ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672
5719 HOUSE JUDICIARY 123

## CITIZEN REVIEW BOARD COMPARISONS

| | Current State Budget | Professional Staff Coordinating Boards | Profess. Staff / Review Boards Ratio | Profess. Staff/Children Reviewed Ratio |
|---|---|---|---|---|
| OREGON | $1,054,000 | 7.6 | 1/7.8 | 1/976 |
| SOUTH CAROLINA | 1,400,000 | 9 | 1/4 | 1/544 |
| ARIZONA | 1,608,000 | 13 | 1/4 | 1/550 |
| MARYLAND | 1,558,000 | 12.5 | 1/4.5 | 1/528 |

All of the above systems conduct similar types of reviews and are statewide programs.

Approved by State Board
9/8/87

RULES AND REGULATIONS

TITLE 162 - STATE FOSTER CARE REVIEW BOARD

CHAPTER 1-000 INTRODUCTION

1-001 Legal Basis:

The Foster Care Review Act, LB 714 enacted by Nebraska's Eighty-seventh Legislature, Second Session, 1982, established the Foster Care Review Board, Section 43-1301 through Section 43-1318, Revised Statutes of Nebraska, 1943.

1-002 Purpose Statement:

The Foster Care Review Board was established as an independent agency to periodically review the case plans of children in foster care. The purpose of the review is to assure that appropriate goals have been set for the child, that realistic time limits have been set for the accomplishment of these goals, that efforts are being made by all parties to achieve these goals, that appropriate services are being delivered to the child and/or his or her family, and that long-range planning has been done to move the child to a permanent home where he or she can grow and thrive.

The Foster Care Review Board is mandated to maintain a tracking system of all children in out-of-home placement in the State. The tracking system is to provide information about the number of children entering and leaving care as well as any other data regarding needs and trends in foster care.

1-003 Review of Cases:

The State Board or designated local board shall review the case of each child in foster care at least once every six months.

APPROVED
ROBERT M. SPIRE
ATTORNEY GENERAL

APPROVED
Date 11-18-87
Counsel

OCT 13 1987
BY Assistant Attorney General

South Carolina

# I. OVERVIEW OF REVIEW SYSTEMS

## A. PURPOSE OF FOSTER CARE REVIEW

The purpose of foster care review is to assure that children do not linger unnecessarily in foster care, but rather that they receive the support and benefits of a permanent home. Permanence is defined as a home which holds together during crisis and provides a lasting, trusting, and nurturing environment. The return of the child to the biological family is the ideal permanent goal; however, when this is not possible, the goal becomes to place the child in another stable, permanent home.

## B. IMPORTANCE OF REVIEW SYSTEMS

### 1. Impact of Foster Care on Children

Children need the stability and support of a permanent home and family in order to grow and flourish; they need the sense of lifelong belonging and continuity that only a permanent home can provide. Children in foster care represent a huge potential loss in both financial and human terms.

It is estimated that almost half a million children pass through state foster care systems in this country every year. In fiscal year 1985, for example, federal government figures show that an average of 108,000 children were in foster care in any given month. The foster care system places a financial burden on U.S. taxpayers that was estimated at $2 billion. The cost in human potential was- and remains- inestimable, since research indicates a direct correlation between child abuse and neglect and later juvenile delinquency and adult criminality.

When a child is placed in foster care, it is intended to be a short-term solution to an emergency situation. In the past, however, all too often foster care placements resulted in the child being destined to obscurity within the child welfare system. The ideal of assuring a permanent home for every child fell by the wayside while the child was set adrift among different foster families and group homes. The child's vital developmental years were lost, since he was neither free to return home to his natural parents nor eligible to be adopted by a new and permanent family.

Throughout the 1970's, judges, social workers, attorneys and child advocacy groups began to recognize that the U.S. foster care system was failing to respond to the needs of many abused and neglected children and their families. Many children were "adrift" in the system without regular or timely review of their placement. Crowded court calendars and understaffed child welfare agencies were contributing to an increase in the number of children and lengths of time spent in substitute care.

Concern for children lingering unnecessarily in foster care continued to mount throughout the decade. Among solutions proposed by child advocacy organizations were the comprehensive implementation of permanency planning case work and foster care placement monitoring through regular case reviews. A new resource was also identified to help monitor foster care children and to advocate on their behalf: citizen volunteers.

# SECTION 4

# RECOMMENDATIONS

# Summary of Recommendations

The following section contains the recommendations of the State Foster Care Review Board for 1988. In summary, the State Foster Care Review Board recommends that:

## TO THE COURTS

1. ... adjudication and disposition occur in a timely manner.

2. ... courts incorporate case plans and timelines in each child's Court Order.

3. ... child support be court-ordered in every Dispositional Order.

4. ... reasonable efforts determinations be made at every stage of court proceedings.

## TO THE LEGAL PROFESSION

1. ... continuing education be provided for county attorneys on child sexual abuse, child neglect, and other child welfare issues.

2. ... the establishment of a statewide District Attorney system to prosecute child abuse and child sexual abuse cases.

3. ... continuing education be provided for guardians ad litem and judges select trained guardians ad litem to represent children.

4. ... a guardian ad litem be appointed for every child in out-of-home care and that the guardian ad litem remain active throughout the child's stay in foster care.

## TO THE DEPARTMENT OF SOCIAL SERVICES

1. ... foster and adoptive parents be given complete background information on the children in their care.

2. ... no foster care case be allowed to be unassigned or uncovered for over two weeks.

3. ... up-to-date case narrative be required in the files of all children in out-of-home care.

4. ... accurate documentation of the parent's progress be detailed to the court prior to a foster child's court review.

5. ... the Family Policy Act not be used as a reason to leave children in dangerous situations or to prematurely return children home.

6. ... caution be taken in a child's initial placement and any subsequent moves.

7. ... a standardized system of monitoring services being provided by group homes and institutions be developed and implemented.

## TO THE LEGISLATURE

1. ... grounds for termination of parental rights be amended to include length of time in care after diligent efforts have been made to rehabilitate the family.

2. ... legislation be drafted to clarify a father's parental rights.

3. ... training be mandatory for all foster parents and that proposed legislation funding the training be approved.

4. ... the roles of State Agencies responsible for children and youth be defined and methods of cooperation be implemented.

# CORRECTION

THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY

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6. ... caution be taken in a child's initial placement and any subsequent moves.

7. ... a standardized system of monitoring services being provided by group homes and institutions be developed and implemented.

8. ... re-examine its reunification policies when parents show little or no interest or ability in parenting their child.

9. ... review its placement policies regarding children who are seriously mentally ill, exhibit dangerous and aggressive "acting out" behaviors, and/or have severe bonding issues and consider developing programs to meet these children's needs.

10. ... foster parents be supported in order to avoid unnecessary placement changes.

## TO THE DEPARTMENT OF CORRECTIONS

1. ... peer pressure counseling be used only with juvenile offenders who are not learning disabled.

2. ... interim and post services be provided to juvenile offenders and their families to help successfully reunite the child with the family.

3. ...transitional foster and group homes be established to assist troubled youth in their return to the home and community.

## TO PRIVATE AGENCIES, INSTITUTIONS, AND MENTAL HEALTH FACILITIES

1. ... permanency planning be developed and/or refined.

## TO ALL AGENCIES

1. ... all agencies document case plans for children that reflect programs and services being provided which will help the child prepare for the transition from foster care to returning home, being adopted, or independent living.

2. ...new programs be evaluated thoroughly and continuation funding be sought when needed.

## TO THE TRIBES

1. ... Tribal Courts that take jurisdiction over Indian children handle the cases in a timely manner.

2. ... alternate methods be investigated to solve underfunding of Tribal Courts.

## TO THE COMMUNITIES

1. ... the media withhold the names of juvenile victims and offenders, particularly in incest cases.

2. ... communities develop and support primary prevention projects.

3. ... communities value and support foster parents by making parent training available at reduced rates, providing respite care, and developing support groups for both foster parents and foster children.

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4. ... the roles of State Agencies responsible for children and youth be defined and methods of cooperation be implemented.

# TO THE COURTS

## 1. The State Foster Care Review Board recommends that adjudication and disposition occur in a timely manner.

While the majority of foster care cases have court involvement and the adjudication and disposition of the case occur in a reasonable length of time, there are still some cases where the court is not acting in a timely manner. For this reason, the Foster Care Review Board is again making this recommendation.

The adjudication of a case is when the court accepts the charges against the parent or child and finds them to be true. The disposition is when the court makes a determination of what should happen to the child and issues a Court Order. In many cases, services cannot be delivered until the disposition occurs. For example, if a child has been placed in foster care due to allegations of sexual abuse by the father, vital services such as counseling for the father may not begin until the court finds the charges to be true and issues a Court Order requiring certain services. When there are a number of legal delays or when the dispositional hearing is never held, the child is suspended in foster care and there can be no forward progress.

Of the 1,439 children reviewed by the Foster Care Review Board during 1988, 809 children (56.2%) were adjudicated within one month of entering care. On the other hand, 59 children (4.1%) were adjudicated between 6 and 12 months of entering care; 21 children (1.5%) were adjudicated 13-24 months after entering care; and 12 children ( .8%) were adjudicated over 2 years after entering care. Twenty-six children (1.8%) had not been adjudicated at the time of their most recent review.

*Case Example: "Derek", age 8, and his four siblings were placed in foster care when their parents left them in the care of their grandparents and failed to return. A petition was filed in December, 1987. After four continuances, adjudication was held in July, 1988. and the children were found to be dependent under State Statute 43-247(3a) due to the faults and habit of their parents. The plan for the children is reunification with their parents. A plan was drawn up by the agency for the parents to include parenting classes, employment stability, in-home therapy, visitations with the children, and a number of other services. Disposition has not occurred. Since a dispositional hearing has not been held, this reunification plan has not been approved nor adopted by the Court and the services have not been provided. Meanwhile, the cost to the State of Nebraska for the five children's care is over $1,000 per month.*

As the above case demonstrates, with no oversite no services were delivered. P.L. 96-272 mandates disposition occur within 18 months. While disposition may still occur in the above case within the required time, these children have already spent over a year in out-of-home care with no services being provided to the parents to facilitate their return home.

Of the 1,439 children reviewed by the Foster Care Review Board, the date of the disposition was unknown or had not occurred for 175 (12.1%) of the reviewed children.

Reunification is more successful the sooner a child can be returned to his or her parents. Lengthy court delays present a barrier to reunification that need not occur. Timely adjudication and disposition can enhance reunification because the problems are identified and services are ordered and delivered. For this reason, the Foster Care Review Board recommends that courts prioritize children's cases and move rapidly through disposition so services can be received and the children and their parents can be reunified as soon as possible.

## 2. The Foster Care Review Board recommends that caseplans and timelines be incorporated in each child's Court Order.

In its reviews of children placed in out-of-home care, the Foster Care Review Board has noticed that when all parties are made aware of what must be done in order to reunify the family, reunification occurs more rapidly. This can best be accomplished by clearly spelling out the child's caseplan, the services to be utilized, and definite timelines for accomplishing each goal in the Court Order.

Usually it is the responsibility of the child's caseworker to draw up a caseplan which is then submitted to the Court for approval. Incorporating the caseplan in the Court Order is a logical step. The agency responsible for the child and the service providers can be of further assistance by drawing up contracts or agreements with the parties to re-emphasize the goals stated in the Court Order. When everyone involved is aware of the plan and working toward a common goal, progress can be achieved.

Timelines are especially important because they can be used to measure progress or lack of progress. Children cannot be made to wait indefinitely for their parents to rehabilitate themselves. Measurable compliance with the caseplan is a good indicator of success in reunification. On the other hand, when compliance is minimal or non-existent, it can be easily measured and clearly documented that termination of parental rights may be in the best interests of the child. Every child needs and deserves a loving and caring family; and adoption may be the answer.

> *Case Example: "Helena" was placed in foster care in 1985 when she was two months old. Her mother was Court-ordered to attend parenting classes, obtain housing, complete her GED, and visit the baby. She did not complete the parenting classes, did not get her GED, did not find employment, and only visited Helena 2 of 16 possible times. Helena's father then filed a motion to intervene. He was Court-ordered to find legal employment, pay child support, obtain housing, undergo a chemical dependency evaluation,visit Helena , and not violate the law. He was found to be alcohol dependent; he is behind on child support payments; and he was recently arrested. Helena has been in foster care 97% of her life, nearly 4 years. While the plan for Helena is still "reunification", the Review Board disagrees and feels that there are better options for Helena.*

Helena's is a case where the plan and services were clearly defined in the Court Order, but no timelines were imposed. The Review Board notes that in many cases, parents are given chance after chance to rehabilitate themselves. The Board further notes that childhood, once lost, cannot be regained.

Of 1,439 children reviewed by the Foster Care Review Board during 1988, 617 (42.9%) included a clear plan and complete explanation of the services. 676 (47%) of the Court Orders included timelines.

Foster care is meant to be temporary. These children cannot wait forever. Specific Court Orders with definite timelines can help parents understand they must address the problems that brought their children into care in a timely manner and, if the parents cannot or do not address the problems, documentation exists to help the children achieve a permanent, loving home.

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## 3. The Foster Care Review Board recommends that child support be court-ordered in every Dispositional Order.

It is the philosophy of the Foster Care Review Board that parents who cannot or will not parent their children still have an obligation to contribute toward the cost of their children's care. For this reason, the Review Board has included a recommendation on child support in every Annual Report since 1983.

A financial contribution can encourage continued bonding between the parent to the child and encourages a pattern of providing for the child. The amount of the child support should be within the parent's ability to pay and need not be great. Child support, when combined with a clear Court Order containing expected behaviors, measurable goals, needed services, and clear timelines, can be a useful tool in deciding whether a child should be returned to the parents. The failure of the parent to meet the support obligation can be a factor in making long range permanency plans for the child.

Of 1,439 children reviewed by the Foster Care Review Board during 1988, child support was ordered in only 126 cases. Of these, in 38 cases the support was being paid, in 72 cases it was not, and in 16 cases there was no indication in the file if it was being paid or not. On the other had, the parents of 3 of the reviewed children were voluntarily paying support even though it was not court-ordered.

> *Case Example; "Michael" and " Maribeth", ages 12 and 13, were placed in care in 1987 as as result of physical abuse to Michael by his father. Their parents were divorced and the children were living with the father. The plan for Michael is to return to his father. The plan for Maribeth is to return to her mother. The Dispositional Order required the father to obtain a psychological evaluation, attend alcohol education, obtain suitable housing, participate in therapy, visit the children, and pay child support. The mother agreed to participate in therapy and visit. Both parents have been compliant and reunification will be occurring.*

Reviews of cases like Michael's and Maribeth's give the Review Boards hope because they demonstrate what can happen when everything goes as it should. There was a clear Court Order with measurable goals and reasonable timelines. The payment of child support was one of the factors that demonstrated the parents' commitment to their children and their efforts to obtain reunification. The caseworker, parents, children, and other professionals worked together toward reunification with satisfying results. The Review Board agreed with the plan and commended all involved.

## 4. The Foster Care Review Board recommends that reasonable efforts determinations be made at every stage of court proceedings.

During the 1970s, Congress and the nation became aware that the child welfare system was not adequately protecting children and their families. Children were removed from their families too frequently, sometimes unnecessarily, and were placed in foster care. As a result, Congress passed the Adoption Assistance and Child Welfare Act of 1980 (P.L. 96-272).

Among its major provisions, the Act requires judges to determine whether reasonable efforts have been made to enable children to remain safely at home before they are placed in foster care. Many judges are unaware of their obligation to determine if reasonable efforts to preserve the family have been made. Many attorneys and child welfare workers are also unaware of the need for this determination. When reasonable effort determinations aren't made, parents and children are denied a chance to "make it work" and taxpayers must bear the expense of unnecessary foster care placements.

The reasonable efforts requirement should not be looked upon as a burden for judges, agencies, and attorneys. It can be an opportunity for effective advocacy for children and their families, for an open examination of community resources and services, and a tool for sensible fiscal policy.

The National Council of Juvenile and Family Court Judges, the Child Welfare League of America, the Youth Law Center, and the National Center for Youth Law have cooperated in providing guidelines for judges, attorneys and agency personnel regarding reasonable efforts. In their booklet, "Making Reasonable Efforts: Steps for Keeping Families Together," the following questions are recommended as a checklist.

1. When did the agency first have contact with the family?

2. Did the agency identify problems with the family at that time?

3. Did the agency assess the family to determine what services or other supports (services) were necessary to remedy the problem(s)?

4. Did the agency provide the services determined to be necessary?

5. Did the family request additional services?

6. Did the agency provide those services to the family?

7. Did the family accept services provided by the agency?

8. Did any of these services remedy the problem?

9. If the services did not remedy this problem, were additional services tried?

10. Were any services suggested but not provided because they were unavailable?

11. If services were unsuccessful, why?

12. What other services designed to address these problems are available in the community that the agency has not provided?

13. Why were these services not provided?

14. Was there an emergency situation in which the child could not be protected without removal from the home prior to providing services?

15. If so, what services did the agency consider providing as an alternative to removal from the home?

16. Since the removal, has the agency provided services aimed at reunification?

17. Have these services been successful?

18. Does the agency have a plan for providing services aimed at reunification?

19. Has the agency considered the family's requests in developing these services?

20. Could the child be returned if appropriate services were provided?

21. Were all parties represented by counsel?

22. Have all parties had a reasonable opportunity to review the records?

23. Have all parties been permitted to offer testimony and cross-examine witnesses?

24. Has the agency proved that it has made reasonable efforts to eliminate the need for removal on the issue of reasonable efforts?

25. Has the agency been ordered to develop a reunification plan?

The Foster Care Review Board is concerned that children in Nebraska are being placed in out-of-home care without reasonable efforts being made to keep the children in the home. The Board is also concerned that rather than a judicial review being made of the reasonable efforts, in some courts all cases are being treated as emergencies and judges are not asking the appropriate questions to determine if reasonable efforts have been made.

The Foster Care Review Board recommends that reasonable efforts be examined at every stage of legal proceedings.

## TO THE LEGAL PROFESSION

### 1. The Foster Care Review Board recommends that continuing education be provided for county attorneys on child sexual abuse, child neglect, and other child welfare issues.

The Foster Care Review Board first made this recommendation in its 1985 Annual Report. Since then, the Board has been pleased that the County Attorneys Association, in cooperation with the Nebraska Permanency Planning Task Force, has sponsored two workshops for county attorneys on child welfare issues. The first workshop was in 1986 and featured bonding and attachment, separation and loss, and the need for permanency planning in a child's life. The second workshop, in April of 1989, will provide information on the identification and treatment of sexual abuse victims and perpetrators, how to prosecute these cases, and what to expect from a child witness. The Foster Care Review Board is pleased to have participated in the planning of these workshops.

The Review Board is concerned when county attorneys fail to file on cases where sexual abuse and/or other crimes against children are occurring.

> *Case Example: "Monica", age 14, was placed in foster care in early 1988. She alleged that her father had been sexually abusing her for about a year. A Child Protective Service investigation substantiated the abuse. Monica's parents stated they wanted no further contact with their daughter and they would not seek counseling. No charges were filed against Monica's father. The plan for Monica is "long term foster care" until she reaches the age of majority.*

The Review Board is also concerned about the lack of services that occur when plea bargaining is allowed to occur in children's cases. When critical crimes against children are plea bargained out of the case, the child caring agency is put in the position of only being able to put in place a rehabilitation plan that addresses what the court has ruled upon. If the most serious allegations are plea bargained out, the family will never have to address those issues before the child is returned home.

The Review Board recognizes that the county attorney plays the key role in the prosecution of cases involving children. Because of the constant turnover within many county attorney offices throughout the State and the many developments in field, the Board urges continued education on child welfare issues.

## 2. The Foster Care Review Board recommends the establishment of a statewide District Attorney system to prosecute child abuse and child sexual assault cases.

