

### **Faculty Biographies**

**Glenn Cravez, Moderator.** Glenn Cravez is a mediator and attorney in private practice in Anchorage. He chairs the Alaska Bar Association Alternative Dispute Resolution section and is a mediator in the Alaska Court System's Child-in-Need-Of-Aid Mediation Program.

**Anita Alves, Discussion Leader.** Anita Alves is an Assistant Public Advocate with the Office of Public Advocacy. She is a supervising attorney and guardian-ad-litem in the Child Advocacy Section.

**Tracy Spartz Campbell, Discussion Leader.** Tracy Spartz Campbell is the Deputy Director of the Office of Children's Services.

**Rachel Cella, Discussion Leader.** Rachel Cella is an Assistant Public Defender with the Public Defender Agency in Fairbanks. She represents parents and youth in child-in-need-of-aid proceedings.

**Leslie Dickson, Discussion Leader.** Leslie Dickson is an attorney in private practice. She represents pre-adoptive parents in adoption proceedings and youth in the foster care system. She previously worked as an attorney guardian-ad-litem for the Office of Public Advocacy.

**Virginia Gomez, Discussion Leader.** Virginia Gomez is an attorney with Alaska Legal Services who represents tribes in child-in-need-of-aid proceedings.

**Carla Raymond, Discussion Leader.** Carla Raymond is a Chief Assistant Attorney General with the Department of Law and the supervisor of the Child Protection Section.

**Hon. Sen K. Tan, Discussion Leader.** Judge Sen Tan is the presiding superior court judge for the Third Judicial District and the co-chair of the Child-In-Need-of-Aid Court Improvement Committee. He helped start the Family Preservation Court in Anchorage, over which he continues to preside, and is also the administrative and back-up judge for Family Care Court.

### **Critical Dates In Federal and State Child Welfare Law**

#### **1978 Indian Child Welfare Act, P.L. 95-608 (ICWA)**

- Required active efforts to prevent removal of Indian children and reunify Indian families.
- Created hierarchy of foster and adoptive placement preferences for Indian children.
- Strengthened role of tribal governments and tribal representatives and emphasized cultural awareness and cultural competency in child welfare decision-making.

#### **1980 Adoption Assistance and Child Welfare Act, P.L. 96-272 (Title IV-E)**

- Created funding and regulatory scheme designed to address problem of “foster care drift.”
- Introduced concept of “permanency” and “permanency planning.”
- Emphasized state’s obligation to provide “reasonable efforts” to preserve family and prevent removal and to reunify family after removal has occurred.
- Emphasized need for alternative permanent homes for children if reunification cannot be achieved and provided federal funding for adoption subsidies.

#### **1996 Personal Responsibility and Work Opportunities Act, P.L. 104-193**

- Eliminated financial assistance entitlements under AFDC (Aid to Families with Dependent Children) and replaced with TANF (Temporary Assistance to Needy Families).

#### **1997 Adoption and Safe Families Act, P.L. 105-89 (ASFA)**

- Shifted focus more to child safety, permanency, and well-being.
- “Reasonable efforts” can be dispensed with by the court in some cases and are time-limited in nature for all cases. Termination petition must be filed after child has been in state custody for 15 out of 22 months unless (1) child is placed with a relative at option of state; (2) compelling reason exists for why termination is not in child’s best interests; (3) state has failed to provide reasonable efforts directed at reunifying family.
- Permanency hearing required after child has been in state custody for 12 months.
- Created four legally favored permanency outcomes: reunification, adoption, guardianship, and permanent placement with a fit and willing relative. Also created legally disfavored permanency outcome of

another planned permanent living arrangement (APPLA) which can only be ordered if other four outcomes have been ruled out.

- Provided federal financial incentives to states for increased adoptions.

**1998 Alaska implements majority of ASFA directly into Alaska statutory law, HB 375.**

**2008 Fostering Connections to Success and Increasing Adoptions Act, P.L. 110-351**

- Required state to exercise due diligence in identifying and notifying all adult relatives of child within 30 days of removal to facilitate early involvement of relatives and placement with relatives.
- Clarified that non-safety licensing requirements can be waived for relative placements.
- Created federally funded kinship guardianship subsidy program that states can opt into.
- Required reasonable efforts to place siblings together when they enter the system.
- Provided federal support for youth in foster care up to age of 21.
- Allowed Indian tribes direct access to federal foster care and adoption financial assistance.

