ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672
5652 HOUSE HEALTH, EDUCATION & SOCIAL SERVICES

(Job Opportunities and Basic Skills) program for AFDC recipients.

* Sec. 2. AS 47.25.310 is amended to read:

Sec. 47.25.310. ELIGIBILITY FOR ASSISTANCE. The department shall grant assistance to the family of each dependent child and each pregnant woman it determines is eligible for assistance under AS 47.25.310 - 47.25.420. The department shall apply sanctions authorized under AS 47.25.421(d) for failure to comply with the requirements of the JOBS program established under AS 47.25.421 - 47.25.429, or the requirements of an Indian or Native program approved under 42 U.S.C. 682(i) [, OR TO EMPLOYERS UNDER A WORK INCENTIVE PROGRAM ESTABLISHED BY AS 23.15.650, AND BY 42 U.S.C. 633(e)(1) (SOCIAL SECURITY ACT, WIN PROGRAM), AS AMENDED].

* Sec. 3. AS 47.25.310 is amended by adding new subsections to read:

(b) When determining whether a person has sufficient work history for purposes of qualifying for benefits as the unemployed principal wage earner in a family that includes a dependent child, the department shall consider as quarters of qualifying work up to four calendar quarters in the proper time period in which the person (1) attended on a full-time basis an elementary school, a secondary school, or a federally approved vocational or technical training course that is designed to prepare the person for gainful employment; or (2) participated in an education or training program established under the Job Training Partnership Act (P.L. 97-300). A person may substitute quarters of education or training for quarters of work only once in the person's lifetime to establish eligibility under AS 47.25.310 - 47.25.420.

(c) The department may not require as a condition of eligibility under AS 47.25.310 - 47.25.420 that a minor parent or a minor who is pregnant reside in a particular type of household or institutional

setting.

* Sec. 4. AS 47.25.320 is amended by adding new subsections to read:

(e) Until changed under (f) of this section, the department shall determine the amount of assistance payable for a second adult in a household where a child is dependent because of the unemployment of the principal wage earner according to the same standards it uses to determine the amount of assistance that is payable for a second adult in a household where a child is dependent because of parental mental or physical incapacity.

(f) In compliance with federal requirements, the department shall periodically study the standards it uses for determining the amounts of assistance that will be granted under this section. Based on the studies, the department shall adjust the standards and amounts within the maximums established by law. If statutory changes are needed to make the adjustments otherwise required under this section, the department shall report to the legislature its recommendations for changes in law necessary to authorize the adjustments.

* Sec. 5. AS 47.25.410(3) is amended to read:

(3) "dependent child" means a needy child under 18 years of age, or under the age of 19 and a full-time student in a secondary school or an equivalent level of vocational or technical training that the child is reasonably expected to complete before reaching age 19, who is deprived of parental support or care by reason of the death, continued absence from the home, unemployment, or physical or mental incapacity of a parent, and who is living with a father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, nephew, or niece in a place of residence maintained by one or more of these relatives as the child's home or their own home, and includes a child

(A) who would come within the meaning of dependent child except for removal of the child after April 30, 1961, from the home of a relative as a result of a judicial determination to the effect that continuation therein would be contrary to the welfare of the child,

(B) for whose placement the department is responsible,

(C) who has been placed in a foster family home as a result of such determination, and

(D) who received aid under this plan in and for the month in which court proceedings leading to such determination were initiated;

* Sec. 6. AS 47.25 is amended by adding new sections to read:

ARTICLE 3A. JOB OPPORTUNITY AND BASIC SKILLS PROGRAM (JOBS).

Sec. 47.25.421. AUTHORIZATION TO IMPLEMENT PROGRAM. (a) In order to provide persons receiving aid under AS 47.25.310 - 47.25.420 (Aid to Families with Dependent Children) with incentives, opportunities, and necessary services for employment, training, and participation in the nation's economy and to relieve their dependence on the federal and state social services and welfare system, the department shall administer a program of education, training, and job placement entitled JOBS, Job Opportunity and Basic Skills.

(b) In implementing the program, the department shall

(1) execute on behalf of the state the agreements or contracts with appropriate state and federal agencies that are necessary to enable the state to meet the requirements of federal law;

(2) receive and expend money made available for the program by the state or federal government;

(3) supervise the expenditure of the money and the conduct of the program, ensuring that it complies with state and federal law;

(4) make reports and supply certifications that are required in relation to the program; and

(5) otherwise cooperate with the federal government and its departments and agencies in the administration of the program.

(c) The department may carry out the program directly or through arrangements or under contracts with administrative entities involved with the Job Training Partnership Act (P.L. 97-300), as amended, with state and local education agencies, and with other public agencies or private organizations, including community-based organizations acceptable under federal regulations. The department shall contract for services under the program when feasible and in the state's interest. The department may adopt regulations to govern the operation of the program components that are operated under contract by other entities. Whether the department operates the program directly or through contract, the department shall coordinate the program with programs operated in the state under the Job Training Partnership Act and with other relevant employment, training, and education programs available in the state, including programs operated by Indian or Native organizations that receive grants from the federal government to operate their programs under 42 U.S.C. 682(i). The department shall consult with the Department of Education, the Department of Labor, and the Department of Community and Regional Affairs to promote coordination of the planning and delivery of services under the program with programs operated by those departments.

(d) The department shall adopt regulations setting criteria for determining whether a person is in noncompliance with participation requirements of the program for the purpose of imposing sanctions under the program for nonparticipation and for noncompliance with a participation agreement. The department shall consult with Native

organizations that are operating similar programs when developing regulations under this subsection.

Sec. 47.25.423. PROGRAM PARTICIPANTS. (a) The department shall require participation in the program by persons required to participate under federal law. Except as provided in AS 47.25.425(f), the department may not require participation in the program by the parent or other relative of a child under three years of age if the person personally provides care for the child.

(b) The department may allow applicants for and recipients of aid under AS 47.25.310 - 47.25.420 to volunteer to participate in the program whether or not they are required to participate under (a) of this section.

(c) The department shall give priority in the program to the following target populations in the order listed, with further priority in each group being given to persons in families where the dependent child's custodial parent is under the age of 20:

(1) custodial parents under the age of 24 who have not completed high school or its equivalent and are not enrolled in a course of study;

(2) custodial parents under the age of 24 with little or no paid work experience in the 12 months preceding their application under the program;

(3) members of families in which the youngest child who is receiving assistance under AS 47.25.310 - 47.25.420 is within two years of becoming ineligible for assistance because of age;

(4) members of families who received aid to families with dependent children in at least 36 of the 60 months preceding application under the program established in AS 47.25.421 - 47.25.429.

Sec. 47.25.425. PROGRAM COMPONENTS. (a) The department shall

offer to a participant in the program the following types of services and activities to the extent indicated as appropriate by the initial assessment under AS 47.25.427(a):

(1) educational activities, including high school or equivalent education combined with job training as needed, basic and remedial education to achieve a basic literacy level, education for individuals with limited English proficiency, and career training through post-secondary education;

(2) job skills training;

(3) job readiness activities to help prepare participants for work;

(4) job development and job placement;

(5) job search requirements;

(6) on-the-job training;

(7) a work supplementation program;

(8) work experience; and

(9) other educational, training, or work-related services and activities.

(b) The program components required under (a) of this section must conform to the requirements of federal law so as to ensure the maximum federal financial participation in the costs of the program.

(c) In consultation with the Department of Community and Regional Affairs and the Department of Labor, the department shall initiate development of innovative public work programs designed to meet federal requirements related to work activity for a person in a family that receives assistance on behalf of a dependent child who is dependent because of the unemployment of the primary wage earner in a two-parent family.

(d) To further the purposes of the work supplementation program,

the department may use the options allowed under federal law to

(1) adjust the levels of the standards of need set by the department under AS 47.25.320(a) to the extent the department considers it to be appropriate; the need standards in effect in areas of the state in which the work supplementation program is in operation may differ from the need standards in effect in other areas; the need standards for categories of recipients may vary among the categories to the extent appropriate on the basis of ability to participate in the work supplementation program;

(2) adjust retrospective budgeting requirements and the amount of earned income to be disregarded to the extent allowed by federal law so as to encourage participation in the work supplementation program and to decrease disincentives for retaining employment; and

(3) supplement jobs in the public and private sectors, as appropriate.

(e) In implementing the program component under which a person may pursue career training through post-secondary education, the department shall

(1) give priority to participation by persons without a post-secondary degree, persons who were in a post-secondary program of training or education but whose participation was interrupted because of family circumstances, persons who have graduated from high school or hold an equivalent diploma, and persons who need retraining because of changes in the labor market;

(2) establish guidelines under which

(A) other sources of educational assistance must be exhausted before program money is used;

(B) the education must be consistent with the person's

employment goal, and the employment goal must be consistent with the job market of the state;

(C) the education must take place in the state unless a particular type of training is not available in the state; if out-of-state education is approved, the department shall contract for supportive services for the participant at the location of the education, when feasible;

(D) the maximum training cost for books, tuition, and associated education fees is $2,000 a year;

(3) require full-time student status after the initial six months for each participant and maintenance of a "C" average in graded programs or "passing" grades in pass/fail programs.

(f) In the case of a person who is a custodial parent under the age of 25, has not successfully completed a high school education or its equivalent, and is receiving aid under AS 47.25.310 - 47.25.420, the department shall require the person to participate in educational activities directed toward the attainment of a high school diploma or its equivalent on a full-time basis. This requirement is applicable to a person who might otherwise be exempt from full-time participation under regulations of the department because the person personally provides care for a child under the age of six. Notwithstanding AS 47.25.423, this requirement is also applicable to a person who might otherwise be exempt from participation because the person personally provides care for a child under the age of three.

Sec. 47.25.427. PROGRAM OPERATION. (a) The department shall ensure that the program is operated under a case management system. Under an agreement described in (d) of this section, the department or the appropriate contractor shall assign each participant to the various components of the program based on an assessment of the

participant's

(1) family circumstances;

(2) needs for education, child care, and other supportive services;

(3) skills, prior work experience, and employability.

(b) If the assessment required under (a) of this section indicates that more than one available program component would be appropriate for a participant, the department shall assign the participant to the available appropriate component chosen by the participant.

(c) To the extent allowed by federal law, the component options available to persons who are members of families where two parents are living in the household must be the same as those available to persons who are members of families where only one parent is living in the household.

(d) The department shall require the participant, or the adult caretaker in the family of which the participant is a member, to negotiate and enter into an agreement with the department that specifies the participant's obligations under the program, the duration of participation in the program, and the activities to be conducted and the services to be provided in the course of the participation. The agreement must also include a description of what sanctions may be imposed on the participant for noncompliance with the agreement and how noncompliance will be determined. The department shall provide the participant with whatever assistance is needed to review and understand the agreement. The participant and an authorized representative of the department shall sign the agreement.

(e) Notwithstanding AS 47.25.423(a), the department may not require a person to participate in the program unless the department agrees to pay for

(1) costs of child care determined by the department to be necessary for the person's program participation; and

(2) other work-related expenses or expenses related to participation in a training program under AS 47.25.421 - 47.25.429, as determined by the department; this paragraph does not require the department to pay for the cost of tuition and books required for an educational activity approved under the program.

(f) The department shall operate the program in a way that complements, where possible, similar programs operated by Indian or Native organizations under 42 U.S.C. 682(i). The department shall avoid duplicating Indian or Native program efforts and, where appropriate, may negotiate agreements under which a client who is eligible under either (1) an Indian or Native program or (2) the state program, may be served by the other program without a change in funding source for the services provided.

Sec. 47.25.429. DEFINITIONS. In AS 47.25.421 - 47.25.429

(1) "department" means the Department of Health and Social Services;

(2) "participant" means a person who participates in the program;

(3) "program" means the JOBS program established under AS 47.25.421 - 47.25.429.

* Sec. 7. AS 23.15.650 is repealed.

* Sec. 8. DEMONSTRATION PROJECT. The Department of Health and Social Services shall seek authority and funding from the federal Secretary of Health and Human Services to conduct a demonstration project under sec. 503 of the Family Support Act of 1988 designed to evaluate the comparative cost and employment effects of an alternative definition of unemployment that could be used for purposes of granting aid to families with dependent

children who are dependent because of the unemployment of the family's principal wage earner. In the demonstration program, if approved by the federal government, the department shall explore the option of eliminating from the definition any requirement relating to the number of hours worked in a given time period.

* Sec. 9. The Department of Health and Social Services shall explore the possibility of developing an innovative program of education and training designed for two-parent families who receive aid to families with dependent childrer The department shall consider including in the program elements related to participation by both parents, participation for more than 16 hours a week, combining work experience and education components to satisfy work history requirements, and the use of alternative work experience programs. If the department determines that statutory changes are needed to implement this type of innovative program, the department shall recommend the necessary changes to the legislature if they involve state law and seek federal approval if they involve federal law.

* Sec. 10. This Act takes effect October 1, 1990.

from the definition any requirement relating to the number of hours worked in a given time period.

* Sec. 9. The Department of Health and Social Services shall explore the possibility of developing an innovative program of education and training designed for two-parent families who receive aid to families with dependent children. The department shall consider including in the program elements related to participation by both parents, participation for more than 16 hours a week, combining work experience and education components to satisfy work history requirements, and the use of alternative work experience programs. If the department determines that statutory changes are needed to implement this type of innovative program, the department shall recommend the necessary changes to the legislature if they involve state law and seek federal approval if they involve federal law.

* Sec. 10. This Act takes effect October 1, 1990.

HB

175

HOUSE COMMITTEE REPORT

(7)

Date Referred: February 15, 1989 FURTHER REFERRALS: JUDICIARY

Date of Committee Action: 4/6/89

The HEALTH, EDUCATION, & SOCIAL SERVICES Committee considered: HB 175

HOUSE BILL NO. 175 [PROGRAMS & PROCEEDINGS RELATING TO MINORS]
"An Act relating to programs and proceedings concerning children; and emphasizing that the best interests of the child must be considered under certain programs and during certain proceedings involving children."

RECOMMENDS:

[ ] replacing with CSHB 175 (HESS) [ ] the same title [X] a new title

[ ] the attached amendment(s)

[X] do pass

[ ] do not pass

[ ] no recommendation

[ ] individual recommendations

[ ] additional referral to the _____ Committee

ADOPTS: House HESS letter of intent

ATTACHES NEW FISCAL NOTE(s):

[ ] fiscal impact

[ ] zero fiscal note

[X] zero with analysis

APPROVES PREVIOUS:

[ ] fiscal note(s) published:

_____

[ ] zero fiscal notes(s) published:

_____

SIGNING DO PASS:

J. Ellis

Peter Jones

Mark Boyer

George Hobbs

M. L. Duncan

SIGNING OTHER THAN DO PASS:
(Do Not Pass, No Recommendation, Amend)

Witness No Vote

Chris Dunn No Vote

J. Ellis

Chairman's signature

HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES

P.O. BOX V, JUNEAU 99811
(907) 465-3759

HOUSE HESS COMMITTEE
LETTER OF INTENT TO HB 175

It is the intent of the House HESS Committee to endorse the Division of Family and Youth Services' "Permanency for Dependent Children" project as a means of expediting the planning and placement of children in state custody in permanent and safe homes. The Division is requested to report to the Committee on the progress of this project by October 15, 1989.

Rep. Johnny Ellis
Chairman

Date of Adoption

6-0717E
Lauterbach
3/17/89

Original sponsor: Health, Education and Social Services Committee

IN THE HOUSE

BY THE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

CS FOR HOUSE BILL NO. 175 (HESS)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the construction of laws pertaining to adoption; modifying policy statements relating to removal of a child from the custody of the child's parents and from the child's home; requiring the court to make certain findings and conclusions of law related to children who are delinquent or in need of aid; modifying the definition of 'child abuse or neglect'; and emphasizing that the best interests of the child must be considered under certain programs and during certain proceedings involving children."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 25.23 is amended by adding a new section to read:

Sec. 25.23.005. CONSTRUCTION OF CHAPTER; RIGHTS OF PERSONS AFFECTED BY ADOPTION. This chapter shall be liberally construed to the end that the best interests of adopted children are promoted. Due regard shall be given to the rights of all persons affected by a child's adoption.