Child sexual abuse cases are not prosecuted in some areas of the State. Because of this, the Foster Care Review Board believes an alternate system needs to be considered to assure the prosecution of cases of child abuse and child sexual abuse. One possibility would be a statewide District Attorney system. Currently, County Attorneys are responsible for these cases.

Sexual abuse cases are very complicated and time consuming to prosecute. The prosecutor needs to be well versed on the dynamics of sexual abuse, what can be expected from a child witness, and the meaning of medical evidence. In smaller counties, prosecutors lack experience in prosecuting these cases and many times move on before they gain the necessary experience.

In some counties, County Attorneys work on a part-time basis with a private practice as their primary means of support. These part-time County Attorneys, in some instances, make choices about prosecution based on the time they have to complete their duties and the demands of their private practices.

They often use the office to get established then move on to better paying jobs. In a District Attorney system, prosecutors would be well paid and adequately trained to prosecute these cases.

In rural areas, the County Attorney may be influenced by community pressures. Since the District Attorney would be responsible for a larger area, this pressure would be le likely to occur. This system would also give some consistency to prosecutions. Currently, some counties actively prosecute the abuse perpetrators while others rarely prosecute. It should be noted that the Attorney General's Office, while it has the statutory authority to file on these cases, does not have the resources to handle these cases.

Some County Attorneys will file the child as a status offender, especially if it looks like the parents will deny the abuse. Other times, the sexual abuse is amended out of the petition so treatment and services aren't provided to the victim or the family.

> *Case Example: "Mindy", age 7, and "Mark", age 4, were placed in foster care after Mark was hospitalized with facial bruises and the parents provided inconsistent explanations for the injuries. It was subsequently alleged that the father had sexually abused Mindy. A petition was filed on behalf of the children, but the sexual abuse allegation was amended out of the petition. As a result, the father was ordered to have a chemical dependency evaluation, but no therapy or treatment for the sexual abuse was ordered. During a visit with their parents, the children were abducted out of State. Six weeks later, the parents were arrested and the children returned to Nebraska. During their absence, both children had been physically abused and Mindy made references to sexual abuse which was supported by physical evidence.*

A District Attorney system would begin to address the problem of County Attorneys who fail to file on child sexual abuse cases. This system would provide a well-paid prosecutor who would gain the training and experience to handle these very difficult cases. The District Attorney would be trained in handling child witnesses and would be aware of the necessity of prosecuting the perpetrators.

## 3. The Foster Care Review Board recommends that continuing education be provided for guardians ad litem and that judges select trained guardians ad litem to represent children.

Most professionals who deal with children in foster care recognize the value and need for ongoing education for guardians ad litem. Attorneys who represent children must have a wealth of knowledge above and beyond what was learned in law school in order to adequately advocate for an appropriate placement and necessary services for their young clients.

The Permanency Planning Task Force, beginning in 1986, has sponsored workshops on children's issues for guardians ad litem. These workshops were held in several different parts of the State. The 1986-87 workshops featured information on bonding and attachment of children with their families and the problems and behaviors caused by separation and loss. Sexual abuse was the topic for the 1988 workshop. Both of these workshops provided very valuable information for attorneys who represent children. The Foster Care Review Board has been pleased to be a part of the Task Force.

Recognizing the need for additional training, many attorneys who represent children have made a special effort to attend the Permanency Planning Task Force's workshops. Judges across the State have tried to appoint trained attorneys as guardians ad litem.

An evaluation of the Guardian ad Litem Training, conducted by Dr. Ann Coyne of the University of Nebraska at Omaha, has shown that there is a need for more trained guardians ad litem because there are too many foster children for the existing trained guardians ad litem to handle.

Stories of attorneys walking into the courtroom reading the child's file and never even having met their client are numerous. Hopefully, as the attorneys understand how important legal representation of these children is, this practice will no longer occur.

The Foster Care Review Board would like to commend the attorneys who have taken the time to obtain continuing education on child welfare matters. The Board encourages more attorneys to take training on child welfare issues and urges judges to appoint these trained attorneys to represent children whenever possible.

## 4. The Foster Care Review Board recommends that a guardian ad litem be appointed for every child in out-of-home care and that the guardian ad litem remain active throughout the child's stay in foster care.

Everyone who comes in contact with the legal system needs and deserves adequate and competent legal representation. When a child is placed in out-of-home care, the attorney who represents the child and the child's best interests is the guardian ad litem. Unfortunately, not every child in foster care has a guardian ad litem; and many children who have guardians ad litem do not have active ones.

In its reviews of children in foster care, the Foster Care Review Board has identified two groups of children who are unlikely to have legal representation.

Children who have been voluntarily placed in care may not initially have court involvement and, therefore, no guardian ad litem is appointed to represent them. This applies to children placed with private agencies. The County Attorney is asked to file a petition on children placed with the Department of Social Services so the majority of their children eventually come under the Court.

> ***Case Example:*** *"Larry" age 8, was voluntarily placed in a private group home by his mother because he was hyperactive and she couldn't handle him. The mother has an alcohol problem and lacks parenting skills. There has been no court involvement and Larry does not have a guardian ad litem. While the plan is reunification, it appears Larry will remain in the group home until he reaches the age of majority.*

While group homes can be a very valuable placement for adolescents, young children need more family-like placements. This is because children need the stability and consistency of one adult rather than changing supervision provided by shift workers. With no guardian ad litem to advocate for Larry and no court involvement to order services for his mother, reunification is unlikely. As a result, Larry faces 10 years of an inappropriate placement.

The second group of children are those whose parents' rights have been terminated, but the child has not been adopted. This seems to occur more if the termination occurred several years ago. The court, having anticipated an adoption, may also have terminated its involvement in the case and the child then does not receive periodic court reviews. The Legislature, through State Statute 43-295, now requires the court to remain involved; however, this often is not occurring.

> ***Case Example;*** *"Timothy", age 10, was voluntarily placed in a private children's home in 1981 while his mother entered in-patient treatment. Although the placement was supposed to be temporary, the mother continued to have problems. A dependency petition was filed and Tim was referred to the Department of Social Services. When Tim's mother voluntarily relinquished her parental rights, the Court terminated its jurisdiction and the Department's and the private agency placed Tim for adoption.*
>
> *Tim was adopted in 1984 and the attorney who handled the adoption filed an abandonment petition against Tim's father at that time. Approximately a year later, the adoption failed due to Tim's behavior problems, sexual "acting out", and fire-*

*setting. He was relinquished back to the private agency. About this time, a worker contacted Tim's grandmother to get information for Tim's Life Book. She contacted the biological father. The father claimed he had no idea where Tim had been all these years and wanted him back.*

*In the meantime, the agency had relinquished Tim back to the Department of Social Services. In over 2 years of care, there still is no Juvenile Court involvement and Tim has no guardian ad litem. Tim received treatment for his behaviors and his foster mother planned to adopt him. Meanwhile, a favorable homestudy was completed on the father and the father hired an attorney to help him get his son back. The foster mother hired an attorney to handle the adoption. As of the end of 1988, this case was still pending.*

*During over two years under the supervision of the Department of Social Services, there has been no court involvement and,with the brief exception of a few months in 1981, Tim has never been represented by a guardian ad litem.*

The complexity of Tim's case very dramatically shows the need for court involvement and an active guardian ad litem. While there have been a number of different attorneys involved in this case, no one is specifically looking out for Tim's best interests. With all the problems and disruptions this 10-year old has experienced in his young life, Tim needs and deserves stability and legal protection.

# TO THE DEPARTMENT OF SOCIAL SERVICES

## 1. The Foster Care Review Board recommends foster and adoptive parents be given complete background information on the children in their care.

The Foster Care Review Board feels it is imperative that foster and adoptive parents be given complete background information on children placed in their care. Failure to do so can cause unnecessary and devastating results.

Children in grief because of separation from their families, children whose past experiences have taught them not to trust adults, or children who have been victims of sexual abuse can be expected to exhibit certain behaviors. These behaviors may occur immediately after placement or months or years later. Often, the children have no idea why they do what the did.

If the foster parents are aware of the child's background and have been trained to look for and cope with certain predictable behaviors, disruptions are less apt to occur.

No one profits when a child's placement disrupts. A new placement must be located for the child, often in a different community. The child must adjust to a different home, a new set of rules, and often another school. The foster parents feel betrayed by the agency and, in some cases, begin to doubt their parenting abilities. Often they withdraw from foster parenting. Many placement disruptions could have been prevented if the foster parents knew more about the child's background so they could be prepared for disturbing or bizarre behaviors.

It is even more distressing when an adoption disrupts. The child, who has already faced severe abuse, neglect and/or sexual abuse and abandonment by his or her biological parents, is abandoned again. Self-image and esteem are severely damaged. Everyone feels he or she is a failure. In most cases, the disruption could have been prevented with background knowledge and preparation.

> *Case Example: "Lance", age 13, was relinquished by his mother at age 3. He was subsequently adopted. Seven years later, Lance was voluntarily placed in foster care by his adoptive parents who were unable to control his behavior. They relinquished their parental rights the following year. Lance has been in foster care 2 years and has had 8 placements. The plan is adoption by the foster parents. In reviewing this case, the Foster Care Review Board recommended the foster parents attend therapy with Lance in order to understand and cope with his behaviors so he won't experience yet a third rejection.*

It is particularly important that foster and adoptive parents of sexually abused children be told of the abuse, because some boys have a tendency to "act out" and some girls are very self-destructive. If there is a possibility that the "acting out" might take the form of molestation of younger children in the home, the foster parent should be aware of this before agreeing to accept the child. While it may be harder to initially place such a child, there are foster and adoptive parents that can handle and guide these children through the difficult stages and provide them with a structured, stable, loving home.

## 2. The Foster Care Review Board recommends that no foster care case be allowed to be unassigned or uncovered for over two weeks.

The Foster Care Review Board has been concerned about the number of children who do not appear to be under the direct and active supervision of a caseworker. This seems to occur when caseworkers take a leave of absence, quit, or are promoted. The Review Board believes that children's cases need constant and continuing supervision in order to prevent crisis situations and for the child to progress through the system. For these reasons, the Review Board has made the above recommendation every year since 1984.

The Review Board feels that transferring these cases to other workers in the office, to workers in a different office, or to the supervisor should be allowed on only an emergency and very temporary basis. In the majority of cases, the supervisor and the workers have many other duties to perform and cannot adequately handle the overload. Allowing the cases to be unassigned, uncovered, or inadequately covered is clearly an unacceptable alternative to the children.

Of 1,439 children reviewed during 1988, 49 did not have a worker assigned to the case at the time of the review. 72 children (5%) had not had any face-to-face contact with their worker in 2 months or longer.

> ***Case Example;*** *"Gwen", age 15, was placed in foster care by her grandmother. Her mother had died and the grandmother was unable to control Gwen's behavior. Gwen suffers from unresolved grief, depression, suicide ideations, and aggressive behavior. In addition, she was a victim of a sexual assault while in care. The plan is reunification with her grandmother.*
>
> *At the time the Review Board reviewed this case, there was no caseworker assigned to Gwen. The most recent dictation in the file was 5 months old. The Board requested a caseworker be assigned to the case to assist Gwen with her complex problems and facilitate reunification with the grandmother.*

The Foster Care Review Board feels it is very important that a caseworker who is familiar with the child, the child's habits, and the child's history be available to assist the child and the foster family, especially in emergency situations. Similarly, the child must be confident that a known caseworker is available should the child need him or her.

The Review Board recommends that the agency study and develop methods for reducing caseworker turnover. Adequate compensation, smaller caseloads, and an acknowledgement of the efforts of the workers are all needed.

Since the 1984 Annual Report, the Review Board has recommended that no case be allowed to be unassigned or uncovered for over two weeks. Efforts need to be made to develop a method of covering caseloads during transitional periods in order to be prepared for problematic situations before they occur. Finally, the time needed to replace a caseworker must be reduced so case continuity can be maintained.

## 3. The Foster Care Review Board recommends that up-to-date case narrative be required in the files of all children in out-of-home care.

As a part of its reviews of children in out-of-home care, the Foster Care Review Board observes the child's case file in the agency office. The Review Board is concerned when there is no up-to-date case narrative in the files or when the narrative is too brief or vague to tell what is going on in the case.

The Review Board is aware that many of the caseworkers and casemanagers have large caseloads; however, the Board feels it is very important that up-to-date information be available in the files. Accidents and illnesses can occur at any time. The Board feels that all vital data and current information should be easily accessible in the child's file in case a new worker has to take the case. This is especially true if an emergency situation occurs in the child's life.

*Case Example: "Debbie", age 15, was placed in foster care by her mother from 1981 to 1983 and again from 1985 to the present. She has had one home visit in the past 3 years and the mother has done nothing to encourage reunification. Debbie has 4 younger siblings who were in foster care from 9/87 until 4/88. While the siblings were in care, Debbie was able to visit them for the first time in 2 years. Debbie would like further sibling contact; however the mother is opposed to this. Narrative in the file is brief and usually only a line or two. In its review of this case, the Board has encouraged further sibling contact; however, no mention is made in narrative of any efforts to provide sibling visits or reunification efforts.*

## 4. The Foster Care Review Board recommends accurate documentation of the parent's progress be detailed to the court prior to a foster child's review.

The Foster Care Review Act of 1982 requires the courts to review a child's Dispositional Order after the child has been in care a year and every six months thereafter until the child leaves care. Prior to the court review, the agency responsible for the child is asked to submit a report to the court detailing the progress made. The court uses this report to determine if the child should be returned home or, if all efforts have failed, if parental rights should be terminated.

The Review Board has seen a number of court reports where only the date has been changed from the previous report. The Boards have also seen reports that have been hastily prepared and are very incomplete.

> ***Case Example:*** *Three Johnson children were placed in foster care in 1985 due to neglect by their mentally retarded and emotionally handicapped mother. Two other children were placed in care at birth. The children are ages 3 to 9. One of the children is mentally retarded and another is emotionally mentally handicapped and has learning disabilities. Numerous reunification services have been offered without producing notable changes in the mother's condition or parenting abilities. As a result, a motion to terminate parental rights was filed in February, 1988. A hearing was held in July and a guardian ad litem was appointed for the mother. A trial scheduled for October was postponed and has not been rescheduled. The agency has not submitted a report to the Court in over a year. The Review Board recommended this be updated and submitted in order to provide continuity to the case, bring each child's situation up to date, and assist in moving the case through the system.*

The Foster Care Review Board urges all workers to complete their report to the court in as thorough and detailed of a manner as possible. The progress of the child and the parents should be well documented. This documentation is often the deciding factor on what happens to the child. Poor documentation is costly, can be misleading about the progress or lack of progress on the case, and can harm the child by extending the time the child must spend in foster care.

## 5. The Foster Care Review Board recommends that the Family Policy Act not be used to leave children in dangerous situations or to prematurely return children home.

In its reviews of children in out-of-home care, the Foster Care Review Board has observed cases where children appear to be prematurely returned to their parents. The Family Policy Act is being cited as the reason for these returns.

The Legislature passed the Family Policy Act in 1987. Briefly stated, the Family Policy Act says that children should be allowed to remain in their homes as long as possible, that children who have been placed in care should be in the most home-like placement possible, and that placements should be as close to home as possible. For the most part, the Review Board agrees with the Family Policy Act; however, there are times when exceptions must be made for the good of the child.

*Case Example: "Cindi", age 15, was placed in foster care because of sexual abuse by her stepfather. The abuse resulted in a pregnancy and Cindi's baby, "Sunny", has been placed in the same foster home as Cindi. They have had 3 placements. The stepfather has received a prison 1-3 year prison sentence for the abuse. Cindi's mother blames Cindi for the sexual abuse and has not received sufficient therapy to address her denial and responsibilities. In spite of this, the plan is to return Cindi and Sunny to Cindi's mother.*

*The Review Board disagreed with the plan because they felt Sunny would be a constant reminder to the mother of her husband's infidelity. They also felt that Cindi would be in danger of being re-abused when the stepfather gets out of prison. In this case, the Board felt there was a misinterpretation of the Family Policy Act in that reunification clearly was not in the best interests of either child.*

The Foster Care Review Board suggests the Department of Social Services rewrite its regulations re-emphasizing the best interests of the child and urging that keeping families together not outweigh the protection of the child.

## CORRECTION

There is an error on page 81. The recommendation should read as follows:

6. **The Foster Care Review Board recommends that caution be taken in a child's initial placement and any subsequent moves.**

Any disruption in the continuity of a child's life can have a negative effect on the child. When a child is placed in foster care, he or she must face new surroundings, a new authority figure, a new set of rules, and, often, a new school. The initial disruption of moving the child away from his or her parents is very difficult for the child regardless of the quality of care the child has been receiving from the parent or parents. Subsequent moves can cause confusion, anxiety, and trauma, especially to the very young child.

The Review Board is extremely concerned that 33% of the children in Nebraska's child caring systems have had 4 or more placements.

The Foster Care Review Board is concerned that, contrary to the past few years, the number of placements a child in foster care is experiencing is increasing. Of the children reviewed during 1988, 41% have had more than 5 placements and 14.5% have had more than 10. Of all active children in all systems, the percentage of children experiencing 6 or more placements has increased from 15% to nearly 20%. Children who have experienced 4 or more placements have increased in one year by 22%.

> **Case Example:** "Daniel", "Dennis", and "Debbie", ages 3, 2, and 8 months, were placed in foster care because their mother left them dirty and unsupervised. In the 7 months they have been in care, they have each experienced 5 moves. The children are exhibiting some behavior problems. Another move is being considered. The Review Board is especially concerned about these children because their case has not been adjudicated in court, the children have no guardian ad litem, the mother's whereabouts is unknown, and the plan is reunification.

Cases like these show the need for recruitment of quality foster homes, respite care, and support and training of foster parents.

## 7. The Foster Care Review Board recommends that a standardized system of monitoring services being provided by group homes and institutions be developed and implemented.

The Department of Social Services is responsible for licensing the group homes and institutions that serve children throughout the State. The licensing procedure checks the facility for cleanliness, health standards, and safety features. The inspection does not address the services that the facility provides to the children residing at the facility.

Because the majority of children in out-of-home care are under the supervision of the Department of Social Services and DSS children make up the majority of residents in the group homes and institutions, it is especially important that the Department develop a standardized system of monitoring not only the physical aspect of the facility but the services being provided. The monitoring should be on an ongoing basis, not only during contract negotiations.

> ***Case Example:*** *"Christopher", age 14, was placed in foster care after an evaluation of his inappropriate sexual acting out in class revealed he was a victim of sexual abuse. His brother "Mark", age 15, was also placed in foster care. An investigation showed he was both a victim and perpetrator of physical and sexual abuse with other family members. Because he was mentally retarded and a possible sexual perpetrator, Christopher was refused by 20 foster and group homes before a placement was found for him. Mark was placed in a psychiatric hospital, then transferred to a group home.*
>
> *Mark reported inappropriate sexual activity between the boys at the group home. Mark had been assigned a roommate who was "known as homosexual and transexual". Although most of the boys in the group home were behaviorally impaired and/or sexually abused, there was no 24-hour staffing at the facility and the sexual activity was inappropriately handled. The Review Board recommended the group home personnel receive additional training regarding DSS policies and expectations, 24-hour awake staff be put in place, and a closer review be made of the kind of supervision being received by the youth.*

Other issues that need to be considered for group homes and institutions that provide supervision and services to Nebraska's young people include (a) who has access to the children, (b) how are employees screened, (c) who do the agencies allow the youth to leave with, and (d) how are the youth supervised when they leave the campus (especially very young or disabled children).

## 8. The State Foster Care Review Board recommends that DSS re-examine its reunification policies when parents show little or no interest or ability in parenting their child.

When a child is placed in foster care under the supervision of the Department of Social Services, the usual policy is the plan will be reunification for at least the first year. During this time, the Department places its efforts and resources into reuniting the family. In most cases, this is a commendable policy and the Foster Care Review Board is supportive of the reunification efforts.