**2012 Alaska implements statutory changes required by Fostering Connections, SB 82**

- Restricts APPLA to children over 16 years old for whom the department has considered alternative favored permanency outcomes of reunification, adoption, legal guardianship, and permanent placement with a fit and willing relative and has documented “compelling reason” for why most appropriate permanency plan is APPLA.
- Clarifies and expedites waivers for relative placements.
- Requires “reasonable efforts” to place siblings removed from same house together and creates presumption that maintenance of sibling relationships is in child’s best interest.

### **Definitions and Perspectives on “Permanency”**

**per-ma-nent:** continuing or enduring without fundamental or marked change: stable

[www.merriam-webster.com](http://www.merriam-webster.com)

#### ***Alaska Office of Children’s Services***

All children have a right to a permanent and safe home environment. The most desirable plan for a child is to work with the family to remedy the conditions that led to the child's safety concern. The Division has a firm commitment to the concept of permanency planning and will strive to maintain the child in his/her own home whenever possible, and when it is not possible, the division will work steadfastly to promote an alternate permanent home for the child. When appropriate, concurrent planning will be implemented to expedite permanency for the child.

<http://www.hss.state.ak.us/ocs/services.htm>

#### ***United States Department of Health and Human Services***

The concept of permanency is based on certain values, including the primacy of family, significance of biological families, and the importance of parent-child attachment. Research has shown us that children grow up best in nurturing, stable families. These families:

- Offer commitment and continuity—they survive life's challenges intact.
- Have legal status—parents have the legal right and responsibility to protect their children's interests and welfare.
- Have members that share a common future—their fates are intertwined.

However, permanency is not guaranteed—in biological families or otherwise. Permanency conveys an *intent*, and families that express their intent to remain together, legally and in other ways, are crucial to children's well-being and their ability to grow up healthy and happy.

<http://www.childwelfare.gov/permanency/overview/history.cfm>

#### ***National Council of Juvenile and Family Court Judges***

When return to a parent is inappropriate, placement with kin or a responsible person with a significant relationship with the child is the first priority. No child should exit foster care without a life-long connection to a caring and responsible adult.

[http://www.hunter.cuny.edu/socwork/nrcfcpp/info\\_services/permanency-planning.html](http://www.hunter.cuny.edu/socwork/nrcfcpp/info_services/permanency-planning.html)

#### ***Advocacy group for older youth in foster care***

Permanency requires relationships that are life-long and provide what any family might: being in a Last Will and Testament, hearing your name on the answering machine, having your picture on the family photo wall in someone’s house, knowing someone will walk you down the aisle (should you choose to get married and want that), realizing that the term ‘family vacation’ includes you, having people who will visit you regularly even if you are in jail....

If you are a worker in the child welfare field, here is a question you can ask yourself at a youth’s staffing meeting to determine whether or not that youth has permanency: Look around the room. Is there anyone in the room who is not paid to be there (this includes foster parents, guardians ad litem/CASAs, paid mentors)? If the answer is ‘no,’ then that youth does not have permanency. This is certainly not a foolproof question, but it is one way to measure permanency.

<http://www.ampersandfamilies.org/index.html>

**LEGAL PERMANENCY OUTCOMES:**

**The Different Ways Children Who Have Been Adjudicated Children-In-Need-of-Aid  
Can Exit Out of State Custody With Permanency**

**FEDERAL LAW**

- **Reunification**
- **Adoption/Termination**
- **Guardianship**
- **Permanent Placement With A Fit and Willing Relative**
- ***Another Planned Permanent Living Arrangement (APPLA)*** (e.g., long term foster care, group home)
  - Legally disfavored; requires compelling reason why legally preferred permanency outcomes of reunification, adoption, guardianship, or permanent placement with a fit and willing relative are not available.  
42 U.S.C. § 675(5)(C); 45 C.F.R. § 1356.21 (h)(3)