* Sec. 2. AS 47.05.060 is amended to read:

Sec. 47.05.060. PURPOSE AND POLICY RELATING TO CHILDREN. The purpose of this title as it relates to children is to secure for each child the care and guidance, preferably in the child's own home, that will serve the moral, emotional, mental, and physical welfare of the child and the best interests of the community; to preserve and strengthen the child's family ties unless those ties are not in the

best interests of the child [WHENEVER POSSIBLE], removing the child from the custody of the parents only as a last resort when the child's welfare or safety or the protection of the public cannot be adequately safeguarded without removal; and, when the child is removed from the family, to secure for the child adequate custody and care and adequate planning for permanent placement of the child.

* Sec. 3. AS 47.10.080(f) is amended to read:

(f) A minor found to be delinquent or a child in need of aid is a ward of the state while committed to the department or the department has the power to supervise the minor's actions. The court shall review an order made under (b) or (c)(1) or (2) of this section annually, and may review the order more frequently to determine if continued placement, probation, or supervision, as it is being provided, is in the best interest of the minor and the public. The department, the minor, the minor's parents, guardian, or custodian are entitled, when good cause is shown, to a review on application. If the application is granted, the court shall afford these parties and their counsel reasonable notice in advance of the review and hold a hearing where these parties and their counsel shall be afforded an opportunity to be heard. The minor shall be afforded the opportunity to be present at the review. At a hearing held under this subsection, the court shall make specific findings of fact and conclusions of law, which shall be contained in an order relating to the hearing, regarding whether or not

(1) the child is able to be returned to the child's home; and

(2) the department has made reasonable efforts to avoid removal of the child or to facilitate the return of the child to the child's home.

* Sec. 4. AS 47.17.010 is amended to read:

Sec. 47.17.010. PURPOSE. In order to protect children whose health and well-being may be adversely affected through the infliction, by other than accidental means, of harm through physical abuse or neglect or sexual abuse or sexual exploitation, the legislature requires the reporting of these cases by practitioners of the healing arts and others to the appropriate public authorities. It is the intent of the legislature that, as a result of these reports, protective services will be made available in an effort to prevent further harm to the child, to safeguard and enhance the general well-being of the children in this state, and to preserve family life <u>unless it is not in the best interests of the child to do so</u> [WHENEVER POSSIBLE].

* Sec. 5. AS 47.17.070(2) is amended to read:

(2) "child abuse or neglect" means the physical injury or neglect, <u>mental injury,</u> sexual abuse, sexual exploitation, or maltreatment of a child under the age of 18 by a person who is responsible for the child's welfare under circumstances which indicate that the child's health or welfare is harmed or threatened thereby;

HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES

P.O. BOX V, JUNEAU 99811
(907) 465-3759

STATEMENT ON HB 175
by the
HOUSE HESS COMMITTEE

House Bill 175, "relating to programs and proceedings concerning children", was introduced as one of a package of measures proposed or supported by the House HESS Committee, as a result of the Committee's comprehensive interim review of the state's child protection and foster care systems. This bill responds to testimony presented at hearings in the fall of 1988 regarding two different, but related concerns.

Sections 1 and 3 respond to concerns that the Division of Family and Youth Services and the court may not be given clear direction when deciding between the values of preserving family ties and the safety and welfare of children. The intent of these sections is to clarify that the best interests of the child shall be the state's paramount concern and that family preservation or reunification shall be promoted if they are in the best interests of the child.

Section 2 is offered in response to concerns that abused and neglected children often linger unnecessarily long in foster care when there is little or no hope of parental rehabilitation. The intent is to encourage parents to participate in services leading to a beneficial reunification and, if they do not, to make it easier to for the state to terminate parental rights. The ultimate goal is to expedite the placement of children in a secure and stable home so they can quickly reestablish family bonds which are so critical to their emotional well-being.

The rebuttable presumption in section 2, which was borrowed from the Nevada statutes, is a legal mechanism which switches the burden of proof from a state showing of parental unfitness to a parental showing of renewed fitness. It may not be the only or best means of securing the goals stated above.

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: CSHB 175
PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An Act relating to programs & proceedings concerning children...
Sponsor: House HESS Committee
Requestor: _____

Agency Affected: Health & Social Service
BRU: _____
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES	-0-	-0-	-0-	-0-	-0-	-0-
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary) Although CSHB 175 has a zero fiscal note, the legislation has potentially serious financial implications. If CSHB 175 does not become law, the Department will likely lose approximately $100,000 in federal grant funds which are currently used for child abuse and neglect programs within Alaska.

Prepared by: Yvonne Chase, Director — Phone: 465-3170
Division: Family and Youth Services — Date: 4-6-89

Approved by Commissioner: Myra M. Munson — Date: 4-6-89
Agency: Department of Health & Social Services

Distribution (by preparer):
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

STATE OF ALASKA
1989 LEGISLATIVE SESSION

Bill Version: HB 175
Publish Date: 2/15/89

FISCAL NOTE

REQUEST:

Revision Date:
Title: An act relating to programs & proceedings concerning children...
Sponsor: HESS
Requestor: HESS

Agency Affected: Alaska Court System
BRU: Trial Courts
Components:

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

General Funds	0.0	0.0	0.0	0.0	0.0	0.0
Federal Funds						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: Jan Strandberg, General Counsel — Phone: 264-8228
Division: Alaska Court Syste — Date: 03/17/89

Approved by: Arthur H. Snowden, II, Administrative Director — Date: 03/17/89
Agency: Alaska Court System

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management & Budget
Impacted Agency(ies)

POSITION PAPER/Department of Health & Social Services

POSITION PAPER

HOUSE BILL NO. 175

For an Act entitled: "An Act relating to programs and proceedings concerning children; and emphasizing that the best interests of the child must be considered under certain programs and during certain proceedings involving children."

The intent of House Bill 175 is to carefully examine the best interest of a child in State custody and to terminate parental rights if the latter is in conflict with child's best interests.

There are potential problems with the proposed changes in Section 3. The amendment to AS 47.10.080(c)(3) will prolong termination litigation, is in conflict with the Indian Child Welfare Act, and may violate parents' due process rights.

By focusing on the Department's level of assistance rather than the parent's conduct in a termination hearing, the parent's attorney will have the opportunity to shift the focus and delay termination of parental rights based on the best interest of the child. Additional proceedings would be necessary with litigation over what services are appropriate, whether sufficient assistance was provided by the Division, whether there was substantial participation in the services or whether there was good cause not to participate. This could result in delaying the termination of parental rights in cases where termination is justified.

Defining "assistance" would be essential since it could range from facilitating a referral by telephone contact to personally transporting both parent and child to classes or psychiatric counseling. For example, the court could require the Department to pay for any treatment programs in-state or out-of-state and for all counseling. The Department's failure to pay for any or all treatment and treatment related expenses could result in removal of the presumption that the parents behavior will continue and termination of parental rights is justified.

Additional delays could occur by having the court determine what services are appropriate for facilitating reunification. Furthermore, the fiscal impact of this bill is similar to creating a new entitlement program. Without an entitlement "type" formula funding there is no predictability in service costs since the court will determine the appropriate service, not the Department.

Permanent status for some children can be achieved only through the termination of their parents' rights. State and federal statutes give the legal rules and structure to the courts and the State agency to use in deciding when the termination of parental rights can be granted.

There are many barriers to the progression of termination of parental rights for any child's case in the State of Alaska. The statutes are rarely, if ever, the barrier. Ideal progression is dependent on the State agency's capabilities, the community's treatment resources, the skill of the State's attorney, and the wisdom of the court.

Secondly, House Bill No. 175 is in conflict with the Indian Child Welfare Act. Public Law 95-608, 25VSC 1912 Sec.102(f) provides that:

> "No termination of parental rights may be ordered in such proceeding in the absence of a determination, supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child."

Therefore, amending AS 47.80.080(c) will not effect many termination hearings, because federal law will pre-empt the state's lower burden of proof standard.

In an effort to determine if termination of parental rights is in the best interest of a child, the Division of Family and Youth Services, together with the Department of Law, is launching a new program, Permanency for Dependent Children (PDC).

This program will use a team of highly trained individuals who will provide specialized legal and social work expertise, to increase the State's ability to expeditiously handle termination cases and thereby promote early permanent placements of children in state custody.

This program will begin July 1, 1989, and initially will be implemented in Nome, Bethel, Barrow, Fairbanks, Juneau, Anchorage, and Ketchikan. A progess report regarding this program will be issued after the project has been in operation for one year.

DEPARTMENT POSITION

The Department cannot support HB 175 because it would in effect prolong termination hearings and decisions, which would not be in the best interest of the child.

POSITION PAPER/Department of Health & Social Services

RECOMMENDED: Yvonne M. Chase

Yvonne M. Chase, Director
Division of Family
and Youth Services

DATE: 3/8/89

APPROVED: Myra M. Munson

Myra M. Munson, Commissioner
Department of Health
and Social Services

DATE: 3/8/89

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM March 6, 1989

SUBJECT: Sectional Analysis
HB 175

TO: Representative Johnny Ellis, Chair
Health, Education and Social Services
Committee

FROM: Terri Lauterbach
Legislative Counsel

Following is an analysis of HB 175 with respect to its probable legal effects.

Sec. 1 enacts a new policy statement that will be applicable throughout AS 25.23. This chapter deals with adoptions. The best interests of the child are already important in adoption proceedings, but to the extent that a case is "close," this policy section could tip the scales in favor of the best interests of the child compared to other considerations such as the rights of the child's natural parents.

Sec. 2 amends a general policy statement that applies throughout AS 47. To the extent that a court considers a general intent statement when deciding specific cases under other sections of AS 47, clear changes in this general policy statement could affect some court decisions.

The changes on page 1, lines 24 - 25, appear to elevate the best interests of the child compared to the old language on those lines. However, the change on page 1, line 26, by using the phrase "when necessary," probably would allow a court to be as reluctant to remove the child from the home as it could have been under the old language. Therefore, I am uncertain whether the changes made in the section, on the whole, are clear enough to lead to any different results in children's proceedings.

Sec. 3 establishes a rebuttable presumption that would apply to proceedings to terminate parental rights. The presumption would be that the parental conduct that caused a child to be adjudicated a child in need of aid is likely to continue without termination of parental rights if the parents have failed, without good cause, to participate in services offered by the Department of Health and Social Services to help them become better parents, or in equivalent services.

In Alaska, once a presumption is established, the opposing party has the burden of proving that the nonexistence of the presumed fact is more probable than its existence. Rollins v. Liebold, 512 P.2d 937, 944.

With respect to the presumption described in sec. 3 of the bill, the presumption, if established, would shift to the parents the burden of proving that the parental misconduct is not likely to continue even though they failed to participate in rehabilitative services. Without the presumption, the burden would be on the department to show that the parental misconduct was likely to continue. With the presumption, the department can shift that burden of proof to the parents by concentrating on showing by clear and convincing evidence that they failed to participate in rehabilitative services. Regardless of the presumption and other evidence, however, the court would still need to find by clear and convincing evidence that the child was a child in need of aid as a result of parental conduct.

Given these considerations, the probable effect of this change in statutory language would be to indicate to the courts and to the parents a legislative intent that the failure to use rehabilitative services by the parents is to be given great weight. The courts and parents might already be giving these services this kind of importance, but these statutory changes would ensure it.

Sec. 4 amends another general policy statement. This statement occurs in connection with a specific chapter of AS 47, the chapter requiring certain persons to report cases of suspected child abuse. The change on lines 8 - 9 indicates a legislative intent that preservation of family life is important only to the extent that it is in the best interests of the child. While this changes the emphasis of the policy statement, it is impossible to predict whether this change will affect the outcome of actual cases.

Let me note as one final comment that the provisions of this bill and its amendments do not necessarily apply to cases involving Indian or Native children. Those cases are governed by the ICWA, a federal law. Where its provisions are more strict, they supersede state law.

I hope this discussion is helpful to you. Please let me know if I can be of further assistance.

TL:gc
WKG7/099

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
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November 10, 1988

MEMORANDUM

TO: Representative Johnny Ellis

ATTN: Jim Nordlund

FROM: Patricia Young
Legislative Analyst

RE: Involuntary Termination of Parental Rights--An Overview
Research Request 89.089

You asked this agency to provide an overview of approaches taken by other states with respect to the involuntary termination of parental rights. You wished particularly to know of states with criteria for involuntary termination which varies from the norm.

General Background

The U.S. Supreme Court held in Santosky v. Kramer (1982) that the minimum standard of proof required in termination of parental rights cases is clear and convincing evidence of parental unfitness or inadequacy.[1] In addition, the petitioner must also prove that termination of the parent's rights would be in the best interest of the child. Traditionally, parents are held to have a fundamental, common law right to the custody of their children Because of the serious penalty that termination represents, this demanding standard of proof has been deemed necessary, and courts have, in general, been conservative about terminating parental rights.

The rights and preferences of the parent must be weighed along with the needs of the child and a balance struck. What best serves a child's interests rarely lends itself to a simple formula; however, clearly defined grounds for termination provide needed guidance to courts and improve a child's chances for a permanent home. The mobility of individuals coupled with the dramatic increase in out-of-wedlock births suggests that the best interests of children would be best served by uniformity among states in their laws on the subjects of terminating of parental rights, notice of termination, visitation, custody, and withholding of consent to adoption. To this end, the National Conference

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[1]In cases involving Indian children, a state must make its findings beyond a reasonable doubt [25 USC 1912(f)(Supp V 1981)].

of Commissioners on Uniform State Laws are in the process of drafting the "Uniform Putative and Unknown Fathers Act" (Attachment A).

Mark Hardin, director of the Foster Care Project, National Legal Resource Center for Child Advocacy and Protection, made pertinent, specific suggestions concerning termination proceedings in a letter to Myra Munson, Commissioner, Alaska Department of Health and Social Services (Attachment B). According to Mr. Hardin, there are cases in which somewhat less stringent standards of substantive grounds for termination or notice are justified. Mr. Hardin particularly recommends the following special cases which apply only to infants 18 months of age or less and require a showing that adoption is in the child's best interest:

- failure of an unmarried father to provide reasonable child support within his ability to pay, or the failure to regularly visit the child when able to do so;
- disinterest in the child during the pregnancy of the mother; and
- conception as the result of rape or incest committed by the biological father.

Overview of Grounds for Termination of Parental Rights

Attachment C contains three overviews of various aspects of the termination issues. Extensive references to court decisions in various states are included. Most states provide for termination of parental rights on grounds of moral unfitness, serious and continuing neglect, or abandonment. Serious physical, sexual, or mental abuse of the child ranks among the highest grounds for termination. Mental illness, and drug or alcohol abuse are frequently grounds for termination. However, diagnosis per se does not constitute grounds. Termination generally requires a showing that the parent is unable to provide proper care for the child and that the inability is likely to continue for the foreseeable future. In most states, conviction of certain types of felonies or extended imprisonment constitute grounds for termination; however, incarceration per se does not constitute sufficient grounds. In some states, parental rights may be terminated if the child has been removed from the home for a certain length of time and there is little likelihood of returning home within the foreseeable future. Some states provide for termination if the parent is unable or unwilling to make adjustments or preparations necessary for the return of the child.

I have also attached information from a National Conference of State Legislatures (NCSL) survey of child welfare statutes and implementation patterns compiled in 1986 (Attachment D). Attachment E is a copy of the National Council of Juvenile Court Judges' "Model Statute for Termination of Parental Rights."