The Board has become alarmed at situations where children are prematurely returned to parents who minimally take advantage of services and do not appear to be ready for reunification.

> *Case Example: "Ken" and "Katie", ages 1 and 3, were placed in foster care in 1987 after Ken was hospitalized with several infections and possible cigarette burns to his legs. Both children had been left with inappropriate babysitters, had inadequate parental supervision, and there was suspected sexual abuse to Katie. Two months later, they were returned to their mother and home-based services were provided. In addition, vocational assistance, counseling, group therapy, transportation services, and financial aid in obtaining an apartment had been provided to the mother. Workers noted that the mother was inconsistent in parenting, disciplining, and maintaining her home and partially compliant with the reunification plan. Ken was again removed from the home a month later due to his worsening health. Several months later, Katie was severely burned by scalding water and she was again placed in foster care. Felony child abuse charges were filed and the mother was incarcerated. In spite of her legal situation and her proven lack of parenting, the plan for Ken and Katie remains reunification.*

The Foster Care Review Board cannot agree with reunification when the safety and well-being of the child is at risk. When such intensive services as were provided in the above case have been offered with little or no progress, alternative permanency plans must be considered for the children. The child's rights have to be balanced with the rights of the parents.

## 9. The State Foster Care Review Board recommends that DSS review its placement policies regarding children who are seriously mentally ill, exhibit dangerous and aggressive "acting out" behaviors, and/or have severe bonding issues and consider developing programs to meet these children's needs.

The Department of Social Services currently has a policy of not placing children in highly-structured, out-of-state institutions. These institutions are very expensive and family visitation is difficult. For the majority of children, this is a good policy.

However, there are some children and youth who are seriously mentally ill, exhibit dangerous and/or aggressive "acting out" behaviors, and/or have severe bonding difficulties that need these kind of placements. Nebraska does not have appropriate facilities to treat children with these problems.

*Case Example; "Adam", age 15, came to the attention of Child Protective Services in 1975 on a chronic neglect referral. Services were refused by the family and charges were dropped. Another neglect referral was made in 1977. In 1980, a school conference was called due to Adam's encopresis and enuresis, but teachers were told to ignore it because it was attention-seeking. Counseling was recommended for the family, but refused. In 1985, Adam was suspended from school and placed in a hospital's Behavior Modification Unit; however, the family removed him prematurely because of the expense.*

*Adam was sent to the Lincoln Regional Center in 1987 following an indecent exposure episode at school. School problems included threatening a teacher with a pencil, drawing sexually explicit pictures in the classroom, and self-stimulating behaviors. Adam has a violent temper, has been identified as behaviorally impaired, and may suffer from childhood schizophrenia.*

*The Regional Center has stated it can no longer be of assistance to Adam. He was placed at the Nebraska Center for Children & Youth; however, their program is limited to 90 days. In less than 2 years of care, Adam has experienced 9 placements. The plan is to return Adam home in spite of the fact he has physically attacked his mother and sister in the past, they fear Adam, and they don't want him back. Adam needs a long term, structured environment and Nebraska has no facility that can address his needs at this time.*

The Review Board is disturbed when a child has been shuttled from placement to placement with each stating it is not appropriate for the child. When a child has had numerous evaluations at hospitals, the Regional Center, the Youth Development Center, etc., and each indicates the child needs services Nebraska is unable to provide, the child cannot be made to wait until the service is developed or he or she simply ages out of the system. Some of these children have the potential to cause serious harm to themselves or others if they do not receive the services they need.

The Foster Care Review Board has identified three areas where programs are lacking;

(1) Severe bonding problems of children and youth who have suffered multiple abuse and rejections at an early age from biological and/or adoptive parents.

(2) Adolescents and youth who have severe behavior problems, especially those with a potential of harming themselves or others.

(3) Sufficient long-term facilities, especially in rural areas, to treat adolescent sexual perpetrators.

The Review Board urges that attention be given to developing programs to address these problems and, until appropriate programs have been developed, out-of-state facilities be seriously considered.

## 10. The Foster Care Review Board recommends that foster parents be supported in order to avoid unnecessary placement changes.

Foster parents are the heart of the foster care system. The Review Board feels that foster parents must be well compensated, adequately trained, and highly valued in order to maintain a sufficient number of high quality caretakers to care for the increasing number of children entering the foster care system. Standards must be adopted to provide oversite and prevent abuse in the foster home.

Respite care must be readily available to give the foster parents a break from the constant supervision of children who are frequently very demanding of their time and difficult to manage. This is especially necessary for children with physical and/or emotional disabilities.

Foster parents must be included as a part of the team. They must be invited to participate in planning sessions for the child. They should also be included in all court hearings and reviews. As the person most familiar with the child and the child's behavior in care, their input is vital.

> *Case Example: "Harry", age 2, came into care because his mother was unable to care for him, had no permanent residence, and had no job. The mother was court-ordered to find housing, get a job, attend parenting classes, and seek counseling. Harry had only one placement while in foster care. Harry's foster mother was extremely concerned because of Harry's crying and upset behaviors after returning from visits with his mother. She had little communication with the caseworker and was not advised of court hearings. When Harry was injured during a home visit, visitation was held in the foster home; however, no one gave the foster mother instructions about whether she should give direction to the mother, observe the interaction between mother and son, or go in another room. The foster mother became very fearful about what would happen to Harry when he returned home. Although she had been a foster parent several times prior to Harry, she vowed she would never be a foster parent again.*

The Review Board supports L.B. 290 which will require and fund foster parent training. Children in foster care present a number of problems and behaviors that are difficult to understand and deal with without specific training. Issues that should be included in training are working with and understanding the biological parent, recognizing and coping with the acting out behaviors of sexually abused children, substance abuse issues, preparing the older child for independent living, parenting "acting out" adolescents, and identifying and handling separation and loss behaviors.

Training will prevent placement disruptions that can be extremely harmful to the child. Each change in placement has an effect on the child because the child must adjust to a new family, new set of rules, and often a new school. Numerous placement changes can cause a child to become distrustful of adults, withdrawn or depressed, and/or a failure in school.

Foster parents need adequate compensation for caring for children. The ages of the children and the level of care required need to be studied and adjustments made to the current payment system. Feeding and clothing a teenager is much more expensive than caring for a very young child, but foster care rates in Nebraska are the same for both. The rates for caring for physically and emotionally handicapped children also need to be standardized.

The Foster Care Review Board is also concerned that Nebraska appears to be losing foster parents faster than new foster parents can be recruited. Training and support are critical if this trend is to be changed.

# TO THE DEPARTMENT OF CORRECTIONS

## 1. The Foster Care Review Board recommends that peer pressure counseling be used only with juvenile offenders who are not learning disabled.

Peer pressure counseling is a technique used in both of the Youth Development Centers that uses group dynamics to influence the behavior of the individual. Misbehavior by the individual is discussed by a group of the offender's peers and an appropriate punishment determined.

While peer pressure counseling can be very effective, it is not as effective when a child is learning disabled, particularly if the youth cannot understand the relationship between "cause" and "effect". In its reviews of young men and women placed at the Youth Development Centers in Kearney and Geneva, the Foster Care Review Board has determined that many of these youth are learning disabled and that peer pressure counseling would not be appropriate for them.

> ***Case Example:*** *"Willa", age 16, entered care at age 13 as incorrigible, truant, and involved in a breaking and entering incident. She was placed at the Youth Development Center. Willa has an IQ of 80. After 16 months at the YDC, she was given an administrative discharge, although her counselors did not feel she had "worked through the program". Willa was returned to her mother where she ran away and was truant from school. Her parole was revoked and she was returned to the YDC. Willa has spent an additional 7 months at the YDC and is progressing slowly. The Review Board expressed concern that Willa's low IQ was hindering her progress in the YDC program and that if the program could not be adjusted to meet her special needs, this low-functioning child would continue to grow up in this restrictive placement.*

The Foster Care Review Board is concerned that youth placed at the Youth Development Centers as a result of gang activities might also be inappropriate for peer pressure counseling. These young people must learn to be responsible for their own behaviors rather than relying on the opinions and actions of the group. One of the reasons they participate in gangs is because of peer pressure.

The Foster Care Review Board recommends that the Youth Development Centers explore alternate methods of changing behaviors and use the methods that are beneficial and appropriate as determined on an individual basis.

## 2. The Foster Care Review Board recommends that interim and post services be provided to juvenile offenders and their families to help successfully reunite the youth with the family.

The Department of Correctional Services is responsible for a very difficult youth population. Because of recent overcrowding conditions, the youth placed at the Youth Development Centers remain for a short period of time, sometimes only 5-6 months. In spite of this, juvenile offenders are expected to make considerable behavioral changes by the time they return to their families.

The Foster Care Review Board has been concerned for some time that many juvenile offenders are not receiving appropriate services at the Youth Development Centers to address their immediate and severe problems. Frequently the situation that caused the placement at the YDC, such as car theft, stealing, running away, or the youth's substance abuse is only a symptom of a more serious problem, such as sexual abuse, physical abuse, neglect, or alcoholism in the home.

> *Case Example: "Sharon", age 16, was placed in foster care in 1986. She had been physically and sexually abused by her stepfather, had unresolved grief issues over her father's death, had a history of 10 suicide gestures, and is suffering from an eating disorder. Sharon has had 24 placements since November, 1986. She was placed in the Youth Development Center in 1988 as a result of a breaking and entering incident. Dictation indicates Sharon is withdrawing from reality. The Review Board has questioned whether the YDC is an appropriate placement for Sharon. In view of the multiple problems Sharon exhibits, the Board feels an inpatient psychiatric facility prepared to deal with Sharon's multiple grief issues, sexual abuse victimization, and eating disorder might be better able to provide the services Sharon needs.*

Steps must be taken at the Youth Development Centers to evaluate and address the youth's problems when the peer pressure milieu is not sufficient. In addition, services must be made available to the family of the juvenile offender to effect changes within the family so situations do not reoccur that would cause the youth to be returned to care. Finally, post services should be offered to the youth so he or she can move forward with his or her life.

## 3. The State Foster Care Review Board recommends that transitional foster and group homes be established to assist troubled youth in their return to the home and community.

Youth who have been sentenced to one of the State's Youth Development Centers frequently need a transitional placement before returning home. Many of these young people come from dysfunctional families. The problem or problems that caused them to be sentenced to the YDC (breaking & entering, stealing, truancy) often is a symptom of more serious problems in the home (physical or sexual abuse, lack of supervision, parental substance abuse).

Because of the growing number of youth being sentenced to the Youth Development Centers, these facilities have been forced to reduce the length of the sentence. At the Kearney YDC, the average stay is 5 months. The YDCs do not have the time nor resources to provide all of the services the young people need, such as counseling or independent skills training; and, while the youth is at the YDC, the family does not receive services. Under some circumstances, the Department of Corrections and the Department of Social Services are able to work together to provide a transitional placement; however, in most instances, the youth is returned home.

*Case Example: "Calvin", age 13, first came to the attention of authorities at age 5 for stealing. He was placed on probation in 1984 for property damage. In 1986, he was placed in foster care. He returned home in 1987 with home-based services provided to the family. He violated the rules of his home placement, and was sent to the YDC.*

*The Court, Department of Social Services, and Department of Corrections are working together to develop a specialized foster home for Calvin, including home-based services and family therapy. Calvin will visit the family and then be furloughed there. The eventual plan is reunification with Calvin's mother.*

Cooperation between agencies in situations such as the above case is commendable and the Review Board would like to see more efforts like this made to assist children and families. Troubled children need a structured environment where they can re-establish study skills and receive vocational training, take advantage of counseling and therapy to address their specific problems, and learn independent living skills. This can best be accomplished away from the disruptive family, negative peer group or non-supportive community.

**This recommendation also holds true for young people leaving mental health facilities such as the Lincoln Regional Center.**

Transitional foster and group homes would reduce the recidivism rate and save the State money in the long run by preventing re-entry into care and allowing the youth to go on to lead a productive life. Funding must be found to provide this resource to our troubled youth.

# TO PRIVATE AGENCIES, INSTITUTIONS, AND MENTAL HEALTH FACILITIES

## 1. The Foster Care Review Board recommends that permanency planning be developed and/or redefined.

The Foster Care Review Board is concerned that many private agencies and institutions are not doing an effective job of long-range permanency planning for the children in their care. For that reason, the Board again makes the above recommendation.

Since the advent of the Foster Care Review Act, agencies have initiated some planning for their children. The Board, however, cannot accept a long range plan of "group home until the age of majority" for a young child when other options are available. A child needs stability, continuity, and family relationships. Placement in a group home or institution can address many of the problems in a child's life, but it cannot be a substitute for a real home and real family. Each child needs a stable relationship with an adult, and this function cannot be supplied by an ever-changing staff of group home parents and shift workers.

> *Case Example: ""Brad", age 10, was voluntarily placed at a private agency by his mother when he was age 7. The mother was very young when Brad was born and blames him for ruining her adolescence. She lives in another state and has agreed to have more contact with Brad, but hasn't followed through. The grandmother thinks she might like Brad to live with her at sometime when he's older. Brad has spent 28% of his life in out-of-home care. The plan for Brad is to remain at the private agency.*

The Board urges the private agencies to explore methods of bringing needed services to the families of privately placed children so the children can return home. The Board also recommends the development of smaller, family-like placements for young children and transitional homes for those who have completed the institution's program but can't go home for whatever reason. Alternate methods of involving the child in family life should be developed. Finally, independent living skill training should be required for every child over the age of 16.

## TO ALL AGENCIES

**1. The Foster Care Review Board recommends all agencies document caseplans for children that reflect programs and services being provided which will help the child prepare for the transition from foster care to returning home, being adopted, or independent living.**

It is extremely important that all courts and agencies document the caseplan for the child so everyone involved will be aware of what the long range plan is and what services will be necessary to accomplish the plan. The plan should be in writing.

The Foster Care Review Board is aware that sometimes plans change. When the change is clearly documented and everyone is aware of the change, then all parties can work to accomplish the new goal.

The Review Board is concerned when there appears to be no plan for the child or when there are several plans. Of the 1,439 children reviewed during 1988, 48 (3.3%) had no written plan and 169 (11.7%) had only a partial plan.

It is also very important that services be clearly documented, along with information on the child and parents' progress. Of the 1,439 children reviewed, 83 (5.8%) had no written description of services. 142 (9.9%) had a partial description of services and 72 (5%) were receiving services but the services were not in writing. This information can be used to justify the child's return home or, if progress is lacking, termination of parental rights.

Children need and deserve a stable, loving, permanent home and a relationship with at least one caring adult. When there is permanency planning, children move through the foster care system more rapidly.

## 2. The Foster Care Review Board recommends that new programs be evaluated thoroughly and continuation funding be sought when needed.

The Foster Care Review Board first made this recommendation in the 1987 Annual Report and directed it to the Department of Social Services. The recommendation is being expanded this year and directed to all State and private agencies that seek grants to develop programs for children.

Grants are very beneficial to agencies because they allow for the creation, development, and implementation of a wide range of new programs. The Board is concerned that many good programs are begun, then dropped when the funding ends. When a good service for children is discontinued, the void in the community is considerable.

An example of a program that was lost when funding ended but is badly needed foster and group homes for children leaving the Youth Development Centers. Many of the young people leaving these facilities need a transitional placement before returning to their homes.

The Board urges agencies to include a strong evaluation component in their grant applications to validate the need and results if the program proves worthwhile and to discontinue the program if it is ineffective. Evaluations can also identify weaknesses in a program so corrections and modifications can be made.

A vast number of grant-sponsored programs are currently being conducted, in such areas as sexual abuse training, home-based service provision, parent training, family preservation teams, and respite care. The Board recommends these be carefully evaluated as the grants come to an end and special attention be given to locating continuation funding for those programs that are making a difference in the lives of children and their families.

## TO THE TRIBES

### 1. The Foster Care Review Board recommends that Tribal Courts that take jurisdiction over Indian children handle the cases in a timely manner.

The Indian Child Welfare Act was passed by Congress in order to protect the rights and heritage of Native American children placed in foster care. It permits the Tribal Courts of the various tribes to take jurisdiction over cases of families who have membership in the tribe. The county and juvenile courts, the Department of Social Services and other agencies, and the Foster Care Review Board are aware of the Indian Child Welfare Act. Unfortunately, some Tribal Courts and tribal social services do not have the financial resources or foster care ability to handle all Indian children's cases.

> *Case Example: "Rodney", "Rosa", and "Rebecca", ages 8, 4, and 2,were placed in foster care after Rebecca received a spiral fracture to her leg. The children had been living with an aunt and physical abuse was suspected. The children were born in South Dakota where their mother was thought to be still living. Records from South Dakota, when finally received, revealed the mother had a long history of Child Protective Services involvement. Parental rights to an older sibling had been terminated years ago; and a younger sibling had been placed in foster care in South Dakota. Records showed that Rodney had been in foster care 6 times between 1980 and 1986.*
>
> *A petition was filed in County Court on behalf of the children, but before the case was adjudicated, the tribe filed a motion that it wished to transfer the case to tribal court, which was granted. The children were ordered to remain in the custody of the Department of Social Services until custody could be transferred to the South Dakota tribe. Eighteen months have elapsed . The tribe has not assumed custody and there has been no Tribal Court hearing. The caseworker has been unable to complete the transfer. Meanwhile, the county court terminated its jurisdiction and there have been no court reviews of the case since mid-1987. The case remains in limbo. Recently, the social worker requested the county attorney to refile a petition on behalf of the children.*

The Foster Care Review Board respects the tribe's right to assume jurisdiction over Indian children and supports the premise that Indian children should be placed with Indian families whenever possible.

The Board expresses extreme concern, however, in situations like the above. Indian children, and indeed all children, need and deserve a permanent home. Systemic delays such as described above cannot be allowed to continue to be a barrier.

## 2. The Foster Care Review Board recommends that alternate methods be investigated to solve the underfunding of Tribal Courts.

Tribal Courts have been created to serve members of the various Indian tribes throughout the country. Funding for these courts comes from the Federal Government through the Bureau of Indian Affairs. The Foster Care Review Board has learned that many of these courts are badly underfunded. This results in tribes not having the financial resources to provide a guardian ad litem for its children or, at times, to pay the board rate to foster parents who care for Indian children. The case in the previous recommendation demonstrates the difficulties that occur as a result of this lack of funding.

The Federal government provides Indian Child Welfare competitive grants to carry out the provisions of the Indian Child Welfare Act. Not every tribe receives these grants. The Winnebago and Omaha did not receive grants for the coming year. As a result, both tribes will be losing one full time and one part time Child Protective Services Worker.

The Bureau of Indian Affairs provides Social Services grants, but not Child Protective Services grants. The tribes themselves could provide funding; however, they have many programs that need funding and few dollars to spend. Another option is the State could pick up these programs. The Department of Social Services has funded CPS for the Omaha tribe and is looking for ways of contracting with the Winnebago tribe to assist them with Child Protective Services.

The Foster Care Review Board commends the Department of Social Services for taking this position and encourages the Federal Government to study this serious problem.

The Foster Care Review Board urges child welfare agencies, the communities, and the tribes to work together to acquire additional funding so Indian children can have regular court reviews, adequate legal representation in court, and stable placements if they must be in out-of-home care.

## TO THE COMMUNITIES

### 1. The Foster Care Review Board recommends the media withhold the names of juvenile victims and offenders, particularly in incest cases.

This recommendation first appeared in our 1987 Annual Report. The Review Board continues to be concerned about the effects on child victims and offenders when their name is published in the newspaper or broadcast over the radio or television. This is particularly true in incest and sexual abuse cases.

The damage publicity can do to the self esteem and confidence of a young victim can be long lasting. In some small communities, the publicity will follow the child and be discussed for life or as long as the child lives in the community.

