, McGrath, Nome, Petersburg, St. Mary's, St. Paul, Seward, Sitka, Valdez, Unalaska, and Wrangell

--website includes mission and policy statements, case statistics, child protective services manual, report describing child protection cases and state services, contact information for tribes and ICWA workers

Office of Public Advocacy

907-269-3500 Anchorage

907-465-4173 Juneau

907-451-5933 Fairbanks

<http://www.state/local/akpages/ADMIN/OPA/homeopa.htm>

--court-appointed guardians ad litem, CASAs, attorneys for parents

Public Defender Agency

907-264-4400 Anchorage

<http://www.state/local/akpages/ADMIN/PD/homepd.htm>

--court-appointed attorneys for parents

--offices in Anchorage, Barrow, Bethel, Dillingham, Fairbanks, Juneau, Kenai, Ketchikan, Kodiak, Kotzebue, Nome, Palmer, and Sitka

University of Alaska, Anchorage, Family Services Training Academy
907-786-6720 Anchorage
--training for social workers

Alaska law

--online access to the Alaska constitution, statutes, and regulations can be found on the Alaska Legislature's home page at <http://www.legis.state.ak.us>
--the Alaska Court System has a home page with Alaska court rules, legal information, and court opinions at <http://www.alaska.net/~akctlib/homepage.htm>
--the State of Alaska maintains a guide to Alaska library resources at <http://SLED.alaska.edu/index.html>
--a private Alaska-based service maintains case law and links at <http://www.touchngo.com>
--law libraries are available in all superior and district court locations

Community organizations and Alaska Native organizations

AK Info: Alaska Information Database
907-263-2008 Anchorage
<http://www.akinfor.org>
--listing of many health and social services providers statewide

Alaska Bar Association
907-272-7469 Anchorage
907-272-0352 Lawyer Referral Service
1-800-770-9999 statewide
<http://www.alaskabar.org>
--lawyer referral service for referral to private counsel
--complaints about lawyers and fees

Alaska Child Abuse Response and Evaluation
907-561-8301 Anchorage
--coordination of child sexual abuse interview and medical examination, case management to link family to services, serving southcentral Alaska

Alaska Foster Parent Training Center
1-800-478-7307 statewide
907-479-7307 Fairbanks
907-279-1799 Anchorage
907-790-4642 Juneau
--training materials & information for foster parents & others
--self-study training packets and catalog, videos, foster parent handbook
--information on CINA laws, working with social workers, ICWA cases, reporting requirements, and nature and effect of child abuse
--services available to foster parents, birth parents, adoptive parents, residential care providers, tribes

Alaska Legal Services
907-276-6282 statewide
--offices in Anchorage, Barrow, Bethel, Dillingham, Fairbanks, Juneau, Ketchikan, Nome
--restraining orders, child custody, divorce & dissolution for low-income clients

Alaska Native Children's Center

907-729-1010 Anchorage

--a program of Alaska Native Medical Center
--child abuse assistance, family counseling, testing, referral

Alaska Native Health Board

907-562-6006 Anchorage

--coordinating body for Native health providers

Alaska Network on Domestic Violence & Sexual Assault

907-586-3650 Juneau

--referral to local women's programs, domestic violence and sexual assault programs, shelters
--Women's Legal Rights Handbook discusses hiring and working with an attorney, parental rights, adoption, employment, public assistance, immigration, and other issues; handbook available by calling the Network
--pamphlets on sexual assault, domestic violence, safety planning, and victims' rights are available at domestic violence/sexual assault programs

Alaska Tribal CASAs

907-258-5811 Anchorage

--association of Alaska Native CASAs working in state and tribal courts

Alaska Women's Resource Center

907-276-0528 Anchorage

--referral to women's programs, domestic violence and sexual assault programs, shelters

Aleutian Pribilof Islands Association

907-276-2700 Anchorage

--child protection services, family services, health and counseling services

Anchorage Center for Families

907-276-4994

1-888-701-0328 (toll free)

--information, referral services, advocacy

Arctic Slope Native Association

907-852-2762 Barrow

1-800-478-3033

child protection services, counseling, substance abuse treatment, anger management

Army Family Advocacy Program

907-333-5112 Fort Richardson

--prevention, identification and treatment of families at-risk or involved in child or spousal maltreatment

--parenting classes, support groups, workshops, parent-aide services, library for Army families

Association of Village Council Presidents

907-543-3521 Bethel

--child protection services, family services, ICWA training, tribal court development

Bristol Bay Area Health Corporation

907-842-5201 Dillingham
--health and counseling services, treatment programs

Bristol Bay Native Association
907-842-5257 Dillingham
--child protection services, family services, domestic violence program

Catholic Community Services
907-789-0572 Juneau
--adoption services, social services, family support

Catholic Social Services
907-276-5590 Anchorage
--adoption services, social services, family support

Chugachmiut
907-562-4155 Anchorage
--integrated social services, mental health systems, alcohol treatment, and community development
--village child protection teams providing early intervention and monitoring
--coordination with DFYS on ICWA training, development of protocols for child abuse response
--domestic violence program

Cook Inlet Tribal Council
907-265-5900 Anchorage
--health services

Copper River Native Association
907-822-5241 Copper Center
--children's protective services, family services, foster care licensing in cooperation with state