Recent Notable Variations in Termination Proceedings

Alaska is the only state which provides for termination of parental rights gained as the result of sexual assault or sexual abuse of a minor. Indiana, New York, and Wisconsin statutes provide that notice to putative fathers is not required in cases of termination of parental rights when rape is involved. Minnesota, like many states, allows for termination of parental rights if the parent is found to be morally unfit. Nevada has recently added "failure of parental adjustment," or the inability or unwillingness of a parent within a reasonable time to correct conditions or conduct which led to the removal of the child to the list of grounds for termination of parental rights. Louisiana has enacted legislation which provides for the involuntary termination of rights of a parent convicted of a felony under certain circumstances. (See Attachment F for Minnesota, Nevada, and Louisiana statutes.)

In addition to these statutory changes, the following rulings are of note:

- The Arkansas Supreme Court, relying on the U.S. Supreme Court's opinion in Lehr v. Robertson (1983), has ruled that a putative father who is ignorant of the existence of his child does not have to be given notice of an action to adopt the child.

- Acknowledging both a parent's lack of fitness as a parent and the close relationship between that parent and the children, the Montana Supreme Court has held that although parental rights be terminated, contact be maintained.

- A County Superior Court in New Jersey has held that a father's 30 year incarceration for murder of his wife is sufficient to terminate his parental rights. The court notes that although prior case law has established the principle that conviction per se should not be grounds for termination, the father's imprisonment is the consequence of his voluntary act, and he has thereby deprived his child of the regular and expected parental functions of care and support.

- The U.S. Supreme court has recently upheld the California Civil Code which authorizes termination of parental rights in cases where the parent has been convicted of a felony, the nature of which proves the unfitness of the parent.

I hope that this information is useful to you. If you have further questions, please call.

Attachments

court proceedings, the inadequate funding of tribal courts and Indian child welfare services programs, the treatment of children as a service as the chattel or property of the Indian tribe, and the special standards applicable to Indian children based only on their racial background.[208]

Termination of Parental Rights

§9.16 Termination of Parental Rights

Termination of parental rights actions are brought to secure permanent homes for children who are unable to return home. A termination of parental rights completely severs the parent's right to visit or communicate with the child and to receive information about the child. In most jurisdictions, it also abrogates the duty to support the child. Termination frees the child for adoption by removing the parent's right to consent to an adoption. Termination also closes off further litigation concerning the custody of the child.

Although termination proceedings vary by jurisdiction, all states require separate hearings based on a special petition or motion. When contested, termination actions should be full adversary hearings.[209]

The child's right to counsel in termination proceedings is not universally recognized. Some states have statutorily created a right to counsel for the child in termination proceedings,[210] and model acts on termination support a right to counsel for both the child and the parents.[211] Some state courts have also found a constitutional basis for the required appointment of counsel for children in termination actions.[212] The Supreme Court has not ruled on this question but, in a somewhat analogous situation, held that a child facing removal from a long-term foster home may not always be entitled to separate counsel.[213]

Appointment of counsel for indigent parents is provided for in most states by statute.[214] A constitutional right to counsel, however, does not appear to exist in all cases. The Supreme Court in *Lassiter v. Department of Social Services* stated that the right to counsel for indigent parents should be individualized determined in each termination case.[215] Among the factors a court should consider in deciding on an indigent parent's need for the assistance of appointed counsel are the degree of complexity of the case and the potential criminal liability of the parent.[216]

The Supreme Court held in *Santosky v. Kramer* that the state's constitutional minimum burden of proof on a termination of parental rights case is that of clear and convincing evidence.[217] The Court reasoned that a higher standard of proof than preponderance of the evidence is required because of the grave penalty that termination represents—the total legal destruction of the parent-child relationship. In some states, the clear and convincing evidence requirement not only governs the trial court judge in termination proceedings but also demands additional scrutiny of the evidence by appellate courts.[218] Even in these states, however, appellate courts continue to defer to trial court determinations of fact which are based upon the demeanor of witnesses. It has also been held that a presumption which shifts the burden of proof onto the parents violates the requirement of proof by clear and convincing evidence.[219]

If a state divides its termination of parental rights proceedings into adjudicatory and dispositional hearings, under *Santosky* the clear and convincing evidence standard probably need apply only to the fact-finding stage of the proceedings.[220]

The policy issues surrounding the rationale and grounds for termination are quite complex, and states have dealt with these issues in a variety of ways. Even the different proposed model acts arrive at no clear consensus on the grounds for termination.[221] However, some general guidelines are possible in approaching the termination case. The first inquiry regarding the appropriateness of termination should be whether the child can *or should be returned to the parent within a reasonable time*. There are five common indications that the child

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[208] Schweitzer, *The Indian Child Welfare Act and Children's Rights*, 2 Legal Response: Child Advocacy and Protection 2 (June/July 1979); but see American Indian Lawyer Training Program, Inc, Indian Child Welfare Act of 1978 "A Law for Our Children" (1979).

[209] Mlyniec, *Protecting a Termination of Parental Rights Case*, in Foster Children in the Courts 194 (M. Hardin ed 1983).

[210] *See, e.g., In re* Child X, 617 P2d 1078 (Wyo 1980) (termination overturned where counsel not appointed for child, though such appointment mandated by statute).

[211] *See, e.g.*, ABA/Inst of Jud Admin, Final Juvenile Justice Standards Commission Standards Relating to Abuse and Neglect, Standard 8.3 (1981).

[212] *See e.g., In re* J.M.H., 619 P2d 468 (Okla 1980) (separate counsel for child required in all future termination cases since termination proceedings by their nature create potential conflicts between parent and child).

[213] Smith v. Organization of Foster Families for Equality & Reform, 432 US 816 (1977).

[214] Howett, *Defending a Termination of Parental Rights Case*, in Foster Children in the Courts 254 (M. Hardin ed 1983).

[215] 452 US 18 (1981).

[216] Howett, *supra* note 230, at 254-56.

[217] Santosky v. Kramer, 455 US 745 (1982).

[218] *See* M. Hardin & M. Hardin, *Clear and Convincing Evidence in Termination of Parental Rights Cases: The Impact of Santosky v. Kramer*, 5 Legal Response: Child Advocacy and Protection 11 (Win/Sp 1985).

[219] Washington County Dept of Social Serv v. Clark, 296 Md 190, 461 A2d 1077 (1983) (statute which presumed that termination was in the best interest of child because child had been in foster care for two years found unconstitutional).

[220] The New York termination statute at issue did hold that the termination proceedings, and the *Santosky* decision clearly applied only to the adjudication. See M. Hardin & M. Hardin, *supra* note 218.

[221] For a comparison of the various model acts see M. Hardin & P. Tatara, *Termination of Parental Rights: A Summary and Comparison of Grounds for New Model Act* (ABA 1981).

Robert M. Horowitz and Howard A. Davidson, Legal Rights of Children, Family Law Series (New York: McGraw-Hill, 1984) pp. 386-377.

usually cannot safely return home: extreme parental disinterest, failure of a parent to remedy the conditions which caused the separation, extreme or repeated neglect and abuse, parental incapacity to care for the child, and extreme deterioration of the parent-child relationship. The second inquiry is *whether termination is in the child's best interests*. Because termination ends all parent-child contact, it is important to consider whether termination will lead to a more secure and appropriate home for the child.

§9.17 —Extreme Parental Disinterest

Termination may be based on the parent's extreme disinterest or lack of commitment to the child. In these cases it appears likely that the child will not be permitted to return home because the parent has demonstrated an unwillingness to take responsibility for the child.

Traditionally, termination by reason of lack of parental interest and concern for the child has been granted only in the event of abandonment. This restrictive legal approach focuses on the intent of the natural parents to give up their *rights* to the child. In its extreme expression this has required an almost total lack of desire to retain parental rights.[111] Like the traditional property law concept of abandonment of chattel, this approach stresses the parent's *rights* to the child. Courts using this analysis may refuse to terminate based upon abandonment if there has been minimal contact between parent and child, or if the parent exhibits a desire to maintain contact.

With increased recognition of the importance of permanency to the child, many courts and legislatures have taken a broader view of abandonment. The abandonment concept has been expanded in several ways. First, some courts have interpreted an intent to abandon a child as an intent to refrain from accepting full responsibility as a parent, rather than an intent to give up all rights to the child.[112] Second, others have *inferred* intent to abandon by analyzing the parent's actions in light of what could reasonably be expected of the parent in the circumstances.[113] Still other courts have defined abandonment according to affirmative conduct, not intent.[114] Finally, some legislatures have

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[111] *In re* DAH, 390 So 2d 379 (Fla Dist Ct App 1980) (parent's behavior must evidence an intended purpose permanently to forego parental rights and shirk parental responsibilities).

[112] *In re* Burns, 474 Pa 615, 379 A2d 535 (1977) ("parental duty" includes active performance of love, protection, guidance, and support of child and excludes continuing interest in and genuine effort to maintain contact with the child).

[113] *In re* Adoption of David C, 479 Pa 1, 387 A2d 834 (1978) (abandonment found when, over a period of eight years, a father visited his son only once, failed to pay support, and only sporadically sent cards or gifts).

[114] *In re* Rose Lynn G, 37 Cal App 3d 406, 129 Cal Rptr 558 (1976) (denying and demanding return of children not substantive but displaying the emotional control or capability to care for them that would have resulted in their return); *In re* L parcus J, 76 Misc 2d 617, 351 NYS2d 337 (Sur Ct 1974) (parents abandoned child that they had failed to visit for two years).

[illegible] rejected the abandonment concept entirely in favor of an examination of parental behavior during the parental relationship.

In light of these more liberal approaches to the abandonment concept, several types of evidence may be pertinent in determining whether to terminate parental rights, including:

1. The parent fails to visit or communicate with the child.[115] This is especially persuasive when the agency has encouraged visits or made such visits possible.[116]
2. The parent makes a statement showing lack of interest in the child or a willingness to relinquish the child.
3. The parent exhibits a pattern of needlessly leaving the child with others for prolonged periods, despite the fact that the parent is capable of caring for the child.[117]
4. The parent fails to take affirmative steps to secure the return of the child from foster care.[118] Of particular interest here are both the degree of the parent's cooperation with the agency and the parent's progress toward removal of the barriers to return of the child.[119]
5. The parent, despite ability to pay, fails to provide support for the child when required to do so.[120] Failure to pay support is rarely the sole

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[illegible] *See, e.g., In re* Adoption of J.L.G., 492 Pa 507, 424 A2d 1306 (1981) (failure to demonstrate an interest in the child for longer than six months statutorily provided sufficient grounds for termination).

[115] *In re* Jessica B, 121 NH 291, 429 A2d 320 (1981) (abandonment established where natural mother made no attempt to communicate with her daughter but twice wrote, even though they lived near one another). *But see In re* Snyder, 418 NE2d 1171 (Ind Ct App 1981) (termination denied for same mother toward children whom agency allowed and bought them clothes and gifts).

[116] *In re* Marilyn H, 106 Misc 2d 972, 436 NYS2d 914 (Fam Ct 1981) (mother's failure to maintain contact with child, even though agency provided her funds to do so, supported termination decision).

[117] *In re* Lavy, 131 Ga 849, 296 SE2d 82 (1974) (termination warranted where, during the first 18 months of the child's life, mother had had the child less than one month and, on each occasion of custody, had casually left the child in the hands of strangers).

[118] *In re* Jennifer "A", 69 Misc 2d 951, 333 NYS2d 79 (Sur Ct 1972) (abandonment found where, during five and one-half years of child's life, the natural mother never made any efforts to contact or visit the child or agency, made only one statement indicating her desire for the child's return, and never performed any act that would restore the child's return).

[119] Appeal of Maricopa County Juvenile Action No JS-6285, 155 Ariz 508, 635 P2d 55 (1982) (mother's refusal to cooperate in any way with rehabilitation plan justified termination on grounds of abandonment).

[120] McGowen v State, 358 SW2d 561 (Tex Civ App 1977) (termination granted when parent made no effort to pay support despite financial capabilities). *In re* Schulz Children, 303 NW2d 291 (Mich Ct App 1980) (termination granted because of mother's failure to pay support despite financial ability, lack of attentiveness to family matters, and failure to exercise her maximum privileges). See also Mlotek, *Presuming a Termination of Parental Rights Case on Foster Children in the Courts*, 293 (M. Hardin ed. 1983).

juvenile courts for termination, especially where the parents had some past relationship with the child.[155]

Two special cases involving parental disinterest and lack of concern require special attention. The first is the abandoned infant. Some states have recognized and reacted to this phenomenon by shortening the time period necessary before a termination petition can be filed.

The second type of case raises the question whether a parent can abandon a child before it is born. States may deal with this by legislating grounds to terminate the parental rights of a father who abandons the mother during pregnancy.[156] Courts also have found abandonment or pregnancy based upon mother-*repugnant* denials of paternity and failure to show concern for the welfare of mother or child[157] or statements of disinterest and intention to give up the child at birth.[158] The Supreme Court also has suggested that termination of the parental rights of unwed fathers of newborn infants might be permitted on the basis of abandonment when the father does not take affirmative steps to acknowledge paternity.[159]

§9.18 —*Parent's Failure to Remedy Conditions Causing Removal*

A basis for termination of parental rights may exist when a child has been in foster care for a long period of time and the parent has been unable or unwilling to make the adjustments or preparations necessary for the child's return.[160] In general, three requirements must be met for termination on this ground. First, there must have been good case planning by the agency, including a realistic program aimed at correcting the problems that caused the initial parent-child separation.[161]

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[155] *See, e.g.*, Tex. Fam. Code Ann. tit. 2, §15.02(1)(G) (Vernon 1981).

[156] *See, e.g.*, Tex. Fam. Code Ann. tit. 2, §15.02(1)(M) (Vernon 1981).

[157] *State ex rel.* Lewis v. Lutheran Social Servs., 68 Wisc. 2d 36, 227 NW2d 645 (1975). (Insufficient "repeated denials of paternity and lack of concern for or interest in the support, care, and well-being of child and mother during pregnancy" constituted abandonment.)

[158] Diaz v. Berger, 611 SW2d 720 (Tex. Civ. App. 1981) (mother abandoned child during pregnancy when she agreed to give up the child to foster parents as soon as it was born in return for room and board and medical costs).

[159] Caban v. Mohammed, 441 U.S. 380 (1979).

[160] *See, e.g.*, Va. Code §16.1-283 (Supp. 1981); Wis. Stat. Ann. §48.415 (West Supp. 1982).

[161] *See, e.g.*, *In re* LaFreniere, 429 A.2d 82 (R.I. 1980) (termination not permitted where agency attempted to discourage relationship between parents and children); *In re* Jones, 436 N.E.2d 869 (Ind. Ct. App. 1982) (termination not permitted where agency failed to show by clear and convincing evidence that it had offered or provided parents with necessary services); Weaver v. Roanoke Dept. of Human Resources, 229 Va. 521, 265 S.E.2d 692 (1985) (termination order reversed where agency provided some services to parents and encouraged contact with children, but failed to prove [illegible] to remedy the agency's must have exercised due diligence in following through with its plan.[162] States may impose this diligent efforts requirement by case law or statute. Although agency behavior is scrutinized on a case-by-case basis, at least one court has attempted to define what is generally expected of the agency: efforts at rehabilitation should be designed to remedy the particular deficiencies that mandated the separation; the plan should seek to achieve realistic short-term and long-term goals; diagnostic workups on adults and child should be obtained when necessary; and visitation should involve the natural parents, foster parents, and child.[163]

Finally, despite agency efforts, the parents must have persisted in improper conduct or failed to correct the conditions that led to the original removal of the child.[164] For example, a parent may continue to maintain dangerous household conditions,[165] may exhibit bizarre, violent behavior,[166] may come in frequent contact with others who endanger the child,[167] or may fail to cooperate with the agency's efforts to provide services and reunite the family.[168]

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during the father's financial inability to provide for children, which was the reason behind foster care placement). *See also* Katz, Model Act to Free Children for Permanent Placement, §4(c)(1),(2),(d)(2); *see* Katz, *Freeing Children for Permanent Placement Through a Model Act*, 12 Fam. L.Q. 203 (1978); 1985 Model State Adoption Act §31(b)(2) (1980).