> *Case Example; "Heather", age 13, made allegations that she had been sexually assaulted by her stepfather. Authorities believed Heather and charges were filed. During the trial, Heather was harrassed by relatives, became frightened and refused to testify. While the newspaper reporting the story did not disclose Heather's name, the name and address of the stepfather were published. As a result, Heather was teased and taunted at school.*

Each newspaper, radio station, and television station has its own policy regarding publishing the names of juveniles. The Board urges the media to review its policies giving special attention to protecting the confidentiality of young victims and offenders.

### 2. The Foster Care Review Board recommends communities develop and support primary prevention projects.

Communities can take a major role in assisting children and families by developing and supporting community based services for children and families. Projects should be determined according to the specific needs of the community and might include parenting classes, independent living skill training, counseling services, or home-based services.

Early referral to locally available services facilitates keeping the family together. Early prevention also saves money over the long run.

The Foster Care Review Board would like to commend Beatrice, Lincoln, Grand Island, Broken Bow, and Scottsbluff-Gering for developing Family Preservation Teams. These teams consist of representatives from a variety of service agencies. In Beatrice, a Family Resource Center has been developed consisting of 10 service agencies in one location. Lincoln has created a "Welcome Baby" program to assist new parents and improve parenting skills. Scottsbluff-Gering has started a "Health Line" that people can call for service information. In Broken Bow, a step family support group has been formed and home management seminars have been conducted. Grand Island's team has focused on parent education and has been instrumental in bringing the Boys Town Midplains Shelter to Grand Island.

Other communities are working on bringing needed services to their areas. North Platte is working to provide a shelter for runaway children and children in need of temporary assistance.

Child Guidance of Lincoln has hosted training seminars to help professionals who work with sexually abused children and youth.

Boys Town has provided a number of training sessions across the State to help foster parents and workers understand and appropriately handle sexually abused children in foster care. This program has been expanded and is being presented in other states. Boys Town is also recruiting and training therapeutic foster homes in Lincoln and has developed a shelter for youth in Grand Island. Boys Town is in the process of developing a National Hotline (1-800-448-3000) which will include a service referral for troubled families. Future plans include a National Training Center on Violent and Aggressive Children and Youth.

The majority of children in out-of-home care are from the Omaha area. The Department of Social Services has introduced new programs in this area to recruit and train foster parents. Support groups are being formed and respite care services are being developed.

Whether they are large or small, community involvement in projects to help families demonstrate what can be done when people work together and show how much they care. The Foster Care Review Board supports these projects and encourages other communities to become involved in programs and services to assist children and their families.

## 3. The Foster Care Review Board recommends communities support and value foster parents by making parent training available at reduced rates, providing respite care for foster children, and developing support groups for both foster parents and children in foster care.

Foster parents provide an extremely valuable service to the community. It is very important that the community support and respect its foster parents. This can be done in a number of ways.

Beneficial conferences, workshops, and parent training classes can be offered to foster parents at reduced rates. Nursery and babysitting assistance can also be provided.

Foster children can be very difficult children to handle. Many foster children are developmentally disabled and/or behaviorally impaired. It is vital that respite care be provided to allow the foster parents some time away from the children to prevent "burn out". The Foster Care Review Board commends the Department of Social Services, Nebraska Psychiatric Institute, and the community volunteers who have been working together on a grant to provide statewide respite care training and support.

Foster parents and foster children can benefit from support groups. It is always helpful just to know that others have similar problems and to work together to solve problems.

The Foster Care Review Board commends the communities that have developed programs for foster families and encourages others to provide the services and support these families may need.

# TO THE LEGISLATURE

## 1. The Foster Care Review Board recommends grounds for termination of parental rights be amended to include length of time in care after diligent efforts have been made to rehabilitate the family.

In its reviews of children placed in out-of-home care, the Foster Care Review Boards have been concerned about the amount of time some children spend in foster care while their parents are given chance after chance to make necessary changes. Currently, parental rights can be terminated for one or more of the following reasons:

a. Abandonment for 6 months or longer;

b. Continuous or repeated neglect;

c. Failure to provide or pay for subsistance, education, or other care when financially able;

d. Unfit by reason of debauchery, habitual use of alcohol or drugs, or repeated lewd and lascivious behavior to be detrimental to the health, morals, or well-being of the child;

e. Inability to discharge parental responsibilities because of mental illness or mental deficiency with reasonable grounds that such condition will continue for a prolonged period;

f. Failure to correct conditions leading to a court determination that the child is a juvenile under 43-247(3a).

The Foster Care Review Board recommends that length of time in out-of-home care after diligent efforts have been made to rehabilitate the family be added to this list. A child cannot be made to wait indefinately for changes to occur so he or she can return home. All children need and deserve a stable, permanent family. According to the Child Welfare League of America, if a parent has not rehabilitated within 18 months, it is unlikely that the parent will ever rehabilitate. Dr. Alexander Zaphiris of the University of Denver Graduate School has stated that no child should remain in foster care over 9 months. By adding a specific time length during which reasonable, documented efforts have been made to rehabilitate the family to the reasons parental rights can be terminated, children won't be made to wait for years for families.

## 2. The Foster Care Review Board recommends legislation be drafted to clarify a father's parental rights.

In its 1987 Annual Report, the Foster Care Review Board noted the problems that can occur when the father's parental rights are unclear. An adoption was overturned by the Court because a father did not receive due process. The Board continues to feel that Legislation should be drafted to address this problem.

Each year, many children are born to unwed mothers. Statute requires the father to take legal steps to establish paternity within a very short time; however, this is rarely done. In addition, many divorced fathers disappear from the scene only to reappear at a later date.

Various courts take care of the parental rights issue in different ways. Sometimes the parental rights of the father, if not previously terminated, are terminated at the time of the adoption.

The effects, both positive and negative, that these fathers have on their children must be taken into consideration by the agencies that place the children.

## 3. The Foster Care Review Board recommends training be mandatory for all foster parents and that proposed legislation funding the training be approved.

The Foster Care Review Board identified the lack of required foster parent training as a problem in its First Annual Report in 1983 and has made this recommendation in successive Annual Reports.

The Department of Social Services has an excellent training program available for foster parents; however, this program is not a requirement to receiving a child in a home. The program explains how to handle children under a number of predictable circumstances, such as grief, "acting out" behaviors, testing, etc. The training also gives the foster parent a better understanding of what foster parenting is all about and what the foster parents' role is. The Review Board continues to recommend that this optional training become mandatory.

A properly trained foster parent will have a better chance at appropriately guiding a truant adolescent by instilling new values with enough flexibility to prevent the child from running away, skipping school, or rejecting what is being taught. A trained foster parent will not be shocked by the behaviors of a sexually abused child, but rather can help redirect the child's behavior and understanding of sexuality.

There is no doubt that a foster parent with proper training is better able to cope and less apt to ask that the child be moved. Training also allows the foster parent to meet other prospective foster parents, thus setting up a built-in support system. Finally, training allows the agency to to evaluate prospective foster parents and eliminate those with poor motivation or questionable parenting philosophies.

*Case Example: "Bruce", "Katie", and "Tami", ages 6, 4, and 2, were placed in foster care by their father who was unable to care for them. The family had a long history of physical abuse, sexual abuse, and neglect with frequent CPS involvement. Bruce and Katie exhibited inappropriate acting out and aggressive behaviors. In spite of his history, Bruce was placed in a first-time foster home with foster parents who had little training. The placement disrupted when the foster parent, frustrated with Bruce's behavior and unable to cope, stopped the child.*

Training will prevent placement disruptions that can be extremely harmful to the child. Each change in placement has an effect on the child because the child must adjust to a new family, new set of rules, and often a new school. Numerous placement changes can cause a child to become distrustful of adults, withdrawn or depressed, and/or a failure in school.

Foster parents need adequate compensation for caring for children. The ages of the children and the level of care required need to be studied and adjustments made to the current payment system. Feeding and clothing a teenager is much more expensive than caring for a very young child, but foster care rates in Nebraska are the same for both. The rates for caring for physically and emotionally handicapped children also need to be standardized.

The Foster Care Review Board is also concerned that Nebraska appears to be losing foster parents faster than new foster parents can be recruited. Training and support are critical if this trend is to be changed.

## 4. The Foster Care Review Board recommends that the roles of State Agencies responsible for children and youth be defined and methods of cooperations be implemented.

The Foster Care Review Board is concerned about the changing priorities and agendas of State Agencies responsible for children and youth and fears that these will result in needless gaps and duplications in services. Because of this, the Review Board suggests that the roles and responsibilities of these State Agencies be analysed and clarified.

The Department of Social Services appears to be brokering services in some areas and delivering services in other areas. The Department of Public Institutions isn't placing children's mental health as a priority and appears not to want to serve children at all.

The Department of Social Services cannot accept delinquent youth due to regulation and statute. Services can't be delivered to the families of delinquent youth placed at the Youth Development Centers through the Department of Correctional Services.

Many children and youth leaving the Lincoln Regional Center or the YDCs need the services that the Department of Social Services can provide; however, the agencies aren't able to work together to provide these services.

# APPENDIX

# EVALUATION OF THE NEBRASKA FOSTER CARE REVIEW BOARD

1987 - 1988

by

Ann Coyne, Ph.D.

All 1,269 children who were active anytime in 1987 and who were reviewed one or more times by the Foster Care Review Board during 1987 were selected as the reviewed sample. Some of these children had also been reviewed before 1987 and some continued to receive reviews in 1988. By December 31, 1988 when the data was analyzed 100 had been reviewed once; 188 had been reviewed twice; 243 had been reviewed three times; 178 had been reviewed four times; 145 had been reviewed five times; 130 had been reviewed six times; 107 had been reviewed seven times; 76 had been reviewed eight times; 56 had been reviewed nine times; 28 had been reviewed 10 times; 12 had been reviewed eleven times; 2 had been reviewed twelve times; and 4 had been reviewed thirteen times.

A comparison group was constructed of children who were eligible for review in 1987 but were not reviewed, either in 1987 or 1988.

A random sample of non-reviewed children was selected early in 1988, matched by age to the children who had been reviewed. By the time the data was analyzed on December 31, 1988, 338 eligible children who were not reviewed in 1987 had been reviewed in 1988 and had to be dropped from the comparison group.

Comparisons were made between the reviewed and non-reviewed groups to assure that they were similar in sex, race, agency, etc. They were found to be quite similar except for length of time in care, so that differences in outcome can be attributed to the fact that one group had been reviewed by citizen reviewers and the other had not.

## Results

Comparisons were made between the 1,269 children active in 1987 who were reviewed by the Foster Care Review Board at least once in 1987 and the 918 similar children who were active in 1987, eligible for review, but not reviewed in either 1987 or 1988.

## Current Placement Type

There were large significant differences between the two groups in terms of what type of placement the children were in on December 31, 1988.

Similar to the findings in the evaluations of 1985 and 1986, children who were reviewed were 3.5 times more likely to be in adoptive placements as children who were not reviewed. Reviewed children were also twice as likely to be placed with relatives as comparison children and were 1.8 times more likely to be in more homelike foster care settings than comparison children who were 2.6 times more likely to be in an institution. Comparison children, however, were 1.6 times more likely to be returned to parents than reviewed children. All these findings are similar to 1985 and 1986 data.

## Closeness to Home

Reviewed children were more likely to be placed in their own county (52.1%) compared to the comparison group (37.8%). However, this is a decrease overall from 1986 when 57.8% of the reviewed children and 53.6% of the comparison children were placed in their own county. It is however the first time there has been a statistically significant difference between reviewed and comparison group children.

The 1985 data showed no differences in where children were placed, while the 1986 data showed reviewed children slightly more likely to be placed in their own county compared to comparison group children. In 1987 the differences were greater.

## Current Plan

There were significant differences in the current plans between the two groups. The reviewed children were 4.7 times more likely to have adoption as their plan compared with the non-reviewed children. The reviewed children were 3.1 times more likely to have long-term foster care as their plan as well.

On the other hand, the comparison group was 2.2 times more likely to have "return to parents" as its plan. The percentage of children with plans of group home or institution were nearly the same between the two groups.

These findings may be due, in part, to the difference between the two groups in length of time in care. More of the comparison children had not been in care long enough for their plan to change from "return to parent", the typical first plan.

## Plan Achievement Date

Again, the lack of a plan achievement data for many non-reviewed children (46.9%) is a concern. Additionally, some (13.6%) of the plan achievement dates were before 1987 and a few (1.1%) were after 1990 indicating lack of a clear time goal for over 60% of the comparison children.

Children who were reviewed seemed slightly more likely to have reasonable dates for achievement of their plan, although 15.7% had no targeted date, 16.4% had dates before 1987, and 12.4% had target dates after 1990 (a total of 44.5% lacking a clear time goal).

## Number of Placements

There were significant differences between the groups in the number of placements the children had. Some 32.2% of the reviewed children had three or fewer placements while 52.2% of the comparison children had three or fewer. Forty-six percent (46.4%) of the reviewed children had 4 - 9 placements while 38.8% of the comparison children had 4 - 9. Twenty-one percent (21.4%) of the reviewed children had 10 or more placements and 2.8%, 36 children, had 20 or more placements. On the other hand, only 8.3% of the comparison children had 10 or more placements with only 0.3%, 3 children, having 20 or more placements. These differences are probably related to the reviewed children having been in out-of-home care longer.

## Parental Rights Status

There were significant differences between the two groups in terms of the status of parental rights. Children in the reviewed group were 3.3 times more likely to have had a petition for termination filed or to have termination completed against their fathers than children in the comparison group.

Likewise, children in the reviewed group were 4.3 times more likely to have had a petition for termination filed or to have a termination completed against their mothers.

There were also differences between the groups in terms of the number of parents who voluntarily relinquished their children for adoption. Children who were reviewed were 3.9 times more likely to be relinquished for adoption by their mothers and 2.9 times more likely to be relinquished by their fathers than non-reviewed children.

## Adoption Free Date

Children in the reviewed group were 6.6 times more likely to have been freed for adoption after January 1, 1987 than children who were not reviewed in 1987.

## Court Review Results

The lack of information on court reviews is still a concern. While most of the children apparently had court reviews, only 27.6% of the reviewed children and 23.0% of the comparison children had reports of the results of their court reviews submitted to the Foster Care Review Board.

## Number Terminated

Some 624 reviewed children (49.2%) and 578 comparison group children (63%) had been terminated from the system by December 31, 1988.

Reviewed children are significantly less likely to be terminated from care than children not reviewed by the foster care review process. However, much of this difference appears to be related to the fact that most of those children reviewed in 1987 had been in the system and reviewed previously but were still in non-permanent placements. These children are less likely to leave the system. Many children in the "eligible for review but not reviewed" group, tended to avoid review because they left the system soon after they become eligible and before the Foster Care Review Board could schedule a review of them.

As time has gone on, more of the children being reviewed by the Foster Care Review Board have tended to be the hard-core children with serious family problems who are unable to return home to their parent(s).

## Reason Case Terminated

Thirteen percent (13.8%) of the reviewed children who were terminated from care were reported to have returned to their parents' custody while twenty-one percent (21.5%) of the non-reviewed children were reported to have returned to parents. More reviewed children (12.4%) left care through adoption or guardianship than non-reviewed children (3.6%) About the same percentage of reviewed children (9.3%) left care through emancipation (age, marriage, military) as non-reviewed children (9.6%).

These comparisons may not be valid, however, since 59% of the reviewed children who were terminated and 46.1% of the non-reviewed terminated children had no reason stated for leaving care.

## Summary

Findings were very similar to the 1985 and 1986 evaluations, indicating that review by citizen review boards does have a consistent predictable impact on what happens to the children. Particularly significant is the continued difference between the two groups in adoption rates.

The fiscal impact of the adoptions and relative placements made in 1987-1988 is large. A conservative estimate of the net per year savings of the reviewed children who were adoptive or placed with relatives is $249,480 (53 more than expected adoptions and 46 more than expected relative placements at $210/mo. minimal foster care payment.)

Review by citizens apparently encourages the agency, the guardian ad litem and the court to work together to accomplish these very complex adoptions.

## EDITOR'S NOTE

This is Dr. Coyne's third evaluation of the Foster Care Review Board. Previous evaluations were done in 1985 and 1986.

The results of these evaluations has shown the real value of foster care review. The savings during the first year were estimated at $236,880. Second year savings were $277,200 plus the $236,880 from the first year since most of the children would still be in care if the adoption or relative placement had not occurred. Savings for 1988 are estimated at $249,480 plus the $514,080 saved because children placed for adoption or with relatives in 1985 and 1986 were not still in care in 1988. This savings can be expected to continue for at least three more years, afterwhich it should decrease since some of the children adopted in 1985 will be approaching the age of majority.

The Review Board feels that its major contribution in increasing the number of adoptions has been the "push" it gives to the agency and court to get things done. As Dr. Coyne stated, "review by citizens encourages the agency, the guardian ad litem, and the court to work together to accomplish these very complex adoptions."

On the other hand, while the Review Board strongly supports reunification, the reviews stress the successful completion of services before reunification. This may account for the lower number of reunifications of Review Board reviewed children compared to children in the comparison group. Another reason might be the Review Board reviewed children who had been in care longer and the more difficult and problematic cases. These would be children you would not expect to return to their parents as readily.

This will be the final evaluation of this type to be done. As more and more children are reviewed, it is becoming difficult to find a comparison group of children who have been in care approximately the same length of time as the reviewed children. The Review Board is reviewing the majority of children who have spent several years in care.

The Review Board has received a grant from the Developmental Disabilities Council, Department of Health, to do a study, "Identifying Systemic Delays in the Adoption of Developmentally Disabled Children in Foster Care". As a result, children with the plan of "adoption", "permanency", "guardianship", and "long term foster care" will be intentionally selected for review during the early part of 1989. This selection process can be expected to disrupt the evaluation figures as they are presently set up.

The State Board wishes to express its sincerely thanks to Dr. Coyne for the time, effort, and expertise involved in doing the evaluations.

# STATE FOSTER CARE REVIEW BOARD
# FINANCIAL STATEMENT FOR
# FY 1987-1988

## Revenue

| | |
|---|---|
| General Fund | 202,533.36 |
| Cash Fund (Donations & Contributions) | 70.36 |
| | 202,533.36 |

## Expenditures

| | |
|---|---|
| Full time staff (6) | 120,165.84 |
| Contract staff (5) | 41,958.92 |
| Travel expenses | 2,403.82 |
| Rent | 3,219.96 |
| Data Processing | 6,809.32 |
| Postage | 2,469.78 |
| Publication & Printing | 6,848.59 |
| Telephone & Communications | 7,894.26 |
| Office Equipment & Supplies | 2,859.45 |
| Miscellaneous | 2,261.84 |
| | 196,891.73 |

Carry-over for FY 1988-1989 5,641.63

# LOCAL BOARD APPLICATION

State of Nebraska
FOSTER CARE REVIEW BOARD

| MAILING ADDRESS: | TELEPHONE: | LOCATION: |
|---|---|---|
| P.O. Box 94952<br>Lincoln, NE 68509 | (402) 471-4420 | 3rd Floor, State Office Bldg<br>301 Centennial Mall South |

Application for volunteers to serve on a Local Foster Care Review Board as set in Nebraska Statute, Sections 43-1301 to 43-1318, R.R.S. Employees of the State Foster Care Review Board or child welfare agencies are ineligible to serve on local boards.

Ms.
Miss
Mrs.
Mr. _____
Name Address Town Zip

Phone: _____
Residence Office Occupation

If employed, where: _____

Neb. Stat. 43-1304 states: "The members of the board shall reasonably represent the various social, economic, racial, and ethnic groups of the county or counties from which its members may be appointed." In order to comply with the Act, please answer the following:

CHECK: Age 19-30_____ 31-45_____ 46 & older_____

Caucasian_____ Black_____ Hispanic_____ Indian_____ Asian_____ Other_____

Family income: $4,000-$10,000_____ $11,000-$20,000_____

$21,000-$39,000_____ $40,000-above_____

I am presently a foster parent: Yes_____ No_____ (This is not a requirement.)