## LEGAL PERMANENCY OUTCOMES:

### ALASKA LAW

- **At Disposition: Release To Parent, Adult Family Member, Guardian, Or Another Suitable Person With or Without Continuing OCS Supervision.** See AS 47.10.080 (c)(2) (one of three dispositional orders available to court following adjudication).
- **Reunification.** See AS 47.10.086 (reasonable efforts); 25 U.S.C. 1912(d) (active efforts under ICWA).
- **Adoption.** AS 25.23.040 (a)(5) (minor over age of 10 must consent unless waived in best interest).
  - **Voluntary termination of parental rights with/without retained privileges**
    - *Parental consent to adopt.* AS 25.23.060.
    - *Relinquishment of parental rights.* AS 47.10.089.
    - *Cultural or tribal adoption.* 25 U.S.C. 1911; O.C.S. Policy 3.20.03.<sup>1</sup>
      - *May also involve transfer to tribal court.* 25 U.S.C. 1911; CINA Rule 23.
  - **Involuntary termination of parental rights**
    - *Termination petition and trial.* AS 47.10.088.
    - *Post-termination contact orders.* *Burke P. v. State*, 162 P.3d 1239, 1248 (Alaska 2007) (leaving open possibility of post termination orders in extraordinary cases if in child's best interests).
- **Guardianship.** See AS 47.10.084 (b)&(c) (defining rights and responsibilities of guardian versus parent); AS 47.10.110 (appointment of guardian in child-in-need-of-aid proceeding); AS 13.26.040 (minor over 14 can object); AS 13.26.062, 25.23.10 (guardianship subsidies).
- **[Permanent Placement With Fit and Willing Relative].** See AS 47.14.100 (p) & (u); OCS Policy Manual 3.1; AS 25.24.150 (custody to non-parent based on parental unfitness).
- **Another Planned Permanent Living Arrangement (APPLA).** See AS 47.14.100 (p) (child must be over 16, intensive but unsuccessful efforts to find permanent home, documented compelling reason why APPLA appropriate); AS 47.14.100 (t) (compelling reasons include bond with mentally or physically disabled parent and foster family willing to provide care and facilitate contact with disabled parent).

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<sup>1</sup> Whether a tribal or cultural adoption and the subsequent re-issuance of the birth certificate by the state fully "terminates" parental rights is not necessarily clear given the individual tribe's custom and tribal law. See, e.g., *State v. Tanana Chiefs*, 249 P.3d 734 (Alaska 2011) (tribal court orders are entitled to full faith and credit). But see *Hernandez v. Lambert*, 951 P.2d 436 (Alaska 1998) (tribal court's request of new birth certificate acted as adoption decree and terminated putative biological father's rights).

**EXCERPTS FROM ALASKA STATUTES**

**Alaska Statute 47.05.065(2), (4), (5). Legislative findings related to children**

(2) it is the policy of the state to strengthen families and to protect children from child abuse and neglect; the state recognizes that, in some cases, protection of a child may require removal of the child from the child's home; however,

- (A) except in those cases involving serious risk to a child's health or safety, the Department of Health and Social Services should provide time-limited family support services to the child and the child's family in order to offer parents the opportunity to remedy parental conduct or conditions in the home that placed the child at risk of harm so that a child may return home safely and permanently; and
- (B) the state also recognizes that when a child is removed from the home, visitation between the child and the child's parents or guardian and family members reduces the trauma for the child and enhances the likelihood that the child will be able to return home; therefore, whenever a child is removed from the parental home, the Department of Health and Social Services should encourage frequent, regular, and reasonable visitation of the child with the child's parent or guardian and family members;

. . . .

(4) it is in the best interests of a child who has been removed from the child's own home for the state to apply the following principles in resolving the situation:

- (A) the child should be placed in a safe, secure, and stable environment;
- (B) the child should not be moved unnecessarily;
- (C) a planning process should be followed to lead to permanent placement of the child;
- (D) every effort should be made to encourage psychological attachment between the adult caregiver and the child;
- (E) frequent, regular, and reasonable visitation with the parent or guardian and family members should be encouraged; and
- (F) parents and guardians must actively participate in family support services so as to facilitate the child's being able to remain in the home; when children are removed from the home, the parents and guardians must actively participate in family support services to make return of their children to the home possible;

(5) numerous studies establish that

- (A) children undergo a critical attachment process before the time they reach six years of age;
- (B) a child who has not attached with an adult caregiver during this critical stage will suffer significant emotional damage that frequently leads to chronic psychological problems and antisocial behavior when the child reaches adolescence and adulthood; and
- (C) it is important to provide for an expedited placement procedure to ensure that all children, especially those under the age of six years, who have been removed from their homes are placed in permanent homes expeditiously.