[162] *See, e.g.*, State v. Roberts, 91 Ill. 2d 113, 389 A.2d 1387 (1978) (state under obligation to make every effort to aid families facing terminations). *See also* 1985 Model State Adoption Act §31(b)(2) (1980).

[163] *In re* Raymond, 81 Misc. 2d 172, 366 NYS2d 321 (Fam. Ct. 1975).

[164] *See, e.g.*, *In re* Green, 174 Mont. 321, 570 P2d 1110 (1977) (failure to seek counseling and help for recalcitrant emotional and mental problems supports termination). *In re* Robertson, 63 Ill. App. 3d 148, 339 N.E.2d 491 (1977) (death of one-month-old child in parent's home under circumstances suggesting abuse is evidence of parent's failure to correct conditions that led to removal of other child).

[165] *See, e.g.*, *In re* C. & K., 322 N.W.2d 76 (Iowa 1982), *appeal dismissed*, 459 U.S. 1081, 103 S. Ct. 711 (1983) (termination based on parent's inabilities to develop maternal skills to function adequately).

[166] *See, e.g.*, *In re* Fore, 416 N.E.2d 908 (Ind. Ct. App. 1981) (mother's repeated incarceration on felony murder conviction and mother's past severe convictions for theft, disorderly conduct, and trafficking in a controlled substance supports trial court's order for termination).

[167] *See, e.g.*, *People in re* C.A.K., 652 P2d 605 (Colo. 1982); *see* People v. C.A.K., 628 P2d 156 (Colo. Ct. App. 1980) (mother's failure to protect child from abuse by child's grandfather was a contributing factor in decision to terminate).

[168] *See, e.g.*, Miller v. Alabama Dept. of Pensions and Sec., 374 So. 2d 1370 (Ala. Civ. App. 1979) (agency's unexplained disturbance in termination has detrimental consequences obtained from parents). *In re* Montford, 287 York 627, 580 NW2d 795 (1981) (termination based on failure of mother to meet guidelines for establishing a stable home for the child). *In re* Sears, 37 Ill. App. 3d 666, 375 N.E.2d 568 (1978) (failure of mother to obtain special medical training necessary for her to care for handicapped child sufficient grounds for termination).

§9.19 Parental Incapacity to Care for the Child

Termination of parental rights may also be appropriate when the parent has some mental or physical incapacity which is so severe that the parent is not capable of caring for the child. Principal causes of parental incapacity are mental or emotional illness,[147] mental deficiency,[148] alcohol or drug addiction,[149] and extreme physical disability.[150] Any disability standing alone is generally insufficient for terminating the parent-child relationship. In addition, the disabilities must prevent the parent from providing reasonably acceptable care for the child.[151]

In states where parental incapacity is a basis for termination, an expert's diagnosis is usually necessary. The evaluation must establish the existence of a disability, the resulting inability of the parent to provide proper care, and the likelihood that this condition will not improve even with treatment or services.[152]

If the incapacity is unalterable, it may be unnecessary to provide services to reunite the family when it can be shown that the parent is incapable

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[147] See *e.g. In re* R.L.D., 253 NW2d 870 (ND 1977) (mother's recurring mental illness); *In re* N. Children, 107 Misc 2d 788, 435 NYS2d 1018 (Fam Ct 1981) (mother's chronic paranoia rendered it dangerous to her children).

[148] See *e.g. In re* J.L.F., 616 So 2d 1250 (Fla Dist Ct App 1987) (mother mentally retarded and unable to consider child's welfare); *In re* P.L., 597 P2d 886 (Utah 1979) (mother's classification as borderline retarded and passive dependent personality, plus evidence of her inability to care for special needs of child, held sufficient grounds for termination).

[149] See *e.g. In re* Nelson, 210 Kan 271, 501 P2d 68 (1972) (father, sole custodian of eight children, was alcoholic and home environment problematic); *In re* K.F., 294 NW2d 679 (ND 1979) (mother's habitual paint sniffer).

[150] *But see e.g. In re* Swearingen, 69 Or App 395, 686 P2d 372 (1984) (termination cannot base entire decision's failure to provide for daughter's basic physical and psychological needs for one year reasonably based on mother's need to seek treatment for her own extensive hospitalization).

[151] Stone v. Blum, 1 Or App 609, 463 P2d 367 (1970). *See also In re* Vess v. Chase, 60 AD2d 511, 455 NYS2d 108 (1981) (subnormal mother found to be one of trial and her foreseeable future to be unable to care for child); *People ex rel* C.R., 38 Colo App 252, 557 P2d 1229 (1976) (mentally retarded mother found unable to protect children now or in the future from abuse or to provide for their care).

[152] See *e.g. In re* McDonald, 38 Or App 599, 590 P2d 289 (1979) (termination granted because father, a chronic alcoholic, failed several treatment programs and psychiatrist gave him no reasonable prospect for successful rehabilitation); Carter v. Dallas County Child Welfare Unit, 352 SW2d 140 (Tex Civ App 1970) (termination justified when mother diagnosed as paranoid schizophrenic, mistreated children and doctors testified that she would never be completely cured); *In re* Wilson, 32 NYS2d 292, 414 NE2d 1305, 435 NYS2d 286 (1981) (termination overturned where psychiatrist testified that mentally ill mother could recover in some future time through therapy and medication); *But see In re* Vess v. Chase, 60 AD2d 511, 455 NYS2d 108 (1981) (termination granted despite testimony of a psychiatrist that mother might provide services in the future if she took her medicine and nothing unusual occurred; the court was persuaded that, if cured, the mother would be capable of providing adequate care).

and responding to such services.[153] In most cases, however, evidence showing both parental incapacity and unsuccessful agency efforts to reunite the family is necessary.[154]

§9.20 —Extreme or Repeated Abuse or Neglect

Incidences of abusive conduct do not generally warrant termination, but some forms of abuse or neglect are so extreme or repetitious in character that termination is justified. Termination is permitted when the abuse or neglect is so terrible or prolonged that it is unlikely that the parent will reform,[155] or when the risk of harm to the child is too great to offer the parent further chances.[156] In some cases the abuse or neglect is so egregious that the agency need not work with the parents before seeking termination.[157] This is most often true when a serious crime has been committed affecting the child.[158]

Termination may also be ordered against the parent who permits or is able but fails to prevent, serious abusive conduct against the child,[159] especially where the parent lives with the abusive adult.[160] Where one parent has committed a violent act against the other, especially where that act affects the child, termination of the perpetrator's rights may also be warranted. For example, termination may be justified when the father has been convicted of murdering

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[153] See *e.g. In re* Campbell, 298 Neb 274, 903 NW2d 919 (1981) (termination ordered where mother is a paranoid schizophrenic and has a history of drug abuse and where children were not properly cared for).

[154] See *e.g. In re* C.C., 657 P2d 66 (Okla 1981) (termination overturned where agency failed to instruct mentally ill father of the minimum standards of proper parental conduct to which he must conform to prevent termination); *In re* Chapman, 13 Or App 260, 451 P2d 871 (1973).

[155] See *e.g. In re* B.M., 266 SE2d 114 (W Va 1980) (court need not evaluate every conceivable possibility of parental improvement where no reasonable likelihood that conditions of abuse or neglect can be substantially corrected).

[156] See *e.g.* Model Termination of Parent-Child Relationship Act §§3(C)(2) and 7(C)(1); ABA Committee on the Involuntary Termination of Parental Rights (Ellen C. Hardin & P. Tatum, *Termination of Parental Rights: A Summary and Comparison of Grounds for Your State Acts* (ABA 1981)).

[157] See *e.g. In re* Carlton, 287 Neb 340, 299 NW2d 760 (1980) (court need not implement case plan for parents if plan has little chance of success and not in best interests of child).

[158] See *e.g. In re* Angelia P., 28 Cal 3d 908, 623 P2d 198, 171 Cal Rptr 637 (1981) (permanent brain damage inflicted through abusive conduct of father).

[159] See *e.g.* State v. Cook, 208 Neb 569, 304 NW2d 910 (1981) (mother permitted father's sexual abuse of child for own ends and refused to cooperate with authorities).

[160] See *e.g. People in re* T.L., 101 Misc 2d 810, 421 NYS2d 1004 (1979) (mother's rights terminated because child severely burned while in her care and father's rights terminated because mother's marriage household with wife and such a situation was potentially injurious to the child).

child. For example, determination of the parent-child relationship may be shown when the child, over a prolonged period, continuously displays hostility to or terror of the parent. The child may be terrified of the parent or may harbor deep, unrelenting hostility to the parent because of past abuse, and the continuing adverse reaction of the child to the parent can provide evidence against reunification.[167]

Where the antipathy of the child to the parent is not extraordinarily deep, but the parent-child relationship has dissipated or broken down over time with the prolonged absence of the parent, the decision whether to return the child has caused the courts considerable difficulty. Courts have divided on how to weigh the development of substitute parent-child relationships in deciding whether to terminate. In most states, the *psychological parent* argument taken by itself is not enough to justify termination.[168] Rather, evidence of a psychological parent relationship is more often used in conjunction with other evidence to support termination.

Sometimes the cause of breakdown of a parent-child relationship is the prolonged imprisonment of the parent.[169] Courts are generally reluctant to terminate solely on this basis.[170] One explanation of this may be the court's reluctance to exact a double punishment against the parent. However, a number of courts have held that imprisonment may be taken into account as a factor in a termination decision, but that certain other factors must also be present.[171]

Termination of the rights of imprisoned parents typically depends largely on the nature of the parent-child relationship. Some important considerations are whether prior to imprisonment the parent had neglected or abused the child,[172] whether the parent failed to communicate with the child,[173] whether the parent provided support,[174] whether the child is living with relatives,[175] and whether the parent has an interest in and ability to maintain a close relationship with the child.[176] The length of the parent's sentence and the

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[167] *See, e.g., In re* B.MM., 296 NW2d 490 (SD 1980) (father had murdered mother of child; court set case to finish home; child suffered severe trauma and emotional detachment from father).

[168] *See, e.g., In re* J.B., 154 Vt. 480, 565 A2d 521 (1976).

[169] *See generally* Mlotshwa, *Observations a Termination of Parental Rights Case as Viewed Children in the Courts* 206 (M. Hardin ed. 1983).

[170] *See, e.g., In re* Marriage of S., 75 Cal.App.3d 768, 140 Cal.Rptr. 917 (1977); *In re* Abdullah, 90 Ill.App.3d 1144 (1980), *rev'd*, 423 NE2d 915 (Ill. 1981).

[171] *See, e.g., In re* Dept. of Pub. Welf. to Dispense with Consents to Adoption, 421 NE2d 28 (Mass. 1981).

[172] *See, e.g.*, Kinsey v. Kinsey, 208 Neb. 195, 302 NW2d 707 (1981) (father neglected child and failed to perform parental duties).

[173] *See, e.g., In re* Adoption of Herman, 406 NE2d 277 (Ind.Ct.App. 1980) (course of communication maintained through letters and telephone calls a consideration).

[174] *See, e.g., In re* Adoption of Jacobs, 426 Pa. 98, 231 A2d 295 (1967).

[175] *See, e.g., In re* Valdez, 29 Utah 2d 63, 504 P2d 1372 (1972).

[176] *See, e.g.*, Brown v. Department of Human Resources, 157 Ga. 106, 276 SE2d 113 (1981) (court looked at father's lack of financial support of children while incarcerated).

§9.21 —Extreme Deterioration of the Parent-Child Relationship

Another ground for termination is the serious erosion or nonexistence of the emotional bond between parents and child. The breakdown of the parent-child relationship is generally not sufficient on its own to support termination of parental rights. More commonly, it must be found in conjunction with other grounds.

In some instances, however, placement at home may be inappropriate for a child, even when the parents is rehabilitated and emotionally committed to the

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[161] *In re* Marriage S., 75 Cal.App.3d 768, 140 Cal.Rptr. 917 (1977) (father's conviction for manslaughter of mother insufficient for termination where overwhelming circumstances and children have positive relationship with father). *See also In re* Scott, 244 NW2d 669 (Minn. 1976) (volatile nature of father's personality, exhibited by smashing a car window and showing his wife dead while his son was in her lap, justified termination); *cf. In re* Hare, 99 NW2d 856 (Tex.Civ.App. 1960) (evidence of violence between parents absent evidence of abuse of child not sufficient for termination order).

[162] *See, e.g., In re* TVR, 185 Mont. 97, 604 P2d 785 (1979) (parents should not enjoy rights to harass their children in succession).

[163] Adoption of DSC, 98 Cal.App.3d 14, 159 Cal.Rptr. 606 (1979).

[164] *See, e.g., In re* Dodge, 653 P2d 155 (Kan.Ct.App. 1982) (child had been in parents' home continuously from home because of severe abuse); *In re* Gordon, 303 NW2d 278 (Neb. 1981) (termination ordered where mother allowed sexually abusive father to live with family and where family had a history of abuse and neglect proceedings).

[165] Failure to improve is discussed in more detail in §9.18.

[166] *See, e.g.* Hernandez v. State *ex rel.* Arizona Dept. of Economic Sec., 29 Ariz.App. 92, 550 P2d 669 (1977) (mother convicted of criminal abuse and neglect of child on ruling on termination; court considered evidence of unsuccessful agency attempts to aid mother).

timing of possible parole, as well as the age of the child or children, may also be important.

§9.22 Termination and the Best Interests of the Child

With few exceptions,[277] there must be a showing that termination is in *the best interests of the child*, in addition to the establishment of specific grounds indicating that a child cannot be returned home. This two-step analysis including both a specific ground and then an inquiry concerning the best interests of the child may be required by statute[278] or by case law.[279]

In deciding whether termination will be in the child's best interests, courts consider the likelihood that termination will lead to a better, more stable placement for the child. The prospect of adoption of the child is often a key factor. Evidence that a specific adoptive home has been selected is probably not required[280] and is often premature, given that the purpose of termination is to free the child for adoption, and termination and adoption are two distinct legal processes. The likelihood of adoption can often be demonstrated through evidence that similar children are regularly and expeditiously adopted, for example through the testimony of an adoption specialist. Some courts have elected to review the case after termination is granted to ensure that the agency is making reasonable efforts to place the child for adoption.[281] Federal law requires periodic review hearings for the entire length of time a child remains in agency care, even after termination.[282]

At the termination proceedings, courts may also consider whether adoption is a desirable option for the child.[283] This is not always the case. For example, termination may not improve the child's chances for a permanent home. The child may be living in the home of a long-term caretaker, such as a relative, who is unwilling or unable to adopt the child, and the child may be at risk of

and his ability to provide support). *In re* Adoption of MTT, 467 Pa 38, 354 A2d 564 (1976) (termination refused where father demonstrated interest in maintaining a parental relationship with his son, but agency made it impossible for him to locate his son).

[277] *See, e.g.*, DC Code Ann §16-2353 (1978) (only termination ground is best interests of the child).

[278] *See, e.g.*, Tex Well Code Ann tit 2, §15.02(2) (Vernon 1981).

[279] *See, e.g.*, Chances v Department of Human Resources, 156 Ga App 358, 274 SE2d 728 (1980) (court must consider parental fault or incapacity in addition to best interest of child).

[280] *See, e.g.*, *In re* Dept of Pub Welf to Dispense with Consent to Adoption, 421 NE2d 28 (Mass 1981).

[281] *See, e.g.*, *In re* Adoption of Seifner, 627 P2d 456 (Okla Ct App 1981) (final decree of adoption can be entered only after thorough investigation of adoptive parents).

[282] 42 USC §675(5)(B).