Marital status:

Number of Children:

I am available: Weekdays_____ Saturdays_____ Evenings_____ exceptions:_____

List current and past activities:

Please give name, address, and phone number of three (3) references:

On the back of this form, please write a short paragraph on why you would like to serve on a Local Foster Care Review Board.

RETURN WITH LOCAL BOARD APPLICATION

Approved _____
Denied _____
Date _____
Initials _____

**NEBRASKA STATE FOSTER CARE REVIEW BOARD**
P.O. Box 94952
Lincoln, NE 68509

Name _____ Date of Birth _____

Current Address _____ Social Security No. _____

_____

Previous Address _____

_____ How Long? _____

Current Employer _____ How Long? _____

**RELEASE**

I, _____, hereby apply to serve on the Foster Care Review Board. I hereby give my permission and authorize any law enforcement agency, child protective service agency, governmental agency, or court to release to the Nebraska Foster Care Review Board, its agents or representatives, any documents, records, or other information pertaining to me.

I understand that my refusal to authorize the release of the above-mentioned information may adversely affect my application to serve as a member of the Foster Care Review Board.

I hereby release, discharge, and exonerate the State Foster Care Review Board, its agents and representatives, and any agency, court, or person furnishing information from any and all liability of every nature and kind arising out of the furnishing or inspection of such documents, records, and other information or the investigation made by the Foster Care Review Board.

_____
signature date

**********

FOR LAW ENFORCEMENT ONLY:

___ No criminal history on file with _____
___ Criminal history attached.

Processed by: _____
Date: _____

FOR DSS CENTRAL REGISTRY ONLY:

___ No history on Central Registry

___ Dates/types CPS contact attached.

Processed by: _____
Date: _____

CONTENTS

(2)

# STATE OF ALASKA
# THE LEGISLATURE

## LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

MEMORANDUM February 27, 1989

SUBJECT: Sectional Analysis
HB 19

TO: Representative Virginia Collins

FROM: Terri Lauterbach TWL
Legislative Counsel

This memo contains a sectional analysis of HB 19, a bill relating to foster care review panels.

Section 1 requires a court to notify the parties in certain cases about the pertinent foster care review panel established under sec. 3 of the bill.

Section 2 adds a definition of "panel" to the definition section applicable to AS 47.10.

Section 3 establishes criteria for forming a foster care review panel and sets out panel duties.

Sec. 47.10.400 describes the composition of a foster care review panel.

Sec. 47.10.410 sets quorum and voting requirements for panels.

Sec. 47.10.420 directs the Department of Administration to provide staff and meeting space for panels.

Sec. 47.10.430 allows reimbursement of certain expenses of panel members.

Sec. 47.10.440 describes the duties of the panels.

Sec. 47.10.450 requires the Department of Health and Social Services to cooperate with panels and explain to the court any failure by DHSS to implement a panel recommendation.

Sec. 47.10.460 provides for the sharing of a child's records with a panel.

Sec. 47.10.470 sets out the circumstances under which a court must consider panel recommendations.

Sec. 47.10.480 requires the court system to make an annual report to the legislature about the activities of foster care review panels.

Section 4 notes that a court rule is affected by this Act.

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(d) A student shall be excused from service as a panel member if the student submits a written request to the court indicating the reason for not wishing to serve. (§ 2 ch 49 SLA 1966)

**Legislative history reports.** — For report on ch. 49, SLA 1966, see 1966 House Journal, p. 52.

**Sec. 47.10.080. Judgments and orders.** (a) The court, at the conclusion of the hearing, or thereafter as the circumstances of the case may require, shall find and enter a judgment that the minor is or is not delinquent or a child in need of aid.

(b) If the court finds that the minor is delinquent, it shall

(1) order the minor committed to the Department of Health and Social Services for a period of time not to exceed two years or in any event extend past the day the minor becomes 19, except that the department may petition for and the court may grant in a hearing (A) two-year extensions of commitment which do not extend beyond the child's 19th birthday if the extension is in the best interests of the minor and the public; and (B) an additional one-year period of supervision past age 19 if continued supervision is in the best interests of the person and the person consents to it; the department shall place the minor in the juvenile facility which the department considers appropriate and which may include a juvenile correctional school, detention home, or detention facility; the minor may be released from placement or detention and placed on probation on orde. of the court and may also be released by the department, in its discretion, under AS 47.10.200;

(2) order the minor placed on probation, to be supervised by the department, and released to the minor's parents, guardian, or a suitable person; if the court orders the minor placed on probation, it may specify the terms and conditions of probation; the probation may be for a period of time, not to exceed two years and in no event extend past the day the minor becomes 19, except that the department may petition for and the court may grant in a hearing

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(3) order the minor committed to the department and placed on probation, to be supervised by the department, and released to the minor's parents, guardian, other suitable person, or suitable nondetention setting such as a family home, group care facility, or child care facility, whichever the department considers appropriate to implement the treatment plan of the predisposition report; if the court orders the minor placed on probation, it may specify the terms and conditions

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(B) an additional one-year period of supervision past age 19 if the continued supervision is in the best interests of the person and the person consents to it; or

(3) 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.

(d) An order issued under (c)(3) of this section authorizes the commissioner of health and social services or a designee or the guardian of the person of the child to consent to the adoption of the child.

(e) If the court finds that the minor is not delinquent or a child in need of aid, it shall immediately order the minor released from the department's custody and returned to the minor's parents, guardian, or custodian, and dismiss the case.

(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.

(g) No adjudication under this chapter upon the status of a child may operate to impose any of the civil disabilities ordinarily imposed by conviction upon a criminal charge, nor may a minor afterward be considered a criminal by the adjudication, nor may the adjudication be afterward deemed a conviction, nor may a minor be charged with or convicted of a crime in a court, except as provided in this chapter. The commitment and placement of a child and evidence given in the court are not admissible as evidence against the minor in a subsequent case or proceedings in any other court, nor does the commitment and placement or evidence operate to disqualify a minor in a future civil service examination or appointment in the state.

# CORRECTION

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(d) A student shall be excused from service as a panel member if the student submits a written request to the court indicating the reason for not wishing to serve. (§ 2 ch 49 SLA 1966)

**Legislative history reports.** — For report on ch. 49, SLA 1966, see 1966 House Journal, p. 52.

**Sec. 47.10.080. Judgments and orders.** (a) The court, at the conclusion of the hearing, or thereafter as the circumstances of the case may require, shall find and enter a judgment that the minor is or is not delinquent or a child in need of aid.

(b) If the court finds that the minor is delinquent, it shall

(1) order the minor committed to the Department of Health and Social Services for a period of time not to exceed two years or in any event extend past the day the minor becomes 19, except that the department may petition for and the court may grant in a hearing (A) two-year extensions of commitment which do not extend beyond the child's 19th birthday if the extension is in the best interests of the minor and the public; and (B) an additional one-year period of supervision past age 19 if continued supervision is in the best interests of the person and the person consents to it; the department shall place the minor in the juvenile facility which the department considers appropriate and which may include a juvenile correctional school, detention home, or detention facility; the minor may be released from placement or detention and placed on probation on order of the court and may also be released by the department, in its discretion, under AS 47.10.200;

(2) order the minor placed on probation, to be supervised by the department, and released to the minor's parents, guardian, or a suitable person; if the court orders the minor placed on probation, it may specify the terms and conditions of probation; the probation may be for a period of time, not to exceed two years and in no event extend past the day the minor becomes 19, except that the department may petition for and the court may grant in a hearing

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(3) order the minor committed to the department and placed on probation, to be supervised by the department, and released to the minor's parents, guardian, other suitable person, or suitable nondetention setting such as a family home, group care facility, or child care facility, whichever the department considers appropriate to implement the treatment plan of the predisposition report; if the court orders the minor placed on probation, it may specify the terms and conditions

of probation; the department may transfer the minor, in the minor's best interests, from one of the probationary placement settings listed in this paragraph to another, and the minor, the minor's parents or guardian, and the minor's attorney are entitled to reasonable notice of the transfer; the probation may be for a period of time, not to exceed two years and in no event extend past the day the minor becomes 19, except that the department may petition for and the court may grant in a hearing

(A) two-year extensions of commitment which do not extend beyond the child's 19th birthday if the extension is in the best interests of the minor and the public; and

(B) an additional one-year period of supervision past age 19 if the continued supervision is in the best interests of the person and the person consents to it; or

(4) order the minor to make suitable restitution in lieu of or in addition to the court's order under (1), (2) or (3) of this subsection.

(5) order the minor committed to the Department of Health and Social Services for placement in an adventure-based education program established under AS 47.21.020 with conditions the court considers appropriate concerning release upon satisfactory completion of the program or commitment under (1) of this subsection if the program is not satisfactorily completed.

(c) If the court finds that the minor is a child in need of aid, it shall

(1) order the minor committed to the department for placement in an appropriate setting for a period of time not to exceed two years or in any event past the date the minor becomes 19 years of age, except that the department may petition for and the court may grant in a hearing (A) two-year extensions of commitment which do not extend beyond the minor's 19th birthday if the extension is in the best interests of the minor and the public; and (B) an additional one-year period of supervision past age 19 if the continued supervision is in the best interests of the person and the person consents to it; the department may transfer the minor, in the minor's best interests, from one placement setting to another, and the minor, the minor's parents or guardian, and the minor's attorney are entitled to reasonable notice of the transfer;

(2) order the minor released to the minor's parents, guardian, or some other suitable person, and, in appropriate cases, order the parents, guardian, or other person to provide medical or other care and treatment; if the court releases the minor, it shall direct the department to supervise the care and treatment given to the minor, but the court may dispense with the department's supervision if the court finds that the adult to whom the minor is released will adequately care for the minor without supervision; the department's supervision may not exceed two years or in any event extend past the date the minor reaches age 19, except that the department may petition for and the court may grant in a hearing

(A) two-year extensions of supervision which do not extend beyond the minor's 19th birthday if the extension is in the best interests of the minor and the public; and

(B) an additional one-year period of supervision past age 19 if the continued supervision is in the best interests of the person and the person consents to it; or

(3) 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.

(d) An order issued under (c)(3) of this section authorizes the commissioner of health and social services or a designee or the guardian of the person of the child to consent to the adoption of the child.

(e) If the court finds that the minor is not delinquent or a child in need of aid, it shall immediately order the minor released from the department's custody and returned to the minor's parents, guardian, or custodian, and dismiss the case.

(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.

(g) No adjudication under this chapter upon the status of a child may operate to impose any of the civil disabilities ordinarily imposed by conviction upon a criminal charge, nor may a minor afterward be considered a criminal by the adjudication, nor may the adjudication be afterward deemed a conviction, nor may a minor be charged with or convicted of a crime in a court, except as provided in this chapter. The commitment and placement of a child and evidence given in the court are not admissible as evidence against the minor in a subsequent case or proceedings in any other court, nor does the commitment and placement or evidence operate to disqualify a minor in a future civil service examination or appointment in the state.

(h) The department shall pay all court costs incurred in all proceedings in connection with the adjudication of delinquency under this chapter, including hearings which result in the release of the minor.

(i) A minor, the minor's parents or guardian acting on the minor's behalf, or the department may appeal a judgment or order, or the stay, modification, setting aside, revocation, or enlargement of a judgment or order issued by the court under this chapter.

(j) *[Repealed, § 29 ch 63 SLA 1977.]*

(k) In making its order under (c) of this section, the court shall consider the fact, if it is a fact, that the minor was being provided treatment by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination by an accredited practitioner of the church or denomination. (§ 10(2) art I ch 145 SLA 1957; am § 2 ch 110 SLA 1960; am § 2 ch 118 SLA 1962; am § 1 ch 40 SLA 1967; am §§ 1—4 ch 27 SLA 1970; am §§ 12—15 ch 245 SLA 1970; am § 6 ch 104 SLA 1971; am §§ 6, 7 ch 1 SLA 1972; am §§ 1, 2 ch 125 SLA 1974; am §§ 14—18, 29 ch 63 SLA 1977; am § 6 ch 86 SLA 1979)

**Cross references.** — For the standard of proof for findings under this section, see Children's Rule 21, Alaska Rules of Court. See also, Children's Rules 22 and 23.

**Editor's notes.** — Section 31, ch. 63, SLA 1977, provides: "Section 18 of this Act has the effect of adding to the court's responsibilities when holding a review under Rule 28, Alaska Rules of Children's Procedure, by requiring the court to hold a hearing upon a showing of good cause, give notice, and afford an opportunity to be heard."

Section 34, ch. 63, SLA 1977, in the first sentence provides: "The portions of AS 47.10.080(b) and (c) in secs. 15 and 16 of this Act which specify the length of commitment to the department or probation or supervision by the department are applicable to those minors affected under former AS 47.10.080(b), (c) and (j) before the effective date of this Act (August 26, 1977) so that the commitment, probation or supervision of minors by the department before the effective date of this Act (August 26, 1977) shall continue, but may not exceed two years from the effective date of this Act (August 26, 1977) unless two-year extensions have been granted by the court under this Act." Subsection (j) of AS 47.10.080 was repealed by § 29, ch. 63, SLA 1977.

## NOTES TO DECISIONS

**Each category of children mandates differences regarding content of dispositional orders.** — Alaska's pertinent statutory provisions and procedural rules distinguish between categories of children for purposes of administering Alaska children's laws. Of controlling significance is that each class or category mandates distinct differences regarding the permissible content of any dispositional order the trial court can enter. In re A Minor Child, Sup. Ct. Op. No. 737 (File No. 1524), 490 P.2d 658 (1971).

**Where a delinquent child was sentenced for a fixed time period and ordered to an adult institution, this amounted to a penal sentence as opposed to the juvenile disposition required under subsection (b)(1).** B.A.M. v. State, Sup. Ct. Op. No. 1104 (File No. 2144), 528 P.2d 437 (1974).

**Court cannot place child in particular institution.** — Under this section as amended, the court no longer has discretion to order the delinquent child placed in a particular institution. The court only has authority to commit the child to the department, which then places the child. B.A.M. v. State, Sup. Ct. Op. No. 1104 (File No. 2144), 528 P.2d 437 (1974); A.A. v. State, Sup. Ct. Op. No. 1151 (File No. 2400), 538 P.2d 1004 (1975).

**Authority to order placement of delinquent child.** — In enacting paragraph (b)(3), the legislature intended for the department, not the court, to make the decisions concerning placement of the minor. State, Dep't of Health & Social Servs. v. A.C., Ct. App. Op. No. 384 (File No. 7643), P.2d (1984).

Paragraph (b)(3) of this section provides the court authority to order the delinquent minor placed on probation to the Department of Health and Social Services; it is then up to the department to determine whether the minor should be placed with his parents or in another setting. State, Dep't of Health & Social Servs. v. A.C., Ct. App. Op. No. 384 (File No. 7643), P.2d (1984).

**Review of placement decision.** — The superior court has the authority to review the decision of the department to determine if the placement is in the best interest of the minor, but in reviewing a decision of the department, the superior court may not substitute its judgment for the judgment of the department; since the legislature has committed the decision of placement to the department's discretion, the question for the court is whether the agency abused its discretion. State, Dep't of Health & Social Servs. v. A.C., Ct. App. Op. No. 384 (File No. 7643), P.2d (1984).

**Jurisdiction dependent upon age of offender at time of act.** — Juvenile jurisdiction of the superior court in delinquency proceedings is dependent upon the age of the offender at the time of the delinquent acts. Henson v. State, Sup. Ct. Op. No. 1590 (File No. 3024), 576 P.2d 1352 (1978).

**Where a delinquent child was under the age of 18 at the time the acts of delinquency were committed, he is considered a minor** for the purposes of adjudication and disposition. B.A.M. v. State, Sup. Ct. Op. No. 1104 (File No. 2144), 528 P.2d 437 (1974).

**Option available to prosecution absent waiver under AS 47.10.060(a).** — A proceeding in children's court, which is limited to the dispositions set forth in AS 47.10.080(b), is the only option available to the prosecution absent waiver under AS 47.10.060(a), and the standards established in that section are sufficiently clear to prevent arbitrary enforcement. M.O.W. v. State, Ct. App. Op. No. 95 (File No. 4546), 645 P.2d 1229 (1982).

**One who committed a crime when 18 years of age could be criminally prosecuted, as an adult, when he had been** previously adjudged a delinquent minor and the court had retained supervisory jurisdiction over him until age 19. Henson v. State, Sup. Ct. Op. No. 1590 (File No. 3024), 576 P.2d 1352 (1978).

**Section is maximum sentencing statute.** — Statutes requiring release upon a specified birthday are, in effect, maximum sentencing statutes. Davenport v. McGinnis, Sup. Ct. Op. No. 1049 (File No. 1942), 522 P.2d 1140 (1974).

**Sentence reduction to 19 years of age not retroactive.** — There was nothing in the amendatory legislation to this section that indicated an intention that the sentence reduction should operate retrospectively. Davenport v. McGinnis, Sup. Ct. Op. No. 1049 (File No. 1942), 522 P.2d 1140 (1974).

**There is no conflict between subsection (b)(1) and AS 47.10.060(d).** In re F.S., Sup. Ct. Op. No. 1756 (File No. 4015), 586 P.2d 607 (1978).

**Age 20 is the proper age for determining whether a minor is amenable to treatment.** In re F.S., Sup. Ct. Op. No. 1756 (File No. 4015), 586 P.2d 607 (1978).

The inconsistency between AS 47.10.060(d) and subsection (b)(1) of this section that existed prior to the 1977 amendments to these sections has been eliminated in that AS 47.10.060 (d) now provides that the determinative age is 20 and subsection (b)(1) provides that the maximum limitation of confinement of minors is 20. In re F.S., Sup. Ct. Op. No. 1756 (File No. 4015), 586 P.2d 607 (1978).

**Binding advance consent to treatment.** — In order to give effect to the legislature's intent that a court may consider treatment until age 20 in determining waiver of juvenile jurisdiction, it is necessary that the judge be able to evaluate at the time of the waiver hearing whether the juvenile will in fact be available for treatment. It is not possible for the judge to know this unless the child can give binding consent at the time of the hearing. State v. F.L.A., Sup. Ct. Op. No. 2041 (File No. 4333), 608 P.2d 12 (1980).

A minor may bindingly consent to an additional period of supervision as provided by subsection (b)(1) of this section. In determining the effect to be given to such consent, the court should consider the age and maturity of the juvenile and whether he has the advice of counsel. To protect a minor from making a decision adverse to his own interests, a guardian ad litem may be appointed. State v. F.L.A., Sup. Ct. Op.

No. 2041 (File No. 4333), 608 P.2d 12 (1980).

The portion of the opinion in In re F.S., Sup. Ct. Op. No. 1756 (File No. 4015), 586 P.2d 607 (1978) that held that a minor in a waiver hearing could not give a binding advance consent to treatment beyond age 19 was mistaken. State v. F.L.A., Sup. Ct. Op. No. 2041 (File No. 4333), 608 P.2d 12 (1980).

While it is true, as indicated in In re F.S., Sup. Ct. Op. No. 1756 (File No. 4015), 586 P.2d 607 (1978), that the statute contemplates that the determination of the additional period of treatment be made after the initial hearing, such an intent does not mandate that an advance consent to treatment given by the minor may not be regarded as binding. State v. F.L.A., Sup. Ct. Op. No. 2041 (File No. 4333), 608 P.2d 12 (1980).

**The lower court erred in considering the purported consent of a minor to an additional year of supervision** because: (1) the minor could withdraw his consent upon reaching majority and (2) even assuming the minor's consent could not be withdrawn, subsection (b)(1) requires that the department petition the court and that additional commitment be in the minor's best interests before the court has jurisdiction to order the additional one-year period. In re F.S., Sup. Ct. Op. No. 1736 (File No. 4015), 586 P.2d 607 (1978).