**Alaska Statute 47.10.005. Construction**

The provisions of this chapter shall be liberally construed to

- (1) achieve the end that a child coming within the jurisdiction of the court under this chapter may receive the care, guidance, treatment, and control that will promote the child's welfare and the parents' participation in the upbringing of the child to the fullest extent consistent with the child's best interests; and
- (2) follow the findings set out in AS 47.05.065.

**Alaska Statute 47.10.080 Judgments and orders**

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

- (1) order the child committed to the department for placement in an appropriate setting for a period of time not to exceed two years . . .
- (2) order the child released to a parent, adult family member, or guardian of the child or to another suitable person, and, in appropriate cases, order the parent, adult family member, guardian, or other person to provide medical or other care and treatment; if the court releases the child, it shall direct the department to supervise the care and treatment given to the child, but the court may dispense with the department's supervision if the court finds that the adult to whom the child is released will adequately care for the child without supervision. . .

(3) order, under the grounds specified in (o) of this section or AS 47.10.088, the termination of parental rights and responsibilities of one or both parents and commit the child to the custody of the department, and the department shall report quarterly to the court on efforts being made to find a permanent placement for the child.

. . . .

(w) The court shall recognize a presumption that maintenance of a sibling relationship, including with a sibling who is related by blood, marriage, or adoption through one parent, is in a child's best interest.

**Alaska Statute 47.10.084, Legal custody, guardianship, and residual parental rights and responsibilities**

(b) When a guardian is appointed for the child, the court shall specify in its order the rights and responsibilities of the guardian. The guardian may be removed only by court order. The rights and responsibilities may include, but are not limited to, having the right and responsibility of reasonable visitation, consenting to marriage, consenting to military enlistment, consenting to major medical treatment, obtaining representation for the child in legal actions, and making decisions of legal or financial significance concerning the child.

(c) When there has been transfer of legal custody or appointment of a guardian and parental rights have not been terminated by court decree, the parents shall have residual rights and responsibilities. These residual rights and responsibilities of the parent include, but are not limited to, the right and responsibility of reasonable visitation, 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 25.20.025, 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. In this subsection, "major medical treatment" includes the administration of medication used to treat a mental health disorder.

**Alaska Statute 47.10.086. Reasonable efforts**

(a) Except as provided in (b), (c), and (g) of this section, the department shall make timely, reasonable efforts to provide family support services to the child and to the parents or guardian of the child that are designed to prevent out-of-home placement of the child or to enable the safe return of the child to the family home, when appropriate, if the child is in an out-of-home placement. . . .

(c) The court may determine that reasonable efforts of the type described in (a) of this section are not required if the court has found by clear and convincing evidence that

(1) the parent or guardian has subjected the child to circumstances that pose a substantial risk to the child's health or safety; these circumstances include abandonment, sexual abuse, torture, chronic mental injury, or chronic physical harm;

(2) the parent or guardian has

(A) committed homicide under AS 11.41.100--11.41.130 of a parent of the child or of a child;

(B) aided or abetted, attempted, conspired, or solicited under AS 11.16 or AS 11.31 to commit a homicide described in (A) of this paragraph;

(C) committed an assault that is a felony under AS 11.41.200--11.41.220 and results in serious physical injury to a child; or

(D) committed the conduct described in (A)--(C) of this paragraph that violated a law or ordinance of another jurisdiction having elements similar to an offense described in (A)--(C) of this paragraph;

(3) the parent or guardian has, during the 12 months preceding the permanency hearing, failed to comply with a court order to participate in family support services;

(4) the department has conducted a reasonably diligent search over a time period of at least three months for an unidentified or absent parent and has failed to identify and locate the parent;