[283] Hardin, *Legal Placement Options to Achieve Permanence for Children in Foster Care*, in Foster Children in the Courts 129-55 (M. Hardin ed 1983).

substantial emotional harm if removed from that placement. The child may be unalterably opposed to the adoption. Some states require that children of a certain age consent to adoption.[284] Also, a close and positive relationship may exist between the parent and child which should be maintained even though the child cannot be returned home.

Open adoption, or adoption with visitation rights for the biological parents, siblings, grandparents, or other individuals with whom the child has close ties, may be an important option, especially for older children whose family relationships have developed over time.[285] This alternative may not be legally available in all jurisdictions.[286]

Other types of placements which would not require a termination of parental rights may also be considered as alternatives to adoption. The juvenile court may have the power to create a legal guardianship or to give legal custody to an individual instead of freeing the child for adoption.[287] Long-term foster care is another placement option the court may consider[288] when the child cannot be returned home but where adoption is not a satisfactory alternative.[289]

Adoption

§9.23 Introduction to Adoption

Adoption is the legal process through which a child loses legal ties with his or her biological parents and acquires similar legal ties with adoptive parents.[290] The adoption process is governed by statute in every state since adoption was not recognized under English common law.[291]

An adoption proceeding is initiated by petition, which generally must be filed by the prospective adoptive parents.[292] Where there have been prior

[284] *See, e.g.*, Wis Stat Ann §48.84(1)(b) (West 1979).

[285] See generally Clausen, *Alternate Long-Term Arrangements*, in Protecting Children Through the Legal System 643 (ABA 1981); Baron, Panor & Sorosky, *Open Adoption*, 21 Soc Work 97 (1976); Hardin, *supra* note 283, at 173-75. *See also* HHS Model State Adoption Act, 45 Fed Reg 10622 (Feb 15, 1980).

[286] *See, e.g.*, Browning v Tarwater, 524 P2d 1155 (Kan 1974).

[287] See Hardin, *supra* note 285, at 150-57.

[288] *Id* 144-50.

[289] *Id* 129-35, 144-50.

[290] See generally H. Clark, The Law of Domestic Relations 602-71 (1968); A. Kadushin, Child Welfare Services 465-582 (1980).

[291] See generally E. Cole, *Advocating for Adoption Services*, in Foster Children in the Courts 449, 451-54 (M. Hardin ed 1983); Clark, *supra* note 290, at 602-05 (1968); Kadushin, *supra* note 290, at 465-69 (1980); Presser, *The Historical Background of the American Law of Adoption*, 2 J Fam L 443-60 (1972).

[292] *See, e.g.*, Cal Civ Code §226 (West 1982); Conn Gen Stat Ann §45-63(a)(1) (West 1981).

E

NATIONAL COUNCIL OF JUVENILE COURT JUDGES

Model Statute for Termination of Parental Rights

PERMANENT CUSTODY

SEC. 1

The purpose of this act is to provide a judicial process for the termination of all parental rights and responsibilities in situations set forth in this act; to delineate mandatory, but not exclusive, criteria for judicial consideration; to acknowledge that the time perception of children differs from that of adults; to provide stability in the lives of children who must be removed from their home and to make the ongoing needs of a child for proper physical, mental and emotional growth and development, the decisive considerations in permanent custody proceedings. Proceedings shall be civil in nature and governed by rules of civil procedure.

SEC. 2

(a) The Court of juvenile jurisdiction has exclusive and original jurisdiction to terminate the rights and responsibilities of parents of any child under 18 years of age found in the State for the reasons and circumstances set forth in Section 12.

(b) Where the Court has terminated the rights and responsibilities of parents, and has placed custody with a public or a private agency for adoptive placement, the Court shall, at least yearly, as long as the child remains unadopted, review the circumstances of the child to determine what efforts have been made to assure that the child has been adopted.

If the child has not been placed in a home for adoption, the Court may enter such orders as it deems necessary to further the adoption including placement with another agency.

SEC. 3 PETITION

(1) (a) The petition to terminate parental rights and all subsequent Court documents in the proceeding shall be subtitled "In the matter of _____, a child." The petition shall be in writing and verified. The petition may be filed by a peace officer, Juvenile Court counselor, officer of the Court or employee of any public or private licensed child caring agency, or, with permission of the Court, by any interested person.

(b) A petition filed by a peace officer, Juvenile Court counselor, officer of the Court, or employee of a public or private licensed child caring agency may be on information and belief of the petitioner. In all other cases the petition shall be on the personal knowledge of the petitioner.

(2) The petition shall set forth in ordinary and concise language such of the following facts as are known and indicate any which are not known:

(a) The name, age, and residence of child.

(b) The facts which bring the child within the jurisdiction of the Court as provided in Section 12.

(c) The name and residence of the child's parents, guardian, lawful custodian and person presently having physical custody of the child.

(d) That the petition is for the purpose of divesting all parental rights.

(e) The Court may for good cause suppress the address of any party.

SEC. 4 SUMMONS, ETC.

(1) Upon filing of the petition summons shall be issued forthwith on all persons required to be named in Sec. 3 (2) (c).

(2) A copy of the petition shall be attached to the summons in all cases other than service by publication. When served by publication, the notice shall contain a statement of the substance of the facts. All summons shall contain a statement to the effect that the hearing is for the purpose of terminating parental rights.

(3) The summons shall require the person or persons who have physical custody of the child to appear personally and bring the child before the Court at the time and place stated in the summons. Where, at the Court's discretion, it is deemed in the interest of the child that he need not be brought before the Court, the Court may so indicate. The summons shall be served at least 72 hours before the time set for the hearing and a copy of the petition shall be served together with the summons, and shall be made in the manner provided in the rules of civil procedure.

SEC 5 SERVICE OF SUMMONS, ETC.

(1) Service of process shall be made according to the rules of civil procedure of the state.

SEC. 6 COMPLIANCE WITH SUMMONS

(1) If any person named in, and properly served with summons, shall without reasonable cause fail to appear or, when directed in the summons, to bring the child before the Court, then the Court may issue a bench warrant for such person, directing that he be taken into custody and brought before the Court.

(2) If the summons cannot be served or if the person to whom the summons is directed fails to obey it, the Court may issue an order to take the child into protective custody.

SEC. 7

(1) In any proceeding for terminating parental rights or any rehearing or appeal thereon, the Court shall appoint an attorney to represent the child as his counsel and guardian ad litem.

(2) If the parent, or parents of the child desire to be represented by counsel but are indigent, the Court shall appoint an attorney for such parent or parents.

SEC. 8

(1) In all proceedings under this act the standard of proof to be adduced in all proceedings to terminate the rights and responsibilities of parents shall be a preponderance of the evidence.

SEC. 9

(1) No doctor-patient privilege may be invoked with respect to hospital or medical records pertaining to any illness, trauma, incompetency, addiction to drugs or alcoholism of any parent.

SEC. 10

The record of the testimony of the parties adduced in any proceeding terminating parental rights and responsibilities to a child shall not be admissible in any civil criminal or any other cause or proceedings in any Court against a person named as respondent for any purpose whatsoever, except in subsequent proceedings involving the same child or proceedings involving the same respondent, under the above sections.

SEC. 11

(1) The Court may conduct hearings in an informal manner and may adjourn the hearing from time to time. Stenographic notes or other verbatim reports of the hearing shall be taken and such record shall be stored as a permanent record of the Court.

SEC. 12 TERMINATION OF PARENTAL RIGHTS

(1) The Court may terminate parental rights when the Court finds the parent unfit or that the conduct or condition of the parent is such as to render him/her unable to properly care for the child and that such conduct or condition is unlikely to change in the foreseeable future. In determining unfitness, conduct or condition the Court shall consider, but is not limited to the following:

(a) Emotional illness, mental illness or mental deficiency of the parent, of such duration or nature as to render the parent unlikely to care for the ongoing physical, mental and emotional needs of the child.

(b) Conduct towards a child of a physically, emotionally or sexually cruel or abusive nature.

(c) Excessive use of intoxicating liquors or narcotic or dangerous drugs.

(d) Physical, mental or emotional neglect of the child.

(e) Conviction of a felony and imprisonment.

(f) Unexplained injury or death of a sibling.

(g) Reasonable efforts by appropriate public or private child caring agencies have been unable to rehabilitate the family.

(2) Where a child is not in the physical custody of the parent, the Court, in proceedings concerning the termination of parental rights, in addition to the foregoing, shall also consider, but is not limited to the following:

(a) Failure to provide care or pay a reasonable portion of substitute physical care and maintenance where custody is lodged with others.

(b) Failure to maintain regular visitation or other contact with the child as designed in a plan to reunite the child with the parent.

(c) Failure to maintain reasonably consistent contact and or communication with child.

(d) Lack of effort on the part of the parent to adjust his circumstances, conduct or conditions to meet the needs of the child.

(3) Where a child has been placed in foster care by a Court order or has been otherwise placed by parents or others into the physical custody of such family, the Court shall in proceedings concerning the termination of parental rights and responsibilities consider whether said child has become integrated into the foster family to the extent that his familial identity is with that family, and said family or person is able and willing to permanently so integrate the child. In such considerations, the Court shall note, but is not limited to the following:

(a) The love, affection and other emotional ties existing between the child and the parents, and his ties with the integrating family.

(b) The capacity and disposition of the parents from whom he was removed as compared with that of the integrating family to give the child love, affection and guidance and continuing the education of the child.

(c) The capacity and disposition of the parents from whom the child was removed and the integrating family to provide the child with food, clothing, medical care and other physical, mental, and emotional needs.

(d) The length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining such continuity.

(e) The permanence as a family unit of the integrating family or person.

(f) The moral fitness, physical and mental health of the parents from whom the child was removed and that of the integrating family or person.

(g) The home, school and community record of the child, both when with the parents from whom he was removed and when with the integrating family.

(h) The reasonable preference of the child, if the Court deems the child of sufficient capacity to express a preference.

(i) Any other factor considered by the Court to be relevant to a particular placement of the child.

(4) The rights of the parents may be terminated as provided herein if the Court finds that the parents have abandoned the child or the child was left under such circumstances that the identity of the parents is unknown and cannot be ascertained, despite diligent searching, and the parents have not come forward to claim the child within three months following the finding of the child.

(5) In considering any of the above basis for terminating the rights of a parent, the Court shall give primary consideration to the physical, mental or emotional condition and needs of the child.

MEMORANDUM State of Alaska

TO: Eileen Self
Aide to Representative Ann Spohnholz

DATE: February 27, 1989

FILE NO:

TELEPHONE NO:

THRU:

SUBJECT: HB 175 - An Act Relating to Programs and Proceedings Concerning Children

FROM: Barbara Brink BB
Deputy Public Defender

The attached memo is in response to your request for comment on the above-referenced proposed legislation. The memo was prepared by one of our lawyers, R. Scott Taylor.

Do not hesitate to contact our office if you need further information and please let us know when hearings are scheduled concerning this proposal.

BB:sh
Attachment

MEMORANDUM State of Alaska

TO Barb Brink

DATE February 27, 1989

FILE NO

TELEPHONE NO

FROM Scott RST

SUBJECT HB 175

The substantive effect of this bill is to create a rebuttable presumption in a termination proceeding of a likelihood that the parental conduct that resulted in the child being in need of state aid will continue. Ostensibly, this change would make it easier for the state to meet its burden of proving "by clear and convincing evidence that the parental conduct is likely to continue to exist if there is no termination of parental rights." The amendment to AS 47.10.080(c) is ill-advised as it violates parents' due process rights, does not comport with the federal standards of the Indian Child Welfare Act of 1978, and will have the practical effect of complicating and prolonging litigation. These reasons for rejecting the proposed amendment are further outlined below:

1. A natural parent's "right to the companionship, care, custody, and management of his or her children is an interest far more precious than any property right." Santosky v. Kramer, 455 U.S. 745, 758-59, 102 S.Ct. 1388, 71 L.Ed2d 599 (1982). The right of parents to the care, custody and control of their children "is an important and substantial right protected by ... both the United States and Alaska Constitutions." Matter of S.D., Jr., 549 P.2d 1190, 1200 (Alaska 1976). In Santosky the Supreme Court recognized that parents have due process rights at a termination of parental rights proceeding. Similarly, the Alaska Supreme Court has acknowledged that due process dictates that the state (the Division) carries the burden of proving its allegations by clear and convincing evidence. K.T.E. v. State, 689 P.2d 472, 476 (Alaska 1984). By creating a presumption of continuing parental conduct, the proposed amendment would unconstitutionally shift the burden of proof from the Division to the parents.

2. The majority of termination proceedings in Alaska involve Native children. For termination of parental rights of a Native child, the Indian Child Welfare Act (ICWA) requires "evidence beyond a reasonable doubt" "that continued custody of an Indian child is likely to result in serious emotional or physical harm." 25 U.S.C. Sec. 1912(f). Amending AS 47.10.080(c) will not affect most Alaska termination proceedings, since the ICWA pre-empts any lower standard for termination under state law.

3. In the remaining non-Native cases, to which the amended standard would apply, the process of creating the presumption will further complicate and prolong the proceedings. Under the present scheme, the court orders an appropriate disposition under AS 47.10.080(c). A treatment plan to promote reunification is agreed to by the parents and the Division without further court intervention. The state has the option of petitioning for termination as the disposition under subsection (c). The proposed amendment would require a court determination of what services are appropriate for reunification. Additional proceedings would be necessary with litigation over what services are appropriate, whether sufficient assistance was provided by the Division, whether there was substantial participation in services or whether there was good cause not to participate. By interjecting the need for additional court proceedings and findings over these new potentially divisive issues, the proposed amendment would ironically prolong the termination process, a result which is almost never in the child's best interest.

Recently, in considering this section, the Alaska Supreme Court concluded, "The statute is as specific as it can usefully be, even though its application requires interpretation. We believe that the scheme accomplishes its purpose of protecting children, while balancing the parents' interests and still allowing reasonable flexibility for the exercise of discretion in the individual case." R.C. v. State, DHSS, 760 P.2d 501, 506 (Alaska 1988). The supreme court is probably right; making the statute more specific will make it less useful.

The bill purports to emphasize that the best interests of the child must be considered. But termination proceedings are part of the dispositive phase of a children's case where consideration of the "best interests of the child" is already mandated pursuant to AS 47.10.082. The only change the bill will effect is to further complicate the process of terminating parental rights; a change which is clearly not in the children's best interests. I agree with the supreme court that the current statute is as specific as it can usefully be. There is no reason to change it, especially in a way that raises more issues for litigation while contravening parents due process rights and the Indian Child Welfare Act.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF FAMILY AND YOUTH SERVICES

PERMANENCY FOR DEPENDENT CHILDREN

AN INNOVATIVE PROJECT

March 1989

Every child should have the right to a permanent and safe home.

DOES EVERY CHILD HAVE A PERMANENT HOME?

No! At any time in Alaska 900 to 1,100 children are in out of home care. Today, there are 222 children in the custody of the State of Alaska who have been in continuous out of home care for more than two years.

Although most children in custody will return to their own homes, for some, termination of parental rights is the only way they will ever have a chance for a permanent family. A quick survey throughout the state revealed that there have been approximately 35 cases of nonvoluntary terminations of parental rights during the past 18 months. There have also been five guardianships, 17 relinquishments, and there are approximately 50 cases pending termination. Some parts of the state have not had a termination of parental rights case before the court for ten years.

More must be done to assure a permanent home for every dependent child. Better assessment and focused treatment are needed to help the child's parents, and, when that is unsuccessful, faster, more definitive action is needed to make a permanent, substitute home possible for the child.

WHAT CAN BE DONE TO ASSURE PERMANENCY FOR CHILDREN?

The Division of Family and Youth Services (DFYS), together with the Department of Law, is launching a new project, Permanency for Dependent Children (PDC). This project will be implemented in Nome, Bethel, Barrow, Fairbanks, Juneau, Anchorage, and Ketchikan by July 1, 1989. Training to prepare staff will occur in June.