Subsection (b)(1) requires that the department petition for an additional one-year period of supervision and that continued supervision be in the best interests of the minor before the court may order an additional year. Thus, a minor's prospective consent to additional supervision is not a material factor unless the other two conditions of the statute are fulfilled. In re F.S., Sup. Ct. Op. No. 1736 (File No. 4015), 586 P.2d 607 (1978).

This statute contemplates that the decision to extend the period of supervision be made after the initial dispositional hearing. To give effect to the minor's advance consent would thus be contrary to the apparent intent of the legislature. In re F.S., Sup. Ct. Op. No. 1756 (File No. 4015), 586 P.2d 607 (1978).

**The court must choose between commitment to the Department of Health and Social Services and probation,** and may not delegate the choice to the Department of Health and Social Services. This is a correct textual analysis, especially in light of the provision in subsection (b)(1) for subsequent court order for probation following placement or detention. The legislature has clearly indicated its intent to place this choice in the hands of the court. RLR v. State, Sup. Ct. Op. No. 706 (File No. 1156), 487 P.2d 27 (1971).

**Court-ordered probation.** — Probation cannot be deemed court-ordered under subsection (b) of this section unless it is directly ordered. It cannot be "triggered" by a decision of the department that the juvenile has successfully completed a rehabilitation program, even if the court judgment states that institutionalization will end upon such successful completion. In re L.C. v. State, Sup. Ct. Op. No. 2277 (File Nos. 4401, 4411), 625 P.2d 839 (1981).

**The hearing judge erred by placing a delinquent child on probation until his 20th birthday.** B.A.M. v. State, Sup. Ct. Op. No. 1104 (File No. 2144), 528 P.2d 437 (1974).

**Petition necessary to extend probation beyond 19th birthday.** — The superior court was without authority to extend probation beyond the delinquent child's 19th birthday without a petition from the department to extend the probationary period for an additional year. B.A.M. v. State, Sup. Ct. Op. No. 1104 (File No. 2144), 528 P.2d 437 (1974).

**A minor who has been adjudged a child in need of supervision [see now child in need of aid] cannot be institutionalized** under the Children's Code. In re A Minor Child, Sup. Ct. Op. No. 737 (File No. 1524), 490 P.2d 658 (1971).

Where a runaway child is found to be a child in need of supervision [see now child in need of aid], not a delinquent minor, no legal basis exists for his incarceration. In re A Minor Child, Sup. Ct. Op. No. 737 (File No. 1524), 490 P.2d 658 (1971).

**The only instance under Alaska children's laws authorizing institutionalization or incarceration** is when the child has violated the laws of the state, or any of its political subdivisions, and in turn has been adjudged a delinquent minor. In re A Minor Child, Sup. Ct. Op. No. 737 (File No. 1524), 490 P.2d 658 (1971).

The legislature has authorized institutionalization only where the child is found to be a delinquent minor. In re A Minor Child, Sup. Ct. Op. No. 737 (File No. 1524), 490 P.2d 658 (1971).

**Power of court under subsection (c).** — Under subsection (c) of this section, the court is empowered to order the minor committed to the Department of Health and Social Services or order the minor released to his parents, guardian, or some

other suitable person. In re A Minor Child, Sup. Ct. Op. No. 737 (File No. 1524), 490 P.2d 658 (1971).

**The Department of Health and Social Services does not possess the authority to institutionalize any minor,** including one who has been declared a child in need of supervision [see now child in need of aid], who has been committed to its custody. It is unreasonable to construe Alaska children's statutes in a manner which would result in the grant to the Department of Health and Social Services of broader powers of commitment than possessed by the trial court. In re A Minor Child, Sup. Ct. Op. No. 737 (File No. 1524), 490 P.2d 658 (1971).

**A child "in need of aid" appears to be the functional equivalent of a "dependent" child** under AS 47.10.010 as it existed prior to its 1977 amendment. In re C.L.T., Sup. Ct. Op. No. 1866 (File No. 3607), 597 P.2d 518 (1979).

**Parental right to custody and control is not absolute.** — While a parent has a right to the care, custody and control of his or her children, this right is not absolute, and "courts have become increasingly aware of the rights of children." The Alaska legislature has struck a balance between these potentially competing rights by requiring the state to prove its allegations by clear and convincing evidence in parental rights termination cases. Once this burden of proof has been met, however, the statute mandates a termination. In re D.C., Sup. Ct. Op. No. 1862 (File No. 3840), 592 P.2d 22 (1979).

**The discretion allotted a parent in the administration of punishment is not unlimited.** Clearly it does not extend to punishment regularly causing the "substantial physical harm" which under AS 47.10.010(a)(2)(C) determines that a child is in need of aid. In re D.C., Sup. Ct. Op. No. 1862 (File No. 3840), 592 P.2d 22 (1979).

**Statutory provisions governing judgments and orders terminating parental rights have been changed.** In order to terminate parental rights, the court must now find that the child is in need of aid under AS 47.10.010(a)(2) as the result of parental conduct proved by clear and convincing evidence and that the parental conduct is likely to continue to exist if there is no termination of parental rights, proved again by clear and convincing evidence. AS 47.10.080(c)(3). In re C.L.T., Sup. Ct. Op. No. 1866 (File No. 3607), 597 P.2d 518 (1979).

In order to terminate parental rights under this section, the court must find by clear and convincing evidence (1) that there is a child in need of aid under AS 47.10.010(a)(2) as a result of parental conduct, and (2) that the parental conduct is likely to continue. E.A. v. State, Sup. Ct. Op. No. 2289 (File Nos. 4687, 4870), 623 P.2d 1210 (1981).

Under former AS 47.10.010(a)(5) and subsection (a) and former subsection (c)(3)(D) of this section, in order to terminate parental rights, the superior court was required to find (1) that the child was a "dependent minor" and (2) that the parent had demonstrated by her conduct, proved by clear and convincing proof, that she was unfit to continue to exercise her parental rights and responsibilities. In re C.L.T., Sup. Ct. Op. No. 1866 (File No. 3607), 597 P.2d 518 (1979).

**Parent's impulsive personality disorder not ground for termination of rights.** — Where after finding that child was in need of aid, trial judge found that the parent "is likely to continue to demonstrate a conscious disregard of the obligation owed by a parent to a child even after her release from incarceration because she suffers from an impulsive personality disorder," such finding was insufficient to satisfy requirement of clear and convincing evidence that conduct leading to determination that child is in need of aid is likely since an impulsive personality disorder itself is not conduct and thus, not a ground for termination. Nada A. v. State, Sup. Ct. Op. No. 2632 (File Nos. 6546, 6693), 660 P.2d 436 (1983).

**Findings.** — A finding that the parental conduct is likely to continue must be made expressly on the record prior to ordering the termination of parental rights. E.A. v. State, Sup. Ct. Op. No. 2289 (File Nos. 4687, 4870), 623 P.2d 1210 (1981).

**Abandonment.** — For cases construing former language in subsection (c) providing for termination of parental rights and responsibilities when the child had been abandoned, see D.M. v. State, Sup. Ct. Op. No. 962 (File No. 1843), 515 P.2d 1234 (1973); In re B.J., Sup. Ct. Op. No. 1110 (File No. 2161), 530 P.2d 747 (1975); In re E.J. (T.), Sup. Ct. Op. No. 1348 (File No. 2775), 557 P.2d 1128 (1976).

**A rehabilitation program is not a common practice** in the trial courts absent approval by a representative of the state. In re E.J. (T.), Sup. Ct. Op. No. 1348 (File No. 2775), 557 P.2d 1128 (1976).

**Trial court did not abuse discretion in failing to consider possibility of setting up plan for reestablishing family relationship between father and son.** — See In re E.J. (T.), Sup. Ct. Op. No. 1348 (File No. 2775), 557 P.2d 1128 (1976).

**Role of trial court in proceeding involving termination of parental rights.** — See In re E.J. (T.), Sup. Ct. Op. No. 1348 (File No. 2775), 557 P.2d 1128 (1976).

**Applicability of burden of proof.** — A burden of proof is not applicable to a dispositive hearing other than when termination of parental rights is involved. In re S.D., Sup. Ct. Op. No. 1255 (File No. 2530), 549 P.2d 1190 (1976). See also In re C.L.T., Sup. Ct. Op. No. 1866 (File No. 3607), 597 P.2d 518 (1979).

Determination of the standard to be applied by the court at the dispositive phase of a child hearing was not tantamount to establishing a burden of proof requirement. Such a requirement had been set forth in former subsection (c)(3)(D) (see now subsection (c)(3)). No such requirement had been set forth in situations such as where termination of parental rights was not involved. In re S.D., Sup. Ct. Op. No. 1255 (File No. 2530), 549 P.2d 1190 (1976).

**Standard of proof held constitutional.** — Allowing parental rights to be terminated based on a standard of proof less stringent than "beyond a reasonable doubt" does not violate the due process clause of the United States Constitution or the Alaska Constitution. In re C.L.T., Sup. Ct. Op. No. 1866 (File No. 3607), 597 P.2d 518 (1979).

Since in proceedings brought to terminate parental rights, the parent is neither charged with criminal behavior nor subject to incarceration as a direct consequence of the proceeding, there is nothing in the federal constitution that compels adoption of the proof beyond a reasonable doubt standard in termination proceedings. In re C.L.T., Sup. Ct. Op. No. 1866 (File No. 3607), 597 P.2d 518 (1979).

Clear and convincing proof is a more demanding standard than a mere preponderance of the evidence and is adequate to protect the parent's substantial interest in his or her child custody rights. This evidentiary standard balances the competing interests involved in a proceeding brought to terminate parental rights, one of which is the right of a child to an adequate home. In re C.L.T., Sup. Ct. Op. No. 1866 (File No. 3607), 597 P.2d 518 (1979).

The due process clause did not require a standard of proof greater than clear and convincing evidence when the state sought to terminate parental rights because of unfitness under former subsection (c)(3)(D). In re C.L.T., Sup. Ct. Op. No. 1866 (File No. 3607), 597 P.2d 518 (1979).

Standard of proof under former subsection (c)(3)(D) calling for "clear and convincing" evidence of the natural mother's unfitness for the care and custody of the child was held proper. In re K.S., Sup. Ct. Op. No. 1219 (File No. 2359), 543 P.2d 1191 (1975).

**Protection provided by Indian Child Welfare Act.** — The Indian Child Welfare Act, 25 U.S.C. §§ 1901 — 1963, enacted in 1978, provides a higher standard of protection to the rights of parents in termination proceedings involving Indians and Native Alaskans than that provided in this section. E.A. v. State, Sup. Ct. Op. No. 2289 (File Nos. 4687, 4870), 623 P.2d 1210 (1981).

**Orders terminating parental rights met statutory and rule of court requirements regarding findings of fact.** — See In re C.L.T., Sup. Ct. Op. No. 1866 (File No. 3607), 597, P.2d 518 (1979).

**Review of orders terminating parental rights.** — Orders made under subsection (c)(3) of this section are not entitled to automatic review, inasmuch as subsection (f) of this section specifies which orders are entitled to this review and orders under subsection (c)(3) of this section are not included within the list. Rita T. v. State, Sup. Ct. Op. No. 2294 (File No. 5036), 623 P.2d 344 (1981).

All orders made pursuant to this section, including orders under subsection (c)(3) of this section, are to be reviewed upon application of an interested party if the party establishes good cause for the review, and if the child is still a ward of the court. Rita T. v. State, Sup. Ct. Op. No. 2294 (File No. 5036), 623 P.2d 344 (1981).

As long as a child remains the ward of the court, under subsection (f) of this section his or her natural parents are entitled to a review of the order terminating their parental rights upon a showing of good cause for the hearing. Rita T. v. State, Sup. Ct. Op. No. 2294 (File No. 5036), 623 P.2d 344 (1981).

Good cause could be established if the parents showed that it would be in the best interests of the child to resume living with them because they have sufficiently reha-

bilitated themselves so that they can provide proper guidance and care for the child. Rita T. v. State, Sup. Ct. Op. No. 2294 (File No. 5036), 623 P.2d 344 (1981).

Where, when a mother applied for a hearing before the superior court, she indicated that as a result of a 14-month rehabilitation program she had overcome the problems that had led to the termination of her parental rights and also indicated that professional counselors, social workers and others would be able to establish that she was now capable of providing a warm and loving home for the child, this was a sufficient showing of good cause to entitle her to a review of the order terminating her parental rights if the child had not yet been adopted. Rita T. v. State, Sup. Ct. Op. No. 2294 (File No. 5036), 623 P.2d 344 (1981).

**Former AS 17.12.110(d)(4) not in conflict.** — Former AS 17.12.110(d)(4), which provided that a person who, while under the age of 18, possesses, controls or uses any amount of marijuana was, upon conviction, guilty of a misdemeanor punishable by a fine of not more than $1000, was not in conflict with AS 47.10.010(a)(1) and paragraph (b)(1) of this section. M.O.W. v. State, Ct. App. Op. No. 95 (File No. 4846), 645 P.2d 1229 (1982).

**For reference to apparent conflict between subsection (c)(1) as it read prior to 1977 amendment and Children's Rule 22(f), see** footnote 30 in In re S.D., Sup. Ct. Op. No. 1255 (File No. 2530), 549 P.2d 1190 (1976).

**Peremptory challenge procedure inapplicable to juvenile proceedings.** — While juvenile proceedings have some of the characteristics of both civil and criminal actions, they are basically different from both, and the words "civil or criminal" as used in AS 22.20.022 must be strictly construed. The trial judge was correct in holding that peremptory challenge procedure applied only to civil and criminal actions and not to juvenile proceedings. In re A Minor Child, Sup. Ct. Op. No. 737 (File No. 1524), 490 P.2d 658 (1971).

**Notions of benevolent protective policies cannot be used to validate departures from positive law** relating to the adjudicative and dispositive phases of children's proceedings. In re A Minor Child, Sup. Ct. Op. No. 737 (File No. 1524), 490 P.2d 658 (1971).

**Nor to justify dispensing with constitutional safeguards.** — The benevolent social theory supposedly underlying children's court acts does not furnish justification for dispensing with constitutional safeguards. In re A Minor Child, Sup. Ct. Op. No. 737 (File No. 1524), 490 P.2d 658 (1971).

**The right of confrontation is paramount to the state's policy of protecting a juvenile offender.** Davis v. State, 415 U.S. 308, 94 S. Ct. 1105, 39 L. Ed. 2d 347 (1974).

**But state's interest in secrecy of juvenile adjudications need not always fall before confrontation right.** — See Gonzales v. State, Sup. Ct. Op. No. 1030 (File No. 2002), 521 P.2d 512, cert. denied, 419 U.S. 868, 95 S. Ct. 125, 42 L.Ed.2d 106 (1974).

**Prosecution witness impeachable by cross-examination for bias from probationary status as juvenile delinquent.** — The confrontation clause requires that a defendant in a criminal case be allowed to impeach the credibility of a prosecution witness by cross-examination directed at possible bias deriving from the witness's probationary status as juvenile delinquent although such an impeachment would conflict with a state's asserted interest in preserving the confidentiality of juvenile adjudications of delinquency. Davis v. Alaska, 415 U.S. 308, 94 S. Ct. 1105, 39 L. Ed. 2d 347 (1974).

Whatever temporary embarrassment might result to a prosecution witness or his family by disclosure of his juvenile record — if the prosecution insisted on using him to make its case — is outweighed by petitioner's right to probe into the influence of possible bias on the testimony of a crucial identification witness. Davis v. Alaska, 415 U.S. 308, 94 S. Ct. 1105, 39 L. Ed. 2d 347 (1974).

The state cannot, consistent with right of confrontation, require the defendant to bear the full burden of vindicating the state's interest in the secrecy of juvenile criminal records. Davis v. Alaska, 415 U.S. 308, 94 S. Ct. 1105, 39 L. Ed. 2d 347 (1974).

The United States supreme court has held that the constitutional right of confrontation required that defense counsel be allowed to investigate the potential bias of a crucial prosecution witness, even where that potential bias arose out of a juvenile adjudication and its resultant probationary status. Gonzales v. State, Sup. Ct. Op. No. 1030 (File No. 2002), 521 P.2d 512, cert. denied, 419 U.S. 868, 95 S. Ct. 125, 42 L. Ed. 2d 106 (1974).

The United States supreme court concluded that Alaska's interest in protecting the anonymity of the juvenile offender was outweighed by the more

critical need to afford a criminal defendant reasonable inquiry into the motives of prosecution witnesses. Gonzales v. State, Sup. Ct. Op. No. 1030 (File No. 2002), 521 P.2d 512, cert. denied, 419 U.S. 868, 95 S. Ct. 125, 42 L. Ed. 2d 106 (1974).

**Conflict between section and decision in Davis v. Alaska is superficial.** — The conflict between this section and the supreme court's decision in Davis v. Alaska, 415 U.S. 308, 94 S. Ct. 1105, 39 L. Ed. 2d 347 (1974), is only superficial. Gonzales v. State, Sup. Ct. Op. No. 1030 (File No. 2002), 521 P.2d 512, cert. denied, 419 U.S. 868, 95 S. Ct. 125, 42 L. Ed. 2d 106 (1974).

**Since disclosure required because of probationary status, not juvenile adjudication.** — The constitutional requirement of disclosure in the facts in Davis v. Alaska, 415 U.S. 308, 94 S. Ct. 1105, 39 L. Ed. 2d 347 (1974), is created not by the juvenile adjudication itself but by the probationary status of the juvenile at the time of Davis' trial, with its potential for motivating false testimony. Gonzales v. State, Sup. Ct. Op. No. 1030 (File No. 2002), 521 P.2d 512, cert. denied, 419 U.S. 868, 95 S. Ct. 125, 42 L. Ed. 2d 106 (1974).

**Where the witness was not on juvenile probation,** it cannot be seriously argued that the fact of previous juvenile convictions, standing alone, provided any inference of potential bias. Gonzales v. State, Sup. Ct. Op. No. 1030 (File No. 2002), 521 P.2d 512, cert. denied, 419 U.S. 868, 95 S. Ct. 125, 42 L. Ed. 2d 106 (1974).

**State adjudications directed solely at credibility do not conflict with confrontation right.** — Juvenile adjudications which are stale by Alaska's standards and directed solely at general credibility rather than bias are generally not sufficiently probative to create a genuine conflict with the defendant's right of confrontation. Gonzales v. State, Sup. Ct. Op. No. 1030 (File No. 2002), 521 P.2d 512, cert. denied, 419 U.S. 868, 95 S. Ct. 125, 42 L. Ed. 2d 106 (1974).

Where the attempted impeachment was of general credibility by proof of prior convictions, the probative value of this type of evidence is considerably less than that which suggests false or distorted testimony because of bias, and the need to confront a witness with such evidence is correspondingly less. Gonzales v. State, Sup. Ct. Op. No. 1030 (File No. 2002), 521 P.2d 512, cert. denied, 419 U.S. 868, 95 S. Ct. 125, 42 L. Ed. 2d 106 (1974).

As a general rule, the trial court could properly refuse evidence of stale convictions or juvenile adjudications where these were offered for the purpose of discrediting the witness generally rather than to show some specific potential for bias or prejudice toward the defendant. Thomas v. State, Sup. Ct. Op. No. 1040 (File Nos. 1888, 1854), 522 P.2d 528 (1974).

**Privilege against self-incrimination.** — When a person under the age of 18 years violated former AS 47.10.010(a)(1), he could be adjudged a "delinquent minor," one possible consequence of which adjudication was commitment to a juvenile facility until the age of 19 (now 20). Moreover, if there was probable cause to believe the minor was delinquent and the court found that he was not amenable to treatment as a juvenile, he could be prosecuted as if he were an adult. Thus, there was always some danger of incarceration, or other criminal sanctions, when a child committed an act which would have been a crime if committed by an adult. Under such circumstances a child had a privilege against self-incrimination. E.L.L. v. State, Sup. Ct. Op. No. 1540 (File No. 3374), 572 P.2d 786 (1977).