(5) the parent or guardian is the sole caregiver of the child and the parent or guardian has a mental illness or mental deficiency of such nature and duration that, according to the statement of a psychologist or physician, the parent or guardian will be incapable of caring for the child without placing the child at substantial risk of physical or mental injury even if the department were to provide family support services to the parent or guardian for 12 months;

- (6) the parent or guardian has previously been convicted of a crime involving a child in this state or in another jurisdiction and, after the conviction, the child was returned to the custody of the parent or guardian and later removed because of an additional substantiated report of physical or sexual abuse by the parent or guardian;
- (7) a child has suffered substantial physical harm as the result of abusive or neglectful conduct by the parent or guardian or by a person known by the parent or guardian and the parent or guardian knew or reasonably should have known that the person was abusing the child;
- (8) the parental rights of the parent have been terminated with respect to another child because of child abuse or neglect, the parent has not remedied the conditions or conduct that led to the termination of parental rights, and the parent has demonstrated an inability to protect the child from substantial harm or the risk of substantial harm;
- (9) the child has been removed from the child's home on at least two previous occasions, family support services were offered or provided to the parent or guardian at those times, and the parent or guardian has demonstrated an inability to protect the child from substantial harm or the risk of substantial harm; or
- (10) the parent or guardian is incarcerated and is unavailable to care for the child during a significant period of the child's minority, considering the child's age and need for care by an adult. . . .

**Alaska Statute 47.10.088. Involuntary termination of parental rights and responsibilities.**

(a) Except as provided in AS 47.10.080(o), the rights and responsibilities of the parent regarding the child may be terminated for purposes of freeing a child for adoption or other permanent placement if the court finds by clear and convincing evidence that

- (1) the child has been subjected to conduct or conditions described in AS 47.10.011;
- (2) the parent
  - (A) has not remedied the conduct or conditions in the home that place the child at substantial risk of harm; or
  - (B) has failed, within a reasonable time, to remedy the conduct or conditions in the home that place the child in substantial risk so that returning the child to the parent would place the child at substantial risk of physical or mental injury; and
- (3) the department has complied with the provisions of AS 47.10.086 concerning reasonable efforts.

(b) In making a determination under (a)(2) of this section, the court may consider any fact relating to the best interests of the child, including

- (1) the likelihood of returning the child to the parent within a reasonable time based on the child's age or needs;
- (2) the amount of effort by the parent to remedy the conduct or the conditions in the home;
- (3) the harm caused to the child;
- (4) the likelihood that the harmful conduct will continue; and
- (5) the history of conduct by or conditions created by the parent.

(c) In a proceeding under this chapter involving termination of the parental right of a parent, the court shall consider the best interests of the child.

(d) Except as provided in (e) of this section, the department shall petition for termination of a parent's rights to a child, without making further reasonable efforts, when a child is under the jurisdiction of the court under AS 47.10.010 and 47.10.011, and

- (1) the child has been in foster care for at least 15 of the most recent 22 months;
- (2) the court has determined that the child is abandoned under AS 47.10.013 and the child is younger than six years of age;
- (3) the court has made a finding under AS 47.10.086(b) or a determination under AS 47.10.086(c) that the best interests of the child do not require further reasonable efforts by the department;
- (4) a parent has made three or more attempts within a 15-month period to remedy the parent's conduct or conditions in the home without lasting change; or
- (5) a parent has made no effort to remedy the parent's conduct or the conditions in the home by the time of the permanency hearing under AS 47.10.080(l).

(e) If one or more of the conditions listed in (d) of this section are present, the department shall petition for termination of the parental rights to a child unless the department

- (1) has documented a compelling reason for determining that filing the petition would not be in the best interests of the child; a compelling reason under this paragraph may include care by a relative for the child; or

(2) is required to make reasonable efforts under AS 47.10.086 and the department has not provided to the parent, consistent with the time period in the department's case plan, the family support services that the department has determined are necessary for the safe return of the child to the home.

. . . .

(g) This section does not preclude the department from filing a petition to terminate the parental rights and responsibilities to a child for other reasons, or at an earlier time than those specified in (d) of this section, if the department determines that filing a petition is in the best interests of the child.