The goals of PDC are to speed up recognition of those cases in which termination of parental rights, or another permanent plan, should be pursued and to reduce delays in court action necessary to achieve the permanent plan. There are many components to achieving these goals:

Permanency Planning Court Specialists --

At least one permanency planning court specialist will be identified and trained in each of the offices listed above. The social workers will be trained as a team so that standardized procedures are developed statewide and so that these specialists have special support for their work.

The court specialists will conduct periodic reviews of all cases in which a child has been in custody for one year or has been removed from parental care and placed in foster care more than once. The specialists will also be available to consult and assist regarding any child's case where the caseworker or supervisor believes that a permanent plan other than return to the parents may be needed.

In those cases where the parents are not actively involved and progressing, a team decision will be made about whether continued effort with the parents is most appropriate or termination of parental rights should be pursued. In the former cases, further review will occur quarterly to be certain that no "drift" occurs.

In situations where termination of parental rights is identified as the most appropriate permanent plan, the permanency planning court specialist will be responsible for preparing the case for presentation to the court. The specialist will prepare chronologies of events, organize the evidence, interview and prepare witnesses, identify and prepare expert witnesses, and generally assist the ongoing caseworker and the assigned attorney.

Freeing a child for adoption requires the court to terminate the most precious relationship in our society -- that between parent and child. Preparation for these proceedings is extraordinarily demanding, time consuming, and stressful. By assigning specialists, we expect to eliminate delays which occur when ongoing workers are trying to balance this kind of preparation with their day-to-day obligations to respond to the needs of children, parents, and foster parents. The added expertise the specialists can bring to consultation about ongoing cases will also help less experienced workers improve their assessment and treatment skills.

Training regarding Permanency Planning --

In conjunction with the Department of Law, training and orientation for all new social workers will include information concerning legal standards for termination of parental rights, documenting events and services offered throughout a case, and assessing when termination of parental rights or another permanent plan should be pursued.

Updates on these subjects will be included in periodic training for all of the social workers. This will help keep skills current and offer an opportunity to incorporate the findings of the permanency planning court specialists about how best to prepare for court proceedings when they are required.

Specialists will be trained as a team. Their training will focus on legal and child welfare issues associated with permanency planning. The training will include information on how to conduct case reviews, assessment of treatment plans and progress, weighing permanent plan alternatives such as guardianship, adoption and long-term foster care, and preparing for complex legal proceedings.

Department of Law Participation --

In the Fairbanks, Anchorage, and Juneau offices of the Attorney General, arrangements will be made to make attorneys available to assist with training the DFYS specialists and to consult with the specialists and take cases to court. In the other offices, the Assistant Attorneys General assigned to represent DFYS will be offered support and consultation from the three larger offices, as needed.

In Juneau, a paralegal position, which is currently not filled, will be dedicated specifically to child in need of aid termination proceedings.

In Anchorage, the 1990 budget request includes the addition of an attorney and a paralegal to the human services section. Both of those positions will be dedicated to children's proceedings--including consultation with other attorneys handling termination cases. The attorney specialist will also be responsible for developing and implementing the monitoring and evaluation system for all child protection attorneys' cases in Anchorage.

Fairbanks attorneys will continue weekly staffings on all pending cases. The Fairbanks office has been involved in vigorously pursuing termination cases for quite a period of time. They will participate in concerted monitoring of cases, and evaluation of this new statewide effort.

HOW WILL BE KNOW IF WE ARE SUCCEEDING?

No later than August 15, 1990, a report will be jointly issued by the two Departments on the project's first year of operation.

In developing this project, DFYS gathered significant information about the status of permanency planning in Alaska. With the

Department of Law, we closely examined statutes concerning termination of parental rights and the many perceptions about permanency planning and "the best interests of a child." The information we have gathered is set out here as the starting place for the project evaluation, which will be described in the August 1990 report.

The annual report will include an analysis of the impact the project has had on achieving a permanent plan for the children presently in placement more than two years. It will address the project's impact on reducing the average length of time before a permanent plan is achieved for all children in out of home care. It will also include findings about what works and what doesn't and plans and recommendations for further action.

WHY SHOULD WE START THIS PROJECT?

... What is happening to children in the custody of the State of Alaska?

... Are plans for permanency being made in a timely manner?

... What is the Division of Family and Youth Services doing to prevent foster care drift?

... What is in the best interest for each child?

... Are permanent plans being finalized for children?

... What are the barriers to quality care for children in State custody?

For several hundred children, the answers to these questions are vital elements in their day-to-day survival and their future well-being. These are questions considered by policy-makers, legislators, judges, social workers, guardians, and DFYS. These are the questions that drove us to the conclusion that we needed more focused attention than had previously been devoted to permanency planning in Alaska.

Even after a child has been removed from his or her home, the child's immediate safety is not assured. Without continuing appropriate service for the child and the family, the child is at risk of victimization by the protection system. Immediate and long-term goals are necessary for each child who is removed from his or her home. The nationally recognized term for this type of planning is "permanency planning."

WHAT IS PERMANENCY PLANNING?

Permanency planning for children is a concept, a philosophy, and the desired outcome of DFYS intervention with a family. In practice, permanency planning begins with the first act of intervention by the agency. Each child's situation is assessed in two ways: 1) The risk of harm to the child in his own home is determined. 2) The family is assessed to identify needed changes so the family can provide safe, nurturing care for the child.

Through permanency planning, the goal of safe, stable care is achieved individually for each child:

1. When the child's family can be rehabilitated in a reasonable period of time, the permanency planning goal is to reunite the child with his family;

2. When the potential for reuniting a child with his family exists, an interim placement should be found which "could be permanent" if the attempt to reunite the child with his family is unsuccessful. Future planning in this direction reduces the number of placements the child must experience;

3. Sometimes adoption is best for the child and is possible when the child's parents' rights are terminated in court;

4. When the child's family cannot be rehabilitated and relatives can provide a safe, nurturing environment, a permanent relative placement may be the plan;

5. For Alaskan Native children, relatives and tribal members must be considered, and are usually most appropriate to provide the needed permanent placement;

6. Foster families frequently are willing to provide permanent care to a child who cannot be freed for adoption and has no relatives who can provide safe and permanent care;

7. Guardianship is also an avenue for permanency which does not require termination of parental rights. Relatives, tribal members and foster families can be named guardians.

WHERE ARE WE IN MEETING PERMANENCY PLANNING GOALS IN A TIMELY MANNER?

According to a recent analysis (data from December 1985 and the most recent analysis in January 1989), approximately 21% to 23% of the children in state care have been there for more than two years. In Washington, Maine, and Massachusetts the statistic is 30%, 51% and 31%, respectively. Alaska has a lower percentage rate. However, for the 222 children in Alaska who have been in substitute care for more than two years, timely permanency planning has not occurred, and for the 33 children who are between the ages of two and five, out of home care represents the majority of their life span. The following chart shows the region, age, and sex of these children.

REGION	AGE AND SEX						TOTAL
	2-5 yrs.		6-10 yrs.		11-18 yrs.		
	M	F	M	F	M	F	
Western	2	6	4	6	3	4	25
Northwestern					1		1
Northern	1		7	5	8	18	39
Southcentral	12	15	18	13	32	41	131
Southeastern		1	4	1	10	10	26
Totals	15	22	33	25	54	73	222
	37		58		127		

Alaska also appears to be doing a better job than some of the other states by not "losing" children for years in the system.

At the same time, the number of moves a child makes from foster home to foster home and from the child's home to a foster home is a measure of the quality of care the child is receiving from the "system". In 1985, 74% of the children in DFYS custody had been in at least two placements and 25% had over five placements.

In comparison, New Jersey reports that 45% of their children in substitute care have had only one placement. However, the other 55% represent multiple placements. Washington State's data for FY 86 indicated that of the 5,745 children placed, 3,858 (67%) received one placement each; 1,114 (20%) received two placements; 711, three to five placements; and 62 children had received more than six placements. The Division's program goals include reducing the number of placements for each child as well as reducing the length of time in placement for children.

HOW DO STATUTES AFFECT THIS PROCESS?

State and federal statutes define standards of proof for termination of parental rights: state statute mandates clear and convincing evidence that the parents' conduct is likely to continue. The Indian Child Welfare Act mandates evidence beyond a reasonable doubt that continued custody by the parents is likely to result in serious physical or emotional damage to the child and proof that active efforts have been made to offer remedial services. The statutes do not give time frames for the filing of a petition to terminate parental rights.

Both the parents' ability to change and to meet the child's needs are key elements. Although there are barriers to the timely planning for children in custody in Alaska, the statutes are rarely, if ever, the barrier. Ideal progression is dependent on the resources and skill of staff in the state agency, the community's resources for assisting the parents to learn to care for their child and to overcome the parents' problems, the skill and availability of the state's attorney, and the wisdom of the court.

Permanent status for some children can be achieved only through the termination of their parents' rights. State and federal statutes give the legal rules and structure to the courts and the state agency to use in deciding when the termination of parental rights can be granted:

> AS 47.10.080 (c)(3) provides that by order, upon a showing in the adjudication by clear and convincing evidence that there is a child in need of aid under AS 47.10.010 (a)(2) as a result of parental conduct and upon a showing in the disposition by clear and convincing evidence that the parental conduct is likely to continue to exist if there is no termination of parental rights, terminate parental rights and responsibilities of one or both parents and commit the child to the department or to a legally appointed guardian of the person of the child, and the department or guardian shall report annually to

the court on efforts being made to find a permanent placement for the child.

The Indian Child Welfare Act (P.L. 95-608) provides in pertinent part that no termination of parental rights may be ordered in such proceeding in the absence of a determination, supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

The Adoption Assistance and Child Welfare Act of 1980 (P.L. 96-272) provides in pertinent part that effective October 1, 1983, in each case, reasonable efforts will be made (A) prior to the placement of a child in foster care, to prevent or eliminate the need for removal of the child from his home, and (B) to make it possible for the child to return to his home; and it provides for the development of a case plan (as defined in section 475[1]) for each child receiving foster care maintenance payments under the State plan and provides for a case review system which meets the requirements described in section 475(5)(B) with respect to each such child.

The term 'case plan' means . . . a plan for assuring that the child receives proper care and that services are provided to the parents, child, and foster parents in order to improve the conditions in the parents' home, facilitate return of the child to his own home or the permanent placement of the child . . . 475(5) The term 'case review system' means a procedure for assuring that . . . (B) the status of each child is reviewed periodically but no less frequently than once every six months by either a court or by administrative review . . . in order to determine the continuing necessity for and appropriateness of the placement, the extent of compliance with the case plan, and the extent of progress which has been made toward alleviating or mitigating the causes necessitating placement in foster care, and to project a likely date by which the child may be returned to the home or placed for adoption or legal guardianship and

WHAT IS IN THE BEST INTERESTS OF A CHILD?

This question elicits emotional, philosophical, societal, tribal, and sometimes religious responses which are different for every child whose needs have not been met by the child's parents. The court ultimately may have to provide the answer for many children.

We believe it is in the best interest of every child to be loved and cared for by the child's own parents. Unfortunately, even with help to the parents, this is not always possible. The "reasonable efforts" requirement of the Adoption Assistance and Child Welfare Act of 1980 recognized, on a federal level, the bond which a child has with his family and the importance of maintaining that bond. The Indian Child Welfare Act has similar requirements. Both federal laws, like Alaska State law, recognize, however, that this goal may not be attainable for every child. When it is not, another permanent family must be found for the child.

FINALLY --

We will need lots of help to make this project work. We must have enough social workers and lawyers. Treatment providers must recognize the urgency. Tribal advocates and Native organizations must be included so we have the best possible support for parents of Native children and help finding and supporting the most appropriate substitute placements, when that is required. Guardians ad litem must advocate vigorously.

Meeting the goal of a permanent home for every child requires difficult decisions and painful choices. Most important, we need the commitment of every Alaskan to meeting this goal.

For more information, please contact:

Yvonne M. Chase, ACSW
Director
Division of Family and Youth Services
P.O. Box H-05
Juneau, Alaska 99811-0630
(907) 465-3170

Yvonne M. Chase, ACSW
Director
Division of Family
and Youth Services

Date: 2/8/89

Myra W. Munson
Commissioner
Department of Health and
Social Services

Date: 3/8/89

Alaska Foster Parents Association

P. O. BOX 140631 • ANCHORAGE, ALASKA 99508

POSITION PAPER
HB 175
PROGRAMS AND PROCEEDINGS RELATED TO CHILDREN

The Alaska Foster Parent Association supports this legislation. Sections one, two and four contain long needed corrections to current statutes.

Section three contains language relating to termination proceedings that appears to make termination of parental rights, when appropriate, easier for the state to accomplish. We do have reservations about this specific language. However, in our contacts with legislators and legal professionals it would seem that there is about an equal opinion concerning this language and possible alternatives. It is our position that we agree with the intent of the language and if the legislature chooses to uphold rebuttable presumption, we feel we can only concur.

We agree whole-heartedly with the enhancement of the best interest of the child that this legislation will provide. Hopefully, it will give the courts in the state of Alaska a vehicle to provide children a permanent setting that is conducive to their well being and emotional and physical development. We cannot overstate the importance to children of a loving, nurturing family that they can call their own.

It should be considered, when termination is necessary, that one of the factors of determination should be the age of the child. Two years is not a long time to a teenager, however, to a four year old toddler it is half of their life! For extremely young children developmental years are crucial and the need for beneficial bonds with adult parents can have far reaching effects. For very young children whose families have an unfavorable prognosis, the decision to terminate parental rights should not be delayed unnecessarily.

Also, in discussing termination, we feel that the concept of open adoption should be considered when it can be accomplished without endangering the child or the child's new family.

Miriam Sumner
President

Frank H. Wasmer
Vice President

Alaska State Legislature

HOUSE OF REPRESENTATIVES

Official Business

Representative Ann H. Spohnholz
District 13 Seat A

P.O. Box V
State Capitol
Juneau, Alaska 99811
465-2435

MEMORANDUM

TO: Members of the House HESS Committee

FROM: Representative Ann Spohnholz

DATE: March 10, 1989

RE: Attached comments

During discussion of HB175 at yesterday's meeting of the HESS Committee, one of the young people in the audience passed me the attached comments. I was moved by his statement and wanted to share it with you.

The young man's name is Tony Boykin, he is a student at East High School in Anchorage, and he was one of a group of students in attendance at yesterday's meeting as part of his participation in the CloseUp Program.

During the time I've been here and listen to this meeting I haven't heard anyone say or tell the kids what if it. Before we start making panels and making any other moves we should have open experts talk to kids because the things that kids tell other kids are the same things they will never tell a expert because an expert is not a friend but a person wanting to help so best that they listen but don't feel the pain with the kid. Our system tries the system doesn't work because the kids don't understand why there lives are controlled by rules and Strangers that don't know them and only about how smoothly the system works. All I'm trying to say is talk to the kids and listen and feel.

During the time I've sat here and listen to this meeting, I haven't heard anyone try or tell the kids side of it. Before you start making parallels and making any other moves, you should have your experts talk to kids because the things we kids tell other kids are the same things they will never tell a expert because an expert is not a friend but a person wanting to help so bad that they listen but don't feel the pain with the kid. In shorter words, the system doesn't work because the kids don't understand why there lives are controlled by rules and strangers that don't love them and only about how smoothly the system works. All I'm trying to say is talk to the kids and listen and feel.

BILL 175 House Bill
3/9/89

RE: FOSTER CARE ISSUES: Please let me, Jeanine Brown - Foster Mom, voice my opinion on this bill. I have been at your hearings and listened to testimony regarding HB 175. As a foster parent of long standing, I support this bill and think it may be one of the most important bills before this legislation this year.