**A child adjudicated delinquent for selling LSD** may be incarcerated, possibly even in a city jail, until age 19, which may be many years. R.L.R. v. State, Sup. Ct. Op. No. 706 (File No. 1156), 487 P.2d 27 (1971).

**Subsection (g) provides in part that a juvenile offender may not be considered a criminal by reason of the adjudication,** nor may the adjudication be afterward deemed a conviction. Gonzales v. State, Sup. Ct. Op. No. 1030 (File No. 2002), 521 P.2d 512, cert. denied, 419 U.S. 868, 95 S. Ct. 125, 42 L. Ed. 2d 106 (1974).

**A judge cannot consider a juvenile offense as a criminal conviction** for the purpose of prescribing a mandatory sentence. Berfield v. State, Sup. Ct. Op. No. 581 (File No. 960), 458 P.2d 1008 (1969).

The judge's consideration of factors relating to accused's life, characteristics, background and behavior prior to reaching the age of 18 years did not mean that he considered accused a criminal or that he was using the juvenile offenses as criminal convictions in determining the sentence to impose. Berfield v. State, Sup. Ct. Op. No. 581 (File No. 960), 458 P.2d 1008 (1969).

**Consideration of the juvenile record is proper by the court imposing a sentence upon an adult offender.** Penn v. State, Sup. Ct. Op. No. 1774 (File No. 3873), 588 P.2d 288 (1978).

Use of the juvenile history of the offender in sentencing proceedings does not amount to the use of those proceedings as evidence against the offender within the proscription of such a statute as this section. Penn v. State, Sup. Ct. Op. No. 1774 (File No. 3873), 588 P.2d 288 (1978).

**When sentence determined.** — The sentence which may be imposed upon a convicted adult is determined as of the time of the final judgment of conviction, or as of the time of commission of the offense. These rules have been applied to juvenile sentencing. Davenport v. McGinnis, Sup. Ct. Op. No. 1049 (File No. 1942), 522 P.2d 1140 (1974).

**Review of custody orders.** — The new children's law, as a result of the 1977 acts, provides for review of custody orders annually or more often if good cause is shown. In re J.M., Sup. Ct. Op. No. 1548 (File Nos. 3219, 3229), 573 P.2d 1376 (1978).

**Appeal of detention order.** — Under this section and Children's Rule 29(a), a minor who is detained may appeal his detention order. A.M. v. State, Ct. App. Op. No. 150 (File No. 6105), 653 P.2d 346 (1982).

Appellants are authorized to bring juvenile bail appeals under App. R. 207 to ensure that juvenile detention hearings are not insulated from review. A.M. v. State, Ct. App. Op. No. 150 (File No. 6105), 653 P.2d 346 (1982).

**Appeal from detention order dismissed as untimely.** — See A.M. v. State, Ct. App. Op. No. 150 (File No. 6105), 653 P.2d 346 (1982).

**Appellate jurisdiction.** — AS 22.05.010 places final appellate jurisdiction in all cases in the supreme court. In re A Minor Child, Sup. Ct. Op. No. 737 (File No. 1524), 490 P.2d 658 (1971).

**Applied** in L.A.M. v. State, Sup. Ct. Op. No. 1249 (File No. 2221), 547 P.2d 827 (1976); Adams v. Ross, Sup. Ct. Op. No. 1281 (File No. 2458), 551 P.2d 948 (1976); D.H. v. State, Sup. Ct. Op. No. 1396 (File No. 2837), 561 P.2d 294 (1977).

**Quoted** in Davis v. State, Sup. Ct. Op. No. 816 (File Nos. 1428, 1436), 499 P.2d 1025 (1972).

**Stated** in In re G.K., Sup. Ct. Op. No. 796 (File Nos. 1627, 1654, 1674), 497 P.2d 914 (1972).

**Cited** in Elliason v. State, Sup. Ct. Op. No. 898 (File No. 1750), 511 P.2d 1066 (1973); D.L.J. v. W.D.R., Sup. Ct. Op. No. 2433 (File No. 5411), 635 P.2d 834 (1981); S.O. v. W.S., Sup. Ct. Op. No. 2491 (File No. 5856), 643 P.2d 997 (1982).

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**Collateral references.** — Right of indigent parent to appointed counsel in proceeding for involuntary termination of parental rights, 80 ALR3d 1141.

**Sec. 47.10.081. Predisposition hearing reports.** (a) Before the disposition hearing of a delinquent minor the department shall submit a predisposition report with a recommended plan of treatment to aid the court in its selection of a disposition, and any further information which the court may request.

(b) Before the disposition hearing of a child in need of aid the department shall submit a predisposition report to aid the court in its selection of a disposition. This report shall include, but is not limited to, the following:

(1) a statement of changes in the child's or parent's behavior, which will aid the court in determining that supervision of the family or placement is no longer necessary;

(2) if removal from the home is recommended, a description of the reasons the child cannot be protected or rehabilitated adequately in the home, including a description of any previous efforts to work with the parents and the child in the home and the parents' attitude toward placement of the child;

court did not err in failing to grant defendant a nine- to 12-month continuance to permit further psychiatric and psychological treatment in order to test his amenability to juvenile treatment. M.K. v. State, Ct. App. Op. No. 756 (File No. A-1969), 744 P.2d 1178 (1987).

**Quoted** in W.M.F. v. Johnstone, Ct. App. Op. No. 571 (File No. A-1243), 711 P.2d 1187 (1986).

**Cited** in Shewey v. State, Ct. App. Op. No. 723 (File No. A-1924), 739 P.2d 196 (1987).

## Sec. 47.10.070. Hearings.

### NOTES TO DECISIONS

**"Compatible."** — In the absence of contrary authority, it is appropriate to accord the word "compatible" its usual meaning. W.M.F. v. Johnstone, Ct. App. Op. No. 571 (File No. A-1243), 711 P.2d 1187 (1986).

## Sec. 47.10.080. Judgments and orders.

### NOTES TO DECISIONS

**Standards for use in choosing alternatives under subsection (b).** — See R.P. v. State, Ct. App. Op. No. 620 (File No. A-1100), 718 P.2d 168 (1986).

**Findings insufficient to sustain order institutionalizing juvenile.** — See R.P. v. State, Ct. App. Op. No. 620 (File No. A-1100), 718 P.2d 168 (1986).

**"Best interests" standard.** — Given that both subparagraph (c)(1)(A) and subsection (f) contain the "best interests" standard, it's reasonable to assume that the legislature intended the standard to have the same meaning with respect to each type of continuation of custody, namely a 080(c)(1)(A) extension beyond the term of the original order and a 080(f) "extension" beyond the first year of the order until its expiration. In re A.S., Sup. Ct. Op. No. 3197 (File No. S-1739), 740 P.2d 432 (1987).

The "continuing conditions of need" requirement for continued custody found in AS 47.10.083 should be viewed as an additional requirement beyond "best interests," not as the equivalent thereof. In re A.S., Sup. Ct. Op. No. 3197 (File No. S-1739), 740 P.2d 432 (1987).

"Best interests" as used in AS 47.10.080(c)(1)(A) does not constitute a requirement that the state demonstrate the continuing existence of AS 47.10.010(a)(2) conditions of need in order to obtain an extension of custody. Thus, the state may require an extension of custody in order to implement a plan for reuniting the family without causing emotional trauma to the child by virtue of a sudden change of circumstances. In re A.S., Sup. Ct. Op. No. 3197 (File No. S-1739), 740 P.2d 432 (1987).

**Effect of denying petition for extension of custody.** — Where defendant proposed to return child in state custody to her natural mother and sought extension of state custody to accomplish this gradually, a native village council argued that denial of department's petition for an extension of custody would not require the superior court then to return the child to her mother, but rather that under subsection (c) the court could release the child to the child's parents under the tribal court adoption order; however, it was held that the superior court correctly concurred in the state's position that, absent an extension, the child must be returned to her natural mother. In re A.S., Sup. Ct. Op. No. 3197 (File No. S-1739), 740 P.2d 432 (1987).

**Section not in conflict with Indian Child Welfare Act.** — The application of the clear and convincing standard to the findings that a child is in need of aid as a result of parental conduct and that the paternal conduct is likely to continue does not conflict with section 1912(f) of the Indian Child Welfare Act (ICWA). Section 1912(f) looks to likely future harm to the child, requiring only a finding beyond a reasonable doubt of likely harm to the child with continued custody by the parent or Indian custodian. In contrast, this section is concerned with the present condition of the child and the likely future conduct of the parent and requires a finding by clear and convincing evidence that the child is in need of aid as a result of

parental conduct and that the parental conduct that placed the child in need of aid is likely to continued. The Alaska statute requires findings additional to that required by the ICWA, thus providing a level of protection to the parental rights beyond that provided by the ICWA, and is not preempted by the ICWA. In re J.R.B., Sup. Ct. Op. No. 3029 (File No. S-907), 715 P.2d 1170 (1986).

**Authority to direct placement of minor.** — Once a court declares a minor a child in need of aid and commits the minor to the Department of Health and Social Services under subsection (c)(1), the department has the authority to direct the placement of the minor. The court can review the department's decision to see if it constitutes an abuse of discretion, but it cannot make a specific placement order once legal custody has been granted to the department. In re B.L.J., Sup. Ct. Op. No. 3039 (File No. S-648), 717 P.2d 376 (1986).

The Department of Health and Social Services is not required to file an additional petition for ajudication in order to change the physical placement of minors in its legal custody. In re B.L.J., Sup. Ct. Op. No. 3039 (File No. S-648), 717 P.2d 376 (1986).

**Termination of father's parental rights was affirmed,** where he had not made reasonable efforts to locate and communicate with his daughter and, at the time of the termination hearing, was incarcerated for assaulting his girlfriend. E.J.S. v. State, Dep't of Health & Social Servs., Sup. Ct. Op. No. 3318 (File No. S-2231), P.2d (1988).

**Superior court's decision to terminate mother's parental rights on the basis of her abandonment of her child was supported by substantial evidence.** — See D.E.D. v. State, Sup. Ct. Op. No. 2970 (File No. S-553), 704 P.2d 774 (1985).

**Court authority to set conditions on parent for placement of child in parental home.** — Court possessed authority to require parent to complete alcohol abuse program and maintain sobriety as a precondition to placement of the child in the parental home by the department under (c)(1) of this section. D.A.W. v. State, Sup. Ct. Op. No. 2935 (File No. S-169), 699 P.2d 340 (1985).

**Burden of proof under subsection (c)(3).** — Although subsection (c)(3) does not place the burden of proving 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 that the parental conduct is likely to continue on either party, the Supreme Court of Alaska has assigned the burden of proof to the Department of Health and Social Services, Division of Family and Youth Services. K.T.E. v. State, Sup. Ct. Op. No. 2877 (File No. S-50), 689 P.2d 472 (1984).

**Cited** in In re J.R.S., Sup. Ct. Op. No. 2869 (File Nos. 7421, 7422), 690 P.2d 10 (1984); Coney v. State, Ct. App. Op. No. 471 (File Nos. 7456, 7471), P.2d (1985); In re S.C.Y., Sup. Ct. Op. No. 3179 (File No. S-1509), 736 P.2d 353 (1987).

## Sec. 47.10.082. Best interests of the child.

### NOTES TO DECISIONS

**Applied** in D.A.W. v. State, Sup. Ct. Op. No. 2935 (File No. S-169), 699 P.2d 340 (1985).

**Cited** in K.T.E. v. State, Sup. Ct. Op. No. 2877 (File No. S-50), 689 P.2d 472 (1984).

## Sec. 47.10.083. Review hearing information.

### NOTES TO DECISIONS

**The "continuing conditions of need" requirement** for continued custody found in this section should be viewed as an additional requirement beyond "best interests" for extension of custody under AS 47.10.080(c)(1)(A), not as the equivalent thereof. In re A.S., Sup. Ct. Op. No. 3197 (File No. S-1739), 740 P.2d 432 (1987).

(3) a description of the potential harm to the child which may result from removal from the home and any efforts which can be made to minimize such harm; and

(4) any further information which the court may request.

(c) The court shall inform the child, the child's parents and the attorneys representing the parties and the guardian ad litem that the predisposition report will be available to them not less than 10 days before the disposition hearing.

(d) For purposes of this section "parents" means the natural or adoptive parents, and any legal guardian, relative, or other adult person with whom the child has resided and who has acted as a parent in providing for the child for a continuous period of time before this action. (§ 26 ch 63 SLA 1977)

NOTES TO DECISIONS

**Applied** in Granato v. Occhipinti, Sup. Ct. Op. No. 1962 (File No. 3756), 602 P.2d 442 (1979).

**Cited** in M.O.W. v. State, Ct. App. Op. No. 95 (File No. 4846), 645 P.2d 1229 (1982).

**Sec. 47.10.082. Best interests of the child.** In making its dispositional order under AS 47.10.080(b) the court shall consider the best interests of the child and the public, and in making its dispositional order under AS 47.10.080(c) the court shall consider the best interests of the child; in either case the court shall consider also the ability of the state to take custody and to care for the child to protect the child's best interests under AS 47.10.010 — 47.10.142. (§ 26 ch 63 SLA 1977)

NOTES TO DECISIONS

**Showing required to justify termination of parental rights.** — While best interests of the child become relevant at some point, there first must be a showing of parental conduct sufficient to justify termination. Nada A. v. State, Sup. Ct. Op. No. 2632 (File Nos. 6546, 6693), 660 P.2d 438 (1983).

**Cited** in Granato v. Occhipinti, Sup. Ct. Op. No. 1962 (File No. 3756), 602 P.2d 442 (1979); M.O.W. v. State, Ct. App. Op. No. 95 (File No. 4846), 645 P.2d 1229 (1982).

**Sec. 47.10.083. Review hearing information.** In the case of a child in need of aid, the child shall be returned home at the review hearing under AS 47.10.080(f) unless the court finds by a preponderance of the evidence that the basis upon which the child was adjudicated under AS 47.10.010(a)(2) continues to exist. If the child is not returned home, the court shall establish on the record

(1) why the child was removed from the home;

(2) what services have been provided to or offered to the parents to facilitate reunion;

consent to adoption, consent to marriage, consent to military enlistment, consent to major medical treatment except in cases of emergency or cases falling under AS 09.65.100, and the responsibility for support, except if by court order any residual right and responsibility has been delegated to a guardian under (b) of this section. (§ 26 ch 63 SLA 1977)

NOTES TO DECISIONS

**Effect of being foster parents on husband-wife evidentiary privilege.** — A foster child is a child of the foster parents for purposes of applying the exception to the husband-wife privilege set forth in Alaska Evidence Rule 505(a)(2)(D)(i); one foster parent cannot rely on the husband-wife privilege to refuse to testify against the other concerning evidence relating to an assault on the foster child. Daniels v. State, Ct. App. Op. No. 357 (File No. A-366), P.2d (1984).

Cited in M.O.W. v. State, Ct. App. Op. No. 95 (File No. 4846), 645 P.2d 1229 (1982).

**Sec. 47.10.085. Child in need of aid; religious treatment.** In a case in which the minor's status as a child in need of aid is sought to be based on the need for medical care, the court may, upon consideration of the health of the minor and the fact, if it is a fact, that the minor is being provided treatment by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination by an accredited practitioner of the church or denomination, dismiss the proceedings and thereby close the matter. This may be done, in the interests of justice and religious freedom, on the court's own motion or upon the application of a party to the proceedings, at any stage of the proceedings after information is given to the court under AS 47.10.020(a). (§ 8 ch 1 SLA 1972; am § 19 ch 63 SLA 1977)

NOTES TO DECISIONS

Cited in M.O.W. v. State, Ct. App. Op. No. 95 (File No. 4846), 645 P.2d 1229 (1982).

**Sec. 47.10.090. Records.** (a) The court shall make and keep records of all cases brought before it. The court's official records may be inspected only with the court's permission and only by persons having a legitimate interest in them. All information and social records pertaining to a minor and prepared by an employee of the court or by a federal, state or city agency in the discharge of the employee's or agency's official duty, are privileged and may not be disclosed directly or indirectly to anyone without the court's permission. However, a state or city law-enforcement agency shall disclose information regarding a case which is needed by the person or agency charged with

making a preliminary investigation for the information of the court. Within 30 days of the date of a minor's 18th birthday or, if the court retains jurisdiction of a minor past the minor's 18th birthday, within 30 days of the date on which the court relinquishes jurisdiction over the minor, the court shall order sealed all the court's official records, information and social records pertaining to that minor, as well as records of all criminal proceedings against the minor and punishments assessed against the minor except for traffic offenses. A person may not use these sealed records for any purpose except that the court may order their use for good cause shown or may order their use by an officer of the court in making a presentencing report for the court.

(b) The name or picture of a minor under the jurisdiction of the court may not be made public in connection with the minor's status as a delinquent child or a child in need of aid unless authorized by order of the court, except that the name of a minor who is found for the second time to have violated a law, which if committed by an adult would be a felony, shall be made public unless the court, for good cause, in certain individual cases, enters an order prohibiting the disclosure.

(c) A person who violates a provision of this section is guilty of a misdemeanor, and upon conviction is punishable by a fine of not more than $500 or by imprisonment for not more than one year, or by both. (§ 10(3)(4) art I ch 145 SLA 1957; am § 1 ch 124 SLA 1972; am § 1 ch 90 SLA 1975; am § 20 ch 63 SLA 1977)

**Cross references.** — For explanation of how amendments in 1975 changed Rules of Children's Procedure, see § 2, ch. 90, SLA 1975).

## NOTES TO DECISIONS

**Purpose for enacting subsection (a).** — Reading this section together with other sections of the laws relating to children's proceedings leads one to believe that subsection (a) was enacted principally for the purpose of protecting the child against the possible adverse effects an unauthorized revelation of his social record would have. In re P.N., Sup. Ct. Op. No. 1127 (File No. 2191), 533 P.2d 13 (1975).

**There is no indication that subsection (a) was intended to authorize the granting of testimonial use immunity to parents.** In re P.N., Sup. Ct. Op. No. 1127 (File No. 2191), 533 P.2d 13 (1975).

The supreme court could not say with certainty that this section would be construed to forbid the use, in a subsequent criminal action against a parent, of testimony that the parent gave at a children's proceeding. In re P.N., Sup. Ct. Op. No. 1127 (File No. 2191), 533 P.2d 13 (1975).

**Waiver of provisions of section.** — In the case of use of restraints more severe than placement in adjustment rooms (solitary confinement), the approval of the director of McLaughlin Youth Center must be obtained and a report made to the child's attorney and the family court. The provisions of this section are waived for this purpose. T.M. v. Director of McLaughlin Youth Center, Superior Court, No. 72-449 (1973).

Stated in RLR v. State, Sup. Ct. Op. No. 706 (File No. 1156), 487 P.2d 27 (1971).

Cited in M.O.W. v. State, Ct. App. Op. No. 95 (File No. 4846), 645 P.2d 1229 (1982); State v. R.H., Ct. App. Op. No. 373 (File No. 7768), P.2d (1984).

**Sec. 47.10.084. Legal custody, guardianship, and residual parental rights and responsibilities.**

NOTES TO DECISIONS

**The phrase "reasonable visitation" in subsection (c) does not imply an absolute right to visitation;** this section should be read in conjunction with the rest of the chapter to allow parental visits to be barred when the visits are not in the best interests of the child. K.T.E. v. State, Sup. Ct. Op. No. 2877 (File No. S-50), 689 P.2d 472 (1984).