Council of Athabaskan Tribal Governments
907-662-2587 Fort Yukon
--substance abuse prevention and health programs for Yukon Flats villages

East Aleutians Tribes, Inc.
907-277-1440 Anchorage
--health programs for East Aleutian villages

Eklutna Child Advocacy Center
907-278-5437 Anchorage
--children's services, family services, recruitment of Native foster homes, development of children's court
--Eklutna ICWA workers will represent other tribes when child members are involved in state court CINA proceedings in Anchorage

Fairbanks Counseling and Adoptive Services
907-456-4729
--adoption services

Fairbanks Community Mental Health Center
907-452-1575

--mental health services

Fairbanks Native Association

907-452-1648

--children's programs, mental health, alcohol treatment, day care

Fairbanks Resource Agency

907-456-2334

--services for developmentally disabled parents and children

Kawerak, Inc.

907-443-5231

--child protection services, family services, ordinance development, adoption and foster care assistance

Ketchikan Indian Corporation

907-225-5158

--child protective services, family services

Kodiak Area Native Association

907-486-9800

--social services

Maniilaq Association

907-442-3311

--child protection services, family services, elders' councils, mentoring, family support & preservation program

Metlakatla Indian Community

907-886- 4441

child protection services, tribal court, federally recognized jurisdiction over child protection cases

Native Village of Barrow

907-852-4411

child protection services, tribal court, federally recognized jurisdiction over child protection cases

Native Village of Chevak

907-858-7252

child protection services, tribal court, federally recognized jurisdiction over child protection cases

Nome Community Center

907-443-3880

1-800-478-5888

--help for parents and children, child abuse prevention, referral and information

Nome Eskimo Community

907-443-2246

--child protection services, family services

North Slope Borough Health & Social Services

1-907-852-0260 Barrow

--family counseling, crisis intervention, support services, alcohol treatment, mental health, children's home

Norton Sound Health Corporation

907-443-3311 Nome

--health and counseling services, treatment programs

Orutsaramiut Native Council

907-543-2608 Bethel

--child protection services, family services, developing children's court

--ONC ICWA workers will represent other tribes when child members are involved in CINA proceedings in Bethel

Resource Center for Parents and Children

907-456-2866 Fairbanks

--help for parents and children, child abuse prevention, referral and information

Sitka Tribe of Alaska

907-747-3207

--children's protective services, family services, tribal court, foster home recruitment

--domestic violence and child victimization program

Southcentral Foundation (Cook Inlet Region)

907-265-4900

--children's services, family services, behavioral health and treatment programs, domestic violence program

Southeast Alaska Regional Health Corporation

907-463-4052

--health and counseling services, treatment programs

Tanana Chiefs Conference

907-452-8251

1-800-478-6822

--child protection services, family services, ICWA training, tribal court development, foster care funding, domestic violence program

--handbooks on tribal courts, children's cases, adoptions, tribal ordinances, domestic violence

Tlingit Haida Central Council

907-586-1432

--children's services, family services

Yukon-Kuskokwim Health Corporation
907-543-6020 Bethel
1-800-478-3321
--health and counseling services, treatment programs

Tribal addresses and phone numbers

--many Alaska tribes have active social services departments providing a range of child protection services, family services, substance abuse treatment, referrals, and foster care placement. Many tribes have tribal courts or councils that handle child protection cases. Addresses and phone numbers for individual tribes or their social services agencies are available from several sources:

- the Division of Family and Youth Services keeps a list of tribal presidents, social services departments, ICWA workers, and which DFYS office handles cases from that village. This information is available by calling DFYS or by visiting the DFYS website at <http://www.hss.state.ak.us/dfys>. This information is included in the ICWA section and is updated at least annually.
- the Bureau of Indian Affairs website lists recognized tribes, tribal presidents, addresses, and phone numbers. This list is found at <http://doi.gov/bia/tribes>.
- the Alaska Judicial Council has published a 1999 directory of dispute resolution organizations, providing a short description of those tribal courts, tribal councils, and nonprofits that handle children's cases. This directory is available from the Alaska Judicial Council and on the AJC website at <http://www.ajc.state.ak.us>.
- many tribal councils have a children's code or a tribal court code that covers children's cases. There currently is no central collection of these codes in the state. Contact the tribe directly for the current code.

National organizations

ABA Center on Children and the Law
1-202-662-1740 Washington D.C.
<http://www.abanet.org/child/home.html>
--study and advocacy on family and children's policy issues

Child Welfare League of America
1-202-638-2952 Washington D.C.
<http://www.cwla.org>
--state-by-state child welfare statistics, publications for parents and child welfare professionals

National Center for Juvenile and Family Court Judges
1-702-327-5300 Reno, Nevada
<http://www.ncjfcj.unr.edu>
--resources for children's court judges
--national list of organizations concerned with child abuse and neglect, child custody, divorce, foster care, substance abuse, family and children's services, support groups

National Indian Child Welfare Association
1-503-222-4044 Portland
<http://www.nicwa.org>
--Indian child welfare information, public policy, community development

National Clearinghouse on Child Abuse & Neglect Information

1-800-394-3366

1-703-385-7565 Washington, D.C.

<http://calib.com/nccanch.index.htm>

--information, publications, organizations relating to child abuse and neglect

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