I listened to Martha Holmberg this morning and could not help but think "Is this the same policy that I deal with daily?" Peter Goll asked the right questions. Foster Parents see the failure of policy every day. I understand that good policy procedures exist, but are maybe not able to get down to our level of working with children under Alaska's protective services?

It is very frustrating. We all seem to want the best for these minors, and work toward that end. Why are we failing then? In my opionion, the ladder of policy seems to be inassessable. That child, needing our help, is almost abused by quote, "The System" as much as he/she was before being placed into protective services.

If I had to ask any foster parent to voice their main concern out of probably many concerns, the answer would be, "Why do these children remain in the system so long." Back and forth to parents, bounced between foster care providers, any persons chances go "down the drain" when their lives are uprooted, inconsistant, and uncertain of thier survival: and it is survival.

Consider the Dept. of H.S.S. the General: Foster parents the Sargents and foster care children the soldiers. These soldiers are on manuvers: survival the goal. Their training has been very limited if any. Not much of self-esteem, bonding, or security has been given them. They have no goals, battle plans, or futures that they can see. They have been sent to the isolation of unknown territory and given no weapons. Fear and uncertainy have been their background with little good modeling available for them. They deal

STATE OF ALASKA
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Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

H. HESS 3-9-89

H. HESS 3-10-89

CORRECTION

THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY

BILL 175 House Bill
3/9/89

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If I had to ask any foster parent to voice their main concern out of probably many concerns, the answer would be, "Why do these children remain in the system so long." Back and forth to parents, bounced between foster care providers, any persons chances go "down the drain" when their lives are uprooted, inconsistant, and uncertain of thier survival: and it is survival.

Consider the Dept. of H.S.S. the General: Foster parents the Sargents and foster care children the soldiers. These soldiers are on manuvers: survival the goal. Their training has been very limited if any. Not much of self-esteem, bonding, or security has been given them. They have no goals, battle plans, or futures that they can see. They have been sent to the isolation of unknown territory and given no weapons. Fear and uncertainy have been their background with little good modeling available for them. They deal

with a day to day existance and their own life style, cultural background or any other form of themselves on hold

They live on threads of information, or misinformation and wait daily for the next "battle plan' to be told them. The most fortunate soldiers are too young to realize just why they are here The older soldiers know exactly why they are here; they have been here many times before and know how to manipulate to survive. Soon these soldiers will be to "wise" for foster care and go on to the next level of manuvers, juvenile receiving homes and lock-up facilities. These soldiers are now into many different wars, including the war on drugs or alcohol. Running without any plan seems to be in most of these soldiers lives. These soldeirs are lost. The system has claimed them.

What we need to work on is how to get the soldiers new recruits who can help them to get through the wars going on in their lives. Many times we need to "muster out" these people before they get into the "hard timers". Termination can be their only resource.

Please, please, please, do not let (3) out of this bill. Do not white wash any bill dealing with foster care to get it passed. We need your input and interest in foster care children They need you to help them through. I did not agree with Martha's estimate of how many children remain in the foster care system for long periods of time. I consider it a major number with difficult means to get children to be terminated. Even sending back home is a bad battle plan at times. More work has to be done in this area. More looking and asking will help. You are on the right track. Thank you.

Jeanine Brown

Jeanine Brown
P.O. Box 210584
Auke Bay, AK 99821

789-5051

STATE OF ALASKA
THE LEGISLATURE

POUCH Y · STATE CAPITOL
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Mary Van Nimwegen

H. HESS 3-9-89

H. HESS 3-10-89

HB

176

AMENDMENT

OFFERED IN THE HOUSE BY SPOHNHOLZ
TO: HB176

Page 1, lines 18 - 24: OMIT and replace with the following:

(2) the Director of the Division of Family and Youth Services;

(3) three public members with a demonstrated committment in the issues of children and youth and in the community.

AMENDMENT

OFFERED IN THE HOUSE BY SPOHNHOLZ
TO: HB176

Page 2, lines 19 and 20: AMEND as follows:

(6) the grievance process [and compensation system for, and liability of, foster parents;] for foster parents concerned about decisions made regarding children in their care;

And following line 23: ADD:

(8) the compensation system for and the liability of foster parents.

HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES

P.O. BOX V, JUNEAU 99811
(907) 465-3759

STATEMENT ON HB 176
by
Rep. Johnny Ellis

House Bill 176 "relating to an advisory council on foster care", was introduced as one of a package of measures proposed or supported by the House HESS Committee, as a result of the Committee's interim comprehensive review of the state's child protection and foster care systems. This bill responds to testimony presented at hearings in the fall of 1988 regarding the effectiveness of the state's foster care system.

It was apparent to the Committee that there is presently no way for interested parties to officially advise the state on the overall foster care program. Foster parents especially can offer valuable insight into the issues of permanency planning for children; programs for family reunification; foster parent screening, recruitment and training; compensation for foster parents; the grievance process.

This bill establishes a seven member board to address these and other issues. It will also serve as a policy coordinating tool for those state agencies involved with foster care including the Governor's Commission on Children and Youth. As proposed in its present form, the board would meet at least three times per year and would employ existing Department of Health and Social Services personnel as staff.

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

P.O. Box Y, State Capitol
Juneau, Alaska 99811-3100
Mail Stop 3100
(907) 465-3991

November 15, 1988

MEMORANDUM

TO: Representative Johnny Ellis

ATTN: Jim Nordlund

FROM: Tom McKenna TM
Legislative Analyst

RE: **Foster Child Care Advisory Boards in Other States**
Research Request 89.088

You requested information on the range of approaches taken by various states regarding foster child care. Specifically, you wanted to know whether any states have independent foster care advisory boards, characterized by membership from both the state agency handling foster care and the private sector, and the authority to establish foster care policy.

To respond to your request, I contacted child welfare and foster care specialists in the Division of Family and Youth Services (DFYS) (Alaska Department of Health and Social Services) and seven national agencies: National Conference of State Legislatures (NCSL); Administration for Children, Youth and Families; U.S. Department of Health and Human Services (Region X); Children's Defense Fund; Child Welfare League of America; American Public Welfare Association; and the National Association of Child Advocacy Organizations. In addition, 13 states, selected on the basis of recommendations by these specialists, were contacted: Arizona, California, Iowa, Missouri, Massachusetts, Michigan, Minnesota, New Jersey, Ohio, Oklahoma, Oregon, South Carolina, and Texas.

In summary, I did not find any examples of an advisory board that has the authority to establish state foster care policy. The range of state provisions for interaction between state agencies and private parties, with regard to foster child care policy development, includes several patterns of organization. Four types of organizations involving private foster child care interests and state foster child care agencies, with some limited policy-making capacities, can be discerned in the surveyed states.[1]

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[1]Because of its reliance on counties for administration of foster care programs, California does not have an advisory board which falls into one of these categories.

- **Nonpermanent task forces or committees.** Organizations created for the purpose of addressing specific issues within a limited time frame.

- **General social service advisory boards.** Advisory boards which provide policy recommendations for a range of social service areas, including foster child care.

- **Policy-directed foster care review boards.** Review boards that collect data and make recommendations for state policy, rather than review individual cases.

- **Citizens' foster care advisory boards.** Citizens' organizations with influence in state policy development and revision.

NONPERMANENT TASK FORCES AND COMMITTEES

One approach used by states to integrate concerned members of the public with executive agencies' roles in foster care policy development is through nonpermanent task forces and committees. **New Jersey** and **Minnesota** offer examples of the task force approach. In addition, **Michigan** cited the development of ad hoc committees for specific problems.

New Jersey's Department of Human Services, Division of Youth and Family Services, has contracts with the New Jersey Foster Parents Association for statewide recruitment, foster family training, and various aspects of public relations. Foster Parents Association members have traditionally had advisory input through association staff in each county foster care office, advisory boards in each county, and direct advocacy at federal and state hearings. The division is now working on a "Foster Care Enhancement Project" to develop a professionalized, team approach to the relationship between parents and centralized state government officials.[2] The project calls for the establishment of a "Task Force for the '90's" with the following statement of purpose:

> ...to design, develop, and implement a centralized foster care system appropriate to the foster care needs of the future. This Task Force will include child advocates from within the Division as well as from the community. The Task Force will be charged with the responsibility

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[2]Betsy Riegal, New Jersey Division of Youth and Family Services, personal communication, November 8, 1988.

> of assessing New Jersey's needs, evaluating programs nation-wide, assessing their implications for New Jersey; modifying program designs as necessary; developing cost projections; recommending a design for New Jersey and an implementation plan.[3]

The project is still in the formative stages; the membership of the Task Force and the duration and exact scope of its authority have not been established. The policy elements that it may examine have been listed and are provided in Attachment A.

The Commissioner of Minnesota's Department of Human Services, the department whose Social Service Division is responsible for foster care policy, is required by statute to request and receive consultation from a wide range of parties, including "...other state departments and agencies;...other affected political subdivisions;...persons and relatives of persons using the program governed by the rule; advocacy groups; and representatives of license holders affected by the rule." (Minnesota Stat tes, Ch 245.A09, Subd. 6; Attachment B)

For the specific purpose of making regulations, as well as for broader policy advisory work, the Minnesota Social Service Division convenes two types of task forces--either a working group with a specified term or a short-term, temporary "advisory" task force.

The American Indian Advisory Task Force is an example of a working group provided for in statute. It was established for a broad assessment of Indian welfare, with placement of Indian foster care children central to its work.[4] The Task Force's membership (which does not include state agency staff), its broad policy charge, and the duration of work are established in Minnesota Statute 257.3579 (Attachment C).

A temporary task force currently working to revise Minnesota foster care licensing includes a cross-section of community and department people. Of the thirty-member task force, five members are department employees, who represent interests in Childrens' Services, Long-Term Management, Long-Term Care, and Developmental Disabilities. The remainder of the advisory group is composed of various foster care community people: county foster care and licensing people, members of child placement agencies, foster care providers, Foster Care Parents Association members, and members of minority groups.[5]

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[3]New Jersey DFYS, "Foster Care Enhancement Project: Policy, Planning, and Support," 1988, p. 8, (Attachment A.)

[4]Fran Felix, Minnesota Department of Human Services, personal communication, November 10, 1988.

[5]Muriel Sharlow, Minnesota Department of Human Services, Social Services Division, personal communication, November 10, 1988.

The nature of these task forces' work is ultimately advisory. Although a new or revised regulation may be proposed by a task force, the changes are subject to Department approval and are formally drafted by the state Rule Making Unit. In practice, according to Muriel Sharlow of the Minnesota Social Services Division, the task force system is time-consuming but helps to limit controversy.

Michigan's approach of structuring forums for foster child care policy development is similar to that of Minnesota. Michigan's ad hoc committees are convened by the executive agency responsible for foster care to resolve specific policy issues, such as those concerning rules and rates. Michigan's Department of Social Services has traditionally received policy input from a Rate Review Committee, a Cost Review Committee, a Rate Setting Advisory Committee, and a Child Care Fund Advisory Committee.[6]

Although Michigan's Rate Review Committee is staffed from within the Department of Social Services, membership profiles of these other committees provide for foster parent and private agency input. The Child Care Fund Advisory Committee, for example, was established by a statute which mandates promulgation of rules for the services provided under this Fund. This committee included two chairpeople of county committees, two probate judges, two court administrators, one foster parent, one member of the state Department of Management and Budget, and one representative of a private child placement agency. The Rate Setting Advisory Committee, staffed by one representative each from a private placement agency, the Department of Mental Health, the Department of Social Services, and two foster parents, recently revised age brackets for Michigan's rate structure. As is typical, that committee's findings were submitted to the Department of Social Services, which passed them on to the legislature for the actual establishment of rates.[7]

GENERAL SOCIAL SERVICE ADVISORY COMMITTEES

South Carolina and Ohio are states where advisory organizations, composed of state agency members and concerned citizens, function to establish generalized social service policy, which can include foster child care. South Carolina's Child Welfare Advisory Committee focuses primarily on foster child care issues, while Ohio's Social Services Advisory Committee historically has not.

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[6]Scott Deaver, Michigan Department of Social Services, Office of Children and Youth Services, personal communication, November 10, 1988.

[7]Bill Fox, Michigan Department of Social Services, Office of Children and Youth Services, personal communication, November 10, 1988.

The Child Welfare Advisory Committee in South Carolina was established in 1974 as a committee responsible to a state Social Services Board, which is composed of the Social Services Commissioner and seven legislators. The Advisory Committee was set up to examine issues in foster child care, protective services and adoption, and is prohibited from examining personnel issues and case material. The Committee exists at the discretion of the Board, and could be dissolved by that organization at any time. Committee membership is typically 18 to 21 members and excludes staff of the Department of Social Services, the executive agency responsible for foster child care. Membership is usually divided equally between sister state agency personnel and representatives of private organizations. Members, from the state agencies of Mental Health, Education, the Foster Care Review Board, and from residential group care organizations, the Foster Parents Association, the Junior League, and the League of Women Voters, meet bi-monthly.

According to Ramona Foley of South Carolina's Substitute Care Division, the Child Welfare Advisory Committee's performance and policy input have been hampered by lack of organizational independence, inconsistent attendance at infrequent meetings, agendas "stacked" in favor of agency personnel, and strong advisory input from citizens' and judicial review processes. Ms. Foley reported recent discussion about dissolution of the Committee.[8]

Ohio's Social Services Advisory Committee is comprehensive in both its membership and policy-making opportunity. Ohio statutes require a diverse composition including directors from six Ohio departments, legislative appointees, public and private social service agency representatives, citizens interested in and having knowledge of social services, consumers of social services, and members of county welfare advisory boards. The statutes provide for the Committee to advise the officers and departments handling public welfare, and for it to have "adequate opportunity to participate in policy development..."[9]

In practice, the Committee directly advises the Director of the Department of Human Services, with budget recommendations and initiatives for development of policy and procedure. Although foster child care is funded by the Human Services Department, foster care issues have not been discussed. A lack of recent foster care initiatives in the department, and a preference for department-wide concerns such as those surrounding Medicaid issues, may be responsible for this omission. It was suggested that the Committee would have future policy input with regard to foster child care.[10]

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[8]Ramona Foley, Acting Director, Substitute Care Division, South Carolina Department of Social Services, personal communication, November 10, 1988.

[9]Ohio Revised Code, Title 51, 5101.47, (Attachment D).

[10]George Biggs, Chief of Bureau of Licensing, Ohio Department of Human Services, personal communication, November 10, 1988.

POLICY-DIRECTED FOSTER CARE REVIEW BOARDS

Because of their traditional focus on specific case evaluation rather than on comprehensive policy directives, foster care review boards are generally excluded from this memorandum's treatment of independent foster care advisory boards. Arizona and South Carolina's citizen review boards, although attributed some advisory input, were not examined in detail. In contrast, the powers and duties of Iowa's State Foster Care Review Board are more comprehensive and appear to allow significant policy input.

Iowa's State Foster Care Review Board, or State Board, was created within the state's Department of Inspections and Appeals, but reports directly to the governor. It consists of seven citizens, appointed by the governor. According to statute, citizens with any of a variety of special interests in foster care are ineligible to serve:

> An employee of the department of inspections and appeals, the department, an employee or board member of a child-placing agency, an employee of an agency with which the department contracts for services for children under foster care, a foster parent providing foster care, or an employee of the district court is not eligible to serve on the state board.[11]

Although the Board is responsible to the governor, and its charge is fundamentally advisory, the scope of its duties allow for a wide range of recommendations. The Board is empowered to: 1) review the activities of the local, case-specific boards; 2) accumulate data on several aspects of the state's foster care program and develop an annual report; 3) evaluate judicial and administrative data collected on foster care; 4) disseminate the data to the governor, the supreme court, the chief judge of each judicial district, the department, and child-placing agencies; and 5) establish an extensively prescribed mandatory training program for members of the state and local review boards. Iowa statutes also empower the state board to:

> . . . make recommendations to the general assembly, the department, to child placing agencies, the governor, the supreme court, the chief judge of each judicial district, and to the judicial department. The recommendations shall include, but are not limited to, necessary changes relating to the data collected and the annual report...