**The following procedures should be followed when visitation rights are denied prior to the termination of parental rights:** first, the Department of Health and Social Services, Division of Family and Youth Services should have primary authority to set visitation based on the best interests of the child, since the division is in the best position to make this decision in the first instance; and secondly, either the guardian ad litem or the parents should be entitled to request an expedited evidentiary hearing of a denial of visitation, which would consist of an independent determination by the superior court that clear and convincing evidence showed that the child's best interests were served by disallowing parental visitations. K.T.E. v. State, Sup. Ct. Op. No. 2877 (File No. S-50), 689 P.2d 472 (1984).

**De facto determination of natural parent's visitation rights.** — Where the Department of Health and Social Services decided to allow minor children, who had been adjudicated as children in need of aid, to move from Alaska to Alabama with their foster care family, the state's action constituted a de facto termination of a natural parent's visitation rights; the natural father was unemployed and virtually penniless, the state would not provide airfare so that the father could visit his children on a regular basis, and the father would be limited to phone "visits" because of his lack of funds. D.H. v. State, Sup. Ct. Op. No. 3104 (File No. S-1451), P.2d (1986).

**Standard of review of state action constituting de facto termination of natural parent's right of reasonable visitation.** — The appropriate standard of review for state decisions which essentially terminate a natural parent's right of reasonable visitation under subsection (c) is an independent determination of whether the state has proved by clear and convincing evidence that termination of parental visitation is in the child's best interest. D.H. v. State, Sup. Ct. Op. No. 3104 (File No. S-1451), P.2d (1986).

**Applied** in In re B.L.J., Sup. Ct. Op. No. 3039 (File No. S-648), 717 P.2d 376 (1986).

**Cited** in M.O.W. v. State, Ct. App. Op. No. 95 (File No. 4846), 645 P.2d 1229 (1982).

**Sec. 47.10.090. Records.** (a) The court shall make and keep records of all cases brought before it. The court's official records may be inspected only with the court's permission and only by persons having a legitimate interest in them. All information and social records pertaining to a minor and prepared by an employee of the court or by a federal, state or city agency in the discharge of the employee's or agency's official duty, including traffic offenses and driver's license action under AS 28.15.185, are privileged and may not be disclosed directly or indirectly to anyone without the court's permission. However, a state or city law-enforcement agency shall disclose information regarding a case which is needed by the person or agency charged with making a preliminary investigation for the information of the court. The court shall forward a record of adjudication of a violation of an offense listed in AS 28.15.185(a) to the Department of Public Safety, if the court imposes a license revocation under AS

28.15.185. Within 30 days of the date of a minor's 18th birthday or, if the court retains jurisdiction of a minor past the minor's 18th birthday, within 30 days of the date on which the court relinquishes jurisdiction over the minor, the court shall order sealed all the court's official records, information and social records pertaining to that minor, as well as records of all driver's license proceedings under AS 28.15.185, criminal proceedings against the minor and punishments assessed against the minor except for traffic offenses. A person may not use these sealed records for any purpose except that the court may order their use for good cause shown or may order their use by an officer of the court in making a presentencing report for the court.

(b) The name or picture of a minor under the jurisdiction of the court may not be made public in connection with the minor's status as a delinquent child or a child in need of aid unless authorized by order of the court, except that the name of a minor who is found for the second time to have violated a law, which if committed by an adult would be a felony, shall be made public unless the court, for good cause, in certain individual cases, enters an order prohibiting the disclosure.

(c) A person who violates a provision of this section is guilty of a misdemeanor, and upon conviction is punishable by a fine of not more than $500 or by imprisonment for not more than one year, or by both. (§ 10(3)(4) art I ch 145 SLA 1957; am § 1 ch 124 SLA 1972; am § 1 ch 90 SLA 1975; am § 20 ch 63 SLA 1977; am § 4 ch 130 SLA 1988)

**Effect of amendments.** — The 1988 amendment, effective September 1, 1988, in subsection (a), inserted "including traffic offenses and driver's license action under AS 28.15.185" in the third sentence and "driver's license proceedings under AS 28.15.185" in the next-to-last sentence, and inserted the fifth sentence.

**Sec. 47.10.097. Fingerprinting of minors.** (a) Except as provided in (b) of this section, a minor in the custody of the department or of a law enforcement agency may not be fingerprinted for reference to or entry into the Alaska automated fingerprint system without a court order upon good cause shown.

(b) A law enforcement officer may fingerprint a minor who is 16 years of age or older for reference to or entry into the Alaska automated fingerprint system without a court order when the minor is convicted of, or adjudicated a delinquent for, an offense that is a felony.

(c) Fingerprint records under this section are not subject to AS 17.10.090. (§ 3 ch 121 SLA 1988)

**Cross references.** — As to acceptance of grants-in-aid, see AS 47.10.220.

*Sec. 47.10.280. Purpose of chapter. [Repealed, § 1 ch 152 SLA 1976. For the purpose and policy of this title relating to children, see AS 47.05.060.]*

**Sec. 47.10.290. Definitions.** In this chapter, unless the context otherwise requires,

(1) "caring" under AS 47.10.010(a)(2)(A) means to provide for the physical, emotional, mental, and social needs of the child;

(2) "child in need of aid" means a minor found to be within the jurisdiction of the court under AS 47.10.010(a)(2);

(3) "court" means the superior court of the state;

(4) "delinquent minor" means a minor found to be within the jurisdiction of the court under AS 47.10.010(a)(1);

(5) "juvenile detention facility" means separate quarters within a city jail used for the detention of delinquent minors;

(6) "juvenile detention home" or "detention home" is a separate establishment, exclusively devoted to the detention of minors on a short-term basis and not a part of an adult jail;

(7) "minor" is a person under 18 years of age.

(§ 1 art I ch 145 SLA 1957; am § 5 ch 110 SLA 1967; am §§ 5, 6 ch 27 SLA 1970; am §§ 27 — 28 ch 63 SLA 1977)

**Revisor's notes.** — Reorganized in 1984 to alphabetize the terms defined.

**Editor's notes.** — Section 7, ch. 110, SLA 1967, as amended by § 80, ch. 69, SLA 1970, provides: "In exercising its jurisdiction under AS 47.10, the superior court may designate district judges and magistrates as masters under Civil Rule 53."

## NOTES TO DECISIONS

**The legislature has authorized institutionalization only where the child is found to be a delinquent minor.** In re A Minor Child, Sup. Ct. Op. No. 737 (File No. 1524), 490 P.2d 658 (1971).

**Hence, a minor who has been adjudged a child in need of supervision [see now child in need of aid] cannot be institutionalized** under the Children's Code. In re A Minor Child, Sup. Ct. Op. No. 737 (File No. 1524), 490 P.2d 658 (1971).

**The Department of Health and Social Services does not possess the authority to institutionalize any minor,** including one who has been declared a child in need of supervision [see now child in need of aid], who has been committed to its custody. It is unreasonable to construe Alaska children's statutes in a manner which would result in the grant to the Department of Health and Social Services of broader powers of commitment than possessed by the trial court. In re A Minor Child, Sup. Ct. Op. No. 737 (File No. 1524), 490 P.2d 658 (1971).

**A child who sells LSD is a "delinquent minor"** under paragraph (2) of this section because the sale of LSD is a crime under former AS 17.12.010 [now see AS 11.71]. RLR v. State, Sup. Ct. Op. No. 706 (File No. 1156), 487 P.2d 27 (1971).

**"Delinquent" status** depends not upon a criminal conviction but upon proof that the juvenile committed acts which would have been criminal if committed by an adult. Rust v. State, Sup. Ct. Op. No. 1668 (File No. 3172), 582 P.2d 134 (1978).

**"Juvenile" and "minor" as used in AS 47.10.190 construed identically.** — See Davenport v. McGinnis, Sup. Ct. Op. No. 1019 (File No. 1912), 522 P.2d 1140 (1974).

care is not available for the child; or" for "no other care is available for the child or" in subparagraph (B)(i), and deleted "when the foster parent is" at the beginning of subparagraph (B)(ii).

### NOTES TO DECISIONS

**Preferences in adoptive placement.** — Subsection (e) does not entitle natural relatives to a preference in the adoptive placement of children. In re W.E.G. & J.R.G., Sup. Ct. Op. No. 2998 (File Nos. S-777, S-778, S-803), 710 P.2d 410 (1985).

Quoted in In re J.R.S., Sup. Ct. Op. No. 2869 (File Nos. 7421, 7422), 690 P.2d 10 (1984); D.E.D. v. State, Sup. Ct. Op. No. 2970 (File No. S-553), 704 P.2d 774 (1985).

## Article 4. General Provisions.

Section
290. Definitions

**Sec. 47.10.290. Definitions.** In this chapter, unless the context otherwise requires,

(1) "care" or "caring" under AS 47.10.010(a)(2)(A), 47.10.120(a) and 47.10.230(c), means to provide for the physical, emotional, mental, and social needs of the child;

(2) "child in need of aid" means a minor found to be within the jurisdiction of the court under AS 47.10.010(a)(2);

(3) "court" means the superior court of the state;

(4) "delinquent minor" means a minor found to be within the jurisdiction of the court under AS 47.10.010(a)(1);

(5) "department" means the Department of Health and Social Services.

(6) "juvenile detention facility" means separate quarters within a city jail used for the detention of delinquent minors;

(7) "juvenile detention home" or "detention home" is a separate establishment, exclusively devoted to the detention of minors on a short-term basis and not a part of an adult jail;

(8) "minor" is a person under 18 years of age. (§ 1 art I ch 145 SLA 1957; am § 5 ch 110 SLA 1967; am §§ 5, 6 ch 27 SLA 1970; am §§ 27 — 28 ch 63 SLA 1977; am §§ 91, 92 ch 138 SLA 1986)

**Revisor's notes.** — Paragraph (5) was enacted as (a). Renumbered in 1986.

Reorganized in 1985 and 1986 to alphabetize the terms defined.

**Effect of amendments.** — The 1986 amendment inserted "'care' or" and "47.10.120(a) and 47.10.230(c)" in paragraph (1) and added paragraph (5).

### NOTES TO DECISIONS

**"Minor" and "delinquent minor."** — The general definition of "minor" in paragraph (8) is inapplicable to the detention of a delinquent minor until the minor's nineteenth birthday under AS 47.10.080, 47.10.100, and likewise, it is inapplicable to the responsibility to pay support for a delinquent minor committed under those sections. In re S.C.Y., Sup. Ct. Op. No. 3179 (File No. S-1509), 736 P.2d 353 (1987).

(e) Every official and employee shall, unless otherwise authorized by law to travel outside the state, obtain prior approval for travel outside the state from the head of the official's or employee's department or from an immediate supervisor, or from the Department of Administration if the official or employee is not within a department or is not under the direct supervision of an official or supervisor. If an employee deviates materially from the travel authorized under this section, the employee must obtain approval for the deviation from the person who approved the travel before the Department of Administration may reimburse the employee for the travel. (§ 7 ch 60 SLA 1957; am § 1 ch 83 SLA 1962)

**Sec. 39.20.150. Advances and recovery.** (a) An agency may advance, through proper disbursing methods, to a person entitled to per diem or mileage allowance under AS 39.20.110 — 39.20.170 the sums considered advisable considering the character and probable duration of the travel to be performed.

(b) Sums advanced and not used for allowable travel expense are recoverable by setoff against salary due, or otherwise, from the person to whom advanced, or the person's estate, by deduction from any amount due from the state, or by other legal methods of recovery that may be necessary. (§ 8 ch 60 SLA 1957)

**Sec. 39.20.160. Regulations.** The fixing and payment under AS 39.20.110 — 39.20.170 of travel and per diem allowances and of advances and recovery and reimbursement of travel expenses shall be in accordance with regulations adopted by the commissioner of administration. The regulations shall be uniform for all officials and employees, and all agencies and departments. The regulations shall also govern the use of public transportation facilities by officials and employees. The regulations relate to the internal management of state agencies and their adoption is not subject to the Administrative Procedure Act (AS 44.62). (§ 9 ch 60 SLA 1957; am § 2 ch 13 SLA 1963)

**Sec. 39.20.170. Construction of AS 39.20.110 — 39.20.170.** AS 39.20.110 — 39.20.170 may not be construed to modify or repeal a law providing for the travel expenses of the governor, or members of the legislature, or members of boards or commissions of the state government. (§ 10 ch 60 SLA 1957)

**Sec. 39.20.180. Transportation and per diem expenses for members of boards, commissions, etc.** Except as otherwise provided by law, from and after March 27, 1962, the provisions in this section relating to per diem and transportation govern exclusively and supersede all other provisions of law with respect to a member of a state board, commission, committee, judicial council, or other similar

body of persons of the state organized or established under the authority of law, but excluding any other state employee other than a legislator, who is otherwise entitled by law to receive from the state payments for expenses of transportation, and for reimbursement or for per diem in lieu of reimbursement for other expenses incident to duties as such member:

(1) For transportation, the member is entitled either to the use of state transportation requests, or to be reimbursed for expenses of transportation to the same extent, in the same manner, and under the same conditions as provided for state officials and employees by the provisions of AS 39.20.110 — 39.20.170.

(2) For reimbursement for other expenses, the member is entitled to a per diem allowance prescribed by the commissioner of administration under the regulatory authority set out in AS 39.20.160 for each day or portion of a day spent in actual meeting or on authorized official business incident to duties as a member. (§ 1 ch 130 SLA 1953; am § 1 ch 34 SLA 1960; am § 1 ch 37 SLA 1962; am § 5 ch 136 SLA 1967; am § 12 ch 47 SLA 1974)

**Cross references.** — For coverage of state board and commission members under the Worker's Compensation Act, see AS 23.30.242.

**Opinions of attorney general.** — In order to recover an allowance for nonmeeting activity, an occupational licensing board member must be engaged in an activity within the scope of the applicable board's powers. November 6, 1984 Op. Att'y Gen.

An occupational licensing board member cannot receive a per diem allowance for conducting an activity that should be performed by division personnel; any activity approved must be specifically defined by statute as a board duty and should be an activity that cannot be accomplished within the confines of a board meeting. If the task can be performed during a meeting, then per diem should not be paid for time unnecessarily spent by a board member outside a board meeting. It is important, of course, for budgetary reasons, that board activity for which per diem compensation is sought be kept to a minimum. November 6, 1984 Op. Att'y Gen.

The Alaska Power Authority may reimburse a member only for (1) time spent in actual meeting or (2) time spent on authorized official business incident to his duties as a member. April 19, 1984 Op. Att'y Gen.

NOTES TO DECISIONS

**Cited** in Laborers & Hod Carriers Local 341 v. Groothuis, Sup. Ct. Op. No. 773 (File Nos. 1435, 1459), 494 P.2d 808 (1972).

**Sec. 39.20.185. State employees who are members of certain boards.** A state official or employee who is a member of the judicial council or a state official or employee appointed by the governor to a state board, commission, or committee established under the authority of law is not entitled to per diem when the meeting or other business takes place in the community of which the member is a resident. (§ 1 ch 139 SLA 1968)

§ 38.95.270

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# Alaska Statutes

## Title 39. Public Officers and Employees.

Chapter



### Chapter 20. Compensation and Allowances.

Article



#### Article 2. Travel Regulations.

Section



**Sec. 39.20.180. Transportation and per diem expenses for members of boards, commissions, etc.** Except as otherwise provided by law, the provisions in this section relating to per diem and transportation govern exclusively with respect to a member of a state board, commission, committee, judicial council, or other similar body of persons of the state organized or established under the authority of law, but excluding any other state employee other than a legislator, who is otherwise entitled by law to receive from the state payments for expenses of transportation, and for reimbursement or for per diem in lieu of reimbursement for other expenses incident to duties as such member;

(1) for transportation, the member is entitled either to the use of state transportation requests, or to be reimbursed for expenses of transportation to the same extent, in the same manner, and under the same conditions as provided for state officials and employees by the provisions of AS 39.20.110 — 39.20.170;

4

SPONSOR SUMMARY

OF

HOUSE BILL 19

Objective

House Bill 19 would establish independent review panels for children in state custody. The panels would provide assistance to help assure that children in state custody have a permanency plan, that it is followed and adjusted as needed, and that children do not linger unnecessarily in foster care.

Why this bill is needed

Currently, the state has an internal review system that serves a needed function, yet it has received strong criticism for lack of objectivity, lack of accountability, and lack of taking a more comprehensive approach. Specifically, the current system does not ensure that all parties have equal input to review individual case plans. Such complaints should come as no surprise when one considers the serious underfunding and the huge caseloads of those who administer programs serving Alaska's children and youth.

The need is further emphasized by federal requirements regarding funding, more specifically those in Public Law 96-272, the Adoption Assistance and Child Welfare Act of 1980. "Reviews of each child are required 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..." (P.L. 96-272, 94 STAT 511).

DFYS is currently conducting internal reviews to meet requirements of federal law. However, some federal funds have been lost in past years due to the fact that the department was not in compliance.

During the interim, this committee held hearings regarding the state foster care system. The committee proposed a basic mission and established goal statements. Listed under Goal One: Safety, Stability and Permanency for Children, was the creation of a permanent, state-wide citizen review board. Alaska currently has two pilot projects in place, one in Anchorage and one in Ketchikan. Twenty-two states have some type of foster care review panel and are finding them successful. Most of these state review systems are independent of the social services department.

What this bill does

This bill provides for the creation of at least one citizen review panel for each judicial district. Volume or complexity of cases will determine need for appointment of additional panels.

Panels would periodically review documents and records of each child in state custody and take testimony (either in person or telephonically) of natural parents, other relatives of the child, guardian, guardian ad litem, foster parent, the case worker or social worker assigned to the case, and other persons with a close personal knowledge of the case. They would submit their recommendations to the court or to the Department of Health and Social Services. In most cases, either the department or the panel could request a court review if the recommendations were not implemented.

Panel members would only receive reimbursement for actual and necessary expenses for per diem and travel.

Foster Care
Review Panel
(establishing)

5

HOUSE BILL NO. 19, by Reps. Collins and Gruenberg. Will require the presiding judge for each judicial district to appoint a foster care review panel for that district. The judge can appoint additional panels if the volume or complexity of cases involving children placed in foster care warrants it.

A panel will consist of three members who have training or experience in child welfare and a demonstrated interest in children. Members can include foster parents or former foster parents, child psychologists, teachers, professionally trained social workers, and lawyers with experience in children's matters. A person employed by the court system or the Department of Health and Social Services cannot serve on a panel. Members serve two year terms, and will be sworn to keep all information that comes before the panel confidential.

A foster care review panel will be required to review the placement plan and actual placement of each child within its jurisdictional area who is committed to the Dept. of Health & Social Services for placement by court order; or in a case of termination of parental rights by the court (AS 47.10.080(c)(1) or (3), Delinquent Minors & Children in Need of Aid. Judgments and orders).

The review will assess progress toward achievement of a permanent placement plan, the appropriateness of the placement setting, services actually provided to achieve the selected goals, and previous decisions in the case. The panel will consider court records and other available information, will be required to interview the child, foster parents, natural parents, relatives, guardians, case workers and social workers involved, and other persons with close personal knowledge of the case. A written report making recommendations based on the best interests of the child will have to be submitted to the court within 30 days after the case is reviewed. The court will be required to make the report available to the parties immediately. Parties to the case can request the panel to reconsider its recommendations.

The panel will be required to review a case within 90 days of a court order, or within 90 days before the first annual review for children who are wards of the state, and every six months thereafter. The panel has to give two weeks notice prior to a review. The Dept. of Health & Social Services will be required to cooperate with a foster care review panel, and will be responsible for explaining its failure to implement a recommendation of the panel to the court. The court will be required to consider a foster care review panel report during its annual review of cases.

Requires the administrative director of the Alaska Court System to report to the legislature each year on the activities of the foster care review panels.

The bill has the effect of amending Rule 19 of the Child in Need of Aid Rules by requiring a court to consider recommendations from a foster care review panel in conducting a review of the placement of a child in foster care.

The bill takes effect 90 days after enactment.

Introduced January 9, 1989 and referred to Health, Education & Social Services; Judiciary; Finance.