The major policy elements that have stemmed from the State Foster Care Review Board's work include a permanency planning manual authored by the Board and an adoption exchange (which is now mandated by law).

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[11] Code of Iowa, Vol. 1, 1987, 237.16-18, (Attachment E).

CITIZENS' FOSTER CARE ADVISORY BOARDS

Citizens' organizations with foster care advisory functions were noted at two levels: a local, de-centralized level, as well as a statewide, centralized level. Massachusetts, for example, has a citizens' advisory board in each of its 40 public health area offices.[12] Oklahoma also reported recent creation of some local citizens' advisory boards.[13] The parochial focus of local boards limits advisory functions to service-related, rather than statewide policy concerns. In contrast, the more centralized, hierarchically-derived approaches employed in Missouri's Foster Care Advisory Board, and in Texas' Child Protective Services Advisory Committee, provide some opportunity for policy input and are discussed below. Oregon also reported a committee with foster parent representation, set up to advise its Childrens' Service Committee, and to review division policy.[14]

Missouri's Foster Care Advisory Board, appointed by the Division of Family Services Director, is composed of foster parent representatives from regional committees and agency social workers. The Board's charge is advisory; it makes recommendations on training, recruitment, and other related issues.[15]

Specific achievements of Missouri's Board span policy areas dealing with grievance procedures, and recruitment and training of foster families. The Board authored a revised, detailed policy for registering grievances within the foster care program. It has also generated pre-service training standards for foster families and is currently reviewing the restructuring of recruitment mechanisms initiated by the state Office for Childrens Services. Nancy Grant, of the Missouri Office for Childrens' Services, suggested that the creation of the Board in 1986 has provided a more cooperative tenor in the typically conflict-ridden relationship between Childrens' Services and foster parents.[16]

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[12]Saf Lerman, Foster Care Specialist, Office of Public Affairs, Massachusetts Department of Social Services, personal communication, November 7, 1988. Massachusetts also has an Office for Children which functions as an independent state agency, and licenses all private agencies and each area office affiliated with foster care.

[13]Arlene Lotan, Foster Care Program Supervisor, Oklahoma Department of Human Services, personal communication, November 7, 1988.

[14]Monty McLaren, Oregon Department of Human Resources, personal communication, November 10, 1988.

[15]Nancy Grant, Missouri Department of Social Services, personal communication, November 10, 1988.

[16]Ibid., November 10, 1988.

Foster care policy development, along with other child welfare policy development in Texas, involves a Child Protective Services (CPS) Advisory Committee, just recently established in September 1988. Foster care policies, in Texas are typically state-administered. Generated by the Department of Human Services, policies will now be subject to input and review by the CPS Advisory Committee, referred to the Department's board for approval, and depending on the nature of the issue, published for public comment. Thus, the CPS Advisory Committee, a fifteen-member body of private citizens with regional and racial representatives, offers an advisory voice to policy development at the state level. Members are selected from the Texas Council of Child Welfare Boards, the membership of which, in turn, is drawn from the representatives that 254 counties send to 10 regional councils. The Committee supercedes the Texas Council of Welfare Boards in this advisory role.[17]

I hope this information will be useful to you. Please contact me if I can be of further assistance.

Attachments

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[17]Melody Flemming, Texas Department of Social Services, personal communication, November 10, 1988.

Alaska Foster Parents Association

P. O. BOX 140651 • ANCHORAGE, ALASKA 99508

POSITION PAPER
HB 177
PRE-EMANCIPATION SERVICES FOR MINORS

The Alaska Foster Parent Association supports the concept and intent of this legislation, which is to provide pre-emancipation services to youth in the custody of the state in order to prepare them for independent living.

One concern is that, although some youth age 16 and above coming into care may need a specific pre-emancipation setting or supervised independent residence, all youth need to have access to pre-emancipation skill building. Youth also need a home setting in which to be nurtured. Federal laws require the least restrictive setting possible, which is usually defined as foster care. Therefore, we need to insure that this bill also provides for pre-emancipation skills to be provided in each foster home and in residential facilities providing care for youth.

During the past year several foster parents have applied for grants from the Division of Family & Youth Services to help foster parents prepare youth for independent living based on materials from Eastern Michigan University, Institute for the Study of Families and Children called "PREPARING YOUTH FOR EMANCIPATION FROM FOSTER CARE". Foster parents are the logical choice to teach youth these skills, both in specific programs and in every day living that incorporates good role modeling, gradual independence, and an opportunity to test new skills in the community in which they live.

The Alaska Foster Parent Association would support independent living residences for those youth for whom this is the only option, but would also ask for the same support and grants to enhance foster parents' ability to prepare youth for independence that would, hopefully, produce productive and healthy young adults that would not continue to be a burden on society. Grants should be awarded to foster parent groups that are willing to incorporate independent living skills as a program of foster care in their area. Specific supports and provisions within policy would also be needed to support this concept.

We must remember that each and every youth will be an independent young adult soon. We must work to prepare all of them for emancipation or we will perpetuate the cycle of welfare and dependent families.

Miriam Sumner
President

Frank H. Wasmer
Vice Presi'ent

HB

177

HB 177

HOUSE HESS COMMITTEE

1) CALL MEETING TO ORDER

2) NOTE MONTH/DAY/YEAR Thursday, April 6, 1989

3) NOTE TIME:

4) NOTE MEMBERS PRESENT AND EXCUSED

(For the record, note any late arrivals to the meeting)

5) REMIND PARTICIPANTS TO SIGN THE WITNESS REGISTER

6) COMMITTEE CALENDAR:

1. SB 138: Training of Foster Parents
2. HCR 16: Master of Social Work Program: U of A
3. HB 175: Programs & Proceedings Relating to Minors
5. HB 177: Pre-emancipation Aid for Minors
4. HB 178: Tort Liability Related to Foster Care

7) INTRODUCE WITNESSES

For the record, ask participants to state their name, title, and the name of the firm or agency they represent.

Ask participants with written testimony to submit it to the committee secretary.

8) UPCOMING MEETING SCHEDULE: (see attached)

9) ANNOUNCE TIME OF ADJOURNMENT

There was a committee named HESS,

That knew foster care was a mess,

So without hesitation,

They passed legislation,

That changed foster care for the best!

House HESS Committee
Schedule
Page Two

Thursday, April 6, 1989

SB 138: Training of foster parents

HCR 16: Master of Social Work Program: U of A

HB 175: Programs & proceedings relating to minors

HB 177: Pre-emancipation aid for minors

HB 178: Tort liability related to foster care

Friday, April 7, 1989

1 *HB 181: Exemption of home-brew from A.S. 04

3 *HB 230: Warning signs on liquor premises

2 *HB 246: Increasing tax on beer, wine and liquor

5 *HB 236: Level of blood alcohol for DWI offenders

4 HB 35: Access to licensed premises by minors

HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES

P.O. BOX V, JUNEAU 99811
(907) 465-3759

HOUSE HESS COMMITTEE

Committee Schedule
April 10 - April 14, 1989

(*indicates first public hearing)

HOUSE HESS	Capitol Rm. 106 465-3759 or 60	8:30 a.m. T - W - Th - F

Tuesday, April 11, 1989

HCR 18: Joint Committee on School Performance

HB 231: Education: planning/grants/misc. changes

HB 251: Educational TV/RATNET

HB 189: Forward funding for education account

HB 190: Approp: fwd funding for education account

Wednesday, April 12, 1989

Bills held over

Thursday, April 13, 1989

SJR 23: Labeling of irradiated food

SB 209: Sale of organic food

HB 225: Payment of disability insurance claims

HJR 16: Medicaid benefits for veterans

SB 73: Retirement incentive program/PERS & TRS
(pending referral)

TESTIMONY BY FRED ALI
EXECUTIVE DIRECTOR, COVENANT HOUSE ALASKA

TO

ALASKA STATE LEGISLATURE
HOUSE HE&SS COMMITTEE

APRIL 6, 1989

Thank you for the opportunity to meet with you this morning. My name is Fred Ali, and I am the Executive Director of Covenant House Alaska. I am here to testify in support of House Bill No. 177, "An Act relating to the pre-emancipation services for certain minors."

Let me begin by briefly explaining our program at Covenant House. Covenant House Alaska is a private non-profit corporation serving runaway and homeless youth between the ages of 13 and 20. Located in downtown Anchorage, Covenant House is open 24 hours a day, every day of the year, responding to the needs of kids in crisis.

Our goals are to:

- Provide immediate sanctuary and services to homeless and runaway youth;

- Reunite families as quickly as possible, whenever possible;

- Enable youth to choose positive and stable lifestyles;

- Educate the community about problems of homeless, runaway, and throwaway youth, and assist and promote productive community solutions.

Covenant House Alaska is an affiliate of Covenant House, Inc., an international child care agency with centers throughout North and Central America.

I would now like to specifically address H.B. 177.

H.B. 177 would give the Department of Health and Social Services the authority to provide pre-emancipation services to appropriate children, 16 years of age or older. We believe pre-emancipation service programs are needed in this state to address the following groups of kids at risk:

- Youth ageing out of the Foster Home system;

- Youth leaving juvenile justice facilities, i.e, in Anchorage, Fairbanks, Nome, and Bethel;

- Throwaways (not necessarily in state custody);

- Chronic runaways (not necessarily in state custody) who have voluntarily exiled themselves from their families.

Many of these kids share problems in common. They have not developed skills that will allow them to succeed on their own. They find it difficult, if not impossible, to hold a job, manage financial resources, and form positive relationships with other people. They cannot or will not return home or to another stable living situation. They are essentially on their own, but without the skills to live independently. They survive on the streets by participating in illicit activities or by bing exploited by others. Most importantly, they are kids who will eventually end up in our adult correctional facilities unless there is some form of intervention.

Let me share the stories of two of our residents at Covenant House.

> Patty is 17 years old. She is no longer in state custody, lacks a stable home, is addicted. She's dropped out of school and lacks the job skills necessary to hold down a job. Her father is dead and she hasn't seen her mother for over a year.
>
> John is 17 years old. His mom is dead and he hasn't seen his father for over two years. He dropped out of school, and has been living from "crash pad to crash pad." John has decided he wants to make some positive changes in his life. That's why he came to Covenant House.

Patty and John are not unique. We see many kids just like them at Covenant House every day.

Since opening our doors on last Hallowe'en, we have provided shelter and assistance to over 250 youth.

Characteristics typical of runaway and homeless youth across the nation are common in the Anchorage Crisis Center.

- Lack of basic literacy skills

- Lack of skills necessary for independent living

- Lack of self esteem and poor self image

- Youth ageing out of the Foster Home system;

- Youth leaving juvenile justice facilities, i.e, in Anchorage, Fairbanks, Nome, and Bethel;

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- Lack of skills necessary for independent living

- Lack of self esteem and poor self image

- Past involvement in street survival activities, such as prostitution, survival sex, drug dealing, theft

- Histories of personal or family substance abuse

- Escaping abusive or dysfunctional homes

- Victims of physical or sexual assault

We recognize that many of our kids, like Patty and John, need more than just a crisis center. They need sufficient time, support and resources to achieve true independent living.

For this reason, Covenant House has developed a program called Rights of Passage (ROP). ROP programs are operating in tandem with our crisis centers in New York, Houston, New Orleans, and Ft. Lauderdale. In Anchorage, we are currently assessing the feasibility of an ROP program.

The ROP program provides long-term residential care for a period of 9-15 months. In addition to stable housing, ROP residents are provided:

- Counseling
- Health Care
- Money Management training
- Life Skills instruction
- Educational/vocational training
- Employment counseling
- Mentoring
- Aftercare

It is my sincere hope that this legislature will authorize and fund (on a pilot basis) programs offering pre-emancipation services. There is ample need to justify the funding of pilot projects throughout our state.

1. In five short months, Covenant House Alaska has worked with hundreds of disconnected kids in need of specialized services.

2. Annually, many kids are released from McLaughlin and other youth correction facilities who lack the skills to live successful independent lives.

3. On the Kenai Peninsula, the Kenai Community Care Center has begun a small independent living program for youth ageing out of the foster care system.

Chronic youth at risk start from a position of such disadvantage that it is hard for most of us to imagine. Their interior equipment for functioning in mainstream society is almost nonexistent. Lacking the most basic

skills -- rational thinking, decision-making, planning ahead -- they are in many ways no better equipped for life in the world than young children. An apartment of their own; security in a job; stable and constructive relationships with landlord, supervisor, family, friends; competence at fundamental independent living skills: they have difficulty even conceptualizing themselves in this role.

But these young men and women have the drive and talent to succeed. Some of them believe in themselves just enough to strive for a better life. For those young people, a pre-emancipation program like Rights of Passage presents a very real ray of hope. From the moment they are accepted their chance of realizing their vaguely articulated dreams increases thousandfold.

Succeeding will push them to the limits. Major life changes that most of us encounter singly and sporadically will be required of them, and in a limited period of time. Particularly to young people accustomed to running away from the smallest challenge, what we ask is a tall order. But they are accomplished strugglers and they work hard. We develop trusting relationships with them -- the first they may ever have had with an adult. And we use our bond as leverage to help them reach the goals they set out for themselves when they come to us. We praise them, "I can't tell you how proud I am of what you did." The praise means something, and one success breeds another. We address our efforts to every part of their lives.

Undertaking such work is no small challenge. Resolving the complex issues of development and readying a staff to do the demanding work of pushing and prodding, cajoling and encouraging the youth in their struggles with job, school, and personal lives takes time, intellectual and emotional energy, and commitment.

But the rewards are commensurate with the effort -- because programs like this work.

RIGHTS OF PASSAGE

A TRANSITIONAL LIVING PROGRAM FOR STREET YOUTH

TABLE OF CONTENTS

PROGRAM NARRATIVE

In fifteen years of providing short term crisis services to youth, Covenant House has witnessed a growing number of homeless and disconnected young men and women. These young people lack the outside supports necessary to sustain their small gains - dead end jobs fail to provide sufficient income; makeshift housing arrangements dissolve under financial pressures; and the necessity of leading a hand-to-mouth existence prevent them from seeing beyond the present. These young people require long-term assistance: a stable place to live, a supportive environment with the loving relationships that would allow them to grow, guidance in obtaining a job with a future, and assistance in gaining the education and training needed to further themselves.

In response to this need, Covenant House opened its Rights of Passage program in March of 1986. The goal of Rights of Passage is to provide young people, ages 18-21, with the opportunity to change their lives and become productive, successful adults. We firmly believe that it is our relationships with the young people that provide the basis for change. It is in the context of these relationships that the young people are accepted, understood, loved and challenged to reach their potential. As they begin to trust, they are able to look at themselves and the circumstances in their lives that have prevented them from reaching their goals. The youth who come to Covenant House have been failed by their families, the foster care system and society at large. Traditional approaches to change have not been effective for them, and thus Rights of Passage has created this innovative philosophy designed to meet their needs.

EMPLOYMENT

These youth suffer from barriers to employment such as basic education and career awareness. The Rights of Passage employment program eases the labor market exchange between employers and unskilled potential employees. Each youth, with the guidance of the Educational/Vocational Coordinator, develops an individual vocational plan. Plans are created by assessing interests, skills, and abilities through interviews and aptitude tests. Placement is then determined by matching skills and interests with available positions. Entry-level opportunities are provided by donors, board members and friends of Covenant House.

Jobs are developed on an on-going basis to reflect continued demand and the diverse interests of the youth. Selecting appropriate job sites is key in facilitating job placement. The opportunities must be meaningful with recognizable career ladders and limited training. Youth have been placed in fields such as advertising, construction, hotel management and investment banking. Once a youth is placed, employers are contacted on a bi-weekly basis. Workshops are held for supervisors to discuss overall employment issues.