(h) The court may order the termination of parental rights and responsibilities of one or both parents under AS 47.10.080(c)(3) and commit the child to the custody of the department. The rights of one parent may be terminated without affecting the rights of the other parent.

(i) The department shall concurrently identify, recruit, process, and approve a qualified person or family for an adoption whenever a petition to terminate a parent's rights to a child is filed. Before identifying a placement of the child in an adoptive home, the department shall attempt to locate all living adult family members of the child and, if an adult family member expresses an interest in adopting the child, investigate the adult family member's ability to care for the child. . . . If an adult family member of the child requests that the department approve the adult family member for an adoption, the department shall approve the request unless there is good cause not to approve the adoption. If the court issues an order to terminate under (j) of this section, the department shall report within 30 days on the efforts being made to recruit a permanent placement for the child if a permanent placement was not approved at the time of the trial under (j) of this section. . . .

**Alaska Statute 47.10.089. Voluntary relinquishment of parental rights and responsibilities**

(a) When a child is committed to the custody of the department under AS 47.10.080(c)(1) or (3) or released under AS 47.10.080(c)(2), the rights of a parent with respect to the child, including parental rights to control the child, to withhold consent to an adoption, or to receive notice of a hearing on a petition for adoption, may be voluntarily relinquished to the department and the relationship of parent and child terminated in a proceeding as provided under this section.

. . . .

(d) A parent may retain privileges with respect to the child, including the ability to have future contact, communication, and visitation with the child in a voluntary relinquishment executed under this section. A retained privilege must be in writing and stated with specificity.

. . . .

(f) A voluntary relinquishment may not be withdrawn and a termination order may not be vacated on the ground that a retained privilege has been withheld from the relinquishing parent or that the relinquishing parent has been unable, for any reason, to act on a retained privilege, except as provided in Rule 60(b), Alaska Rules of Civil Procedure.

(g) After a termination order is entered, a person who has voluntarily relinquished parental rights under this section may request a review hearing, upon a showing of good cause, to seek enforcement or modification of or to vacate a privilege retained in the termination order. The court may modify, enforce, or vacate the retained privilege if the court finds, by clear and convincing evidence, that it is in the best interest of the child to do so.

(h) After a termination order is entered and before the entry of an adoption or legal guardianship decree, a person who voluntarily relinquished parental rights to a child under this section may request a review hearing, upon a showing of good cause, to vacate the termination order and reinstate parental rights relating to that child. A court shall vacate a termination order if the person shows, by clear and convincing evidence, that reinstatement of parental rights is in the best interest of the child and that the person is rehabilitated and capable of providing the care and guidance that will serve the moral, emotional, mental, and physical welfare of the child.<sup>[2]</sup>

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<sup>2</sup> See *Lara S. v. State*, 209 P.3d 120 (Alaska 2009) (discussing standard for granting review hearings under AS 47.10.089(h)); see also *Rita T. v. State*, 623 P.2d 344 (Alaska 1981) (recognizing common law right to seek reinstatement after involuntary termination if children still in foster care).

(i) A person who relinquished parental rights is entitled to the appointment of an attorney if a hearing is requested under (g), (h), or (j) of this section to the same extent as if the parent's rights had not been terminated in a child-in-need-of-aid proceeding. . . .

**Alaska Statute 47.10.100. Retention of jurisdiction over child**

(b) If the court determines at a hearing authorized by (a) of this section that the department has complied with the requirements for release of a child under AS 47.14.100(q) and that it is in the best interests of the child to be released to the child's own custody, or to the care or custody of the child's parent, guardian, or custodian, it shall enter an order to that effect and the child is discharged from the control of the department.

(c) If a child is adjudicated a child in need of aid before the child's 18th birthday, the court may retain jurisdiction over the child after the child's 18th birthday for the purpose of supervising the child, but the court's jurisdiction over the minor under this chapter never extends beyond the child's 19th birthday, except that the department may apply for and the court may grant an additional one-year period of custody or supervision past 19 years of age and additional one-year periods of custody that do not extend beyond the person's 21st birthday if continued custody or supervision is in the best interests of the person and the person consents to it. The department may retain jurisdiction over a child if the child has been placed in the custody or under the supervision of the department before the child's 18th birthday, except that the department may apply for and the court may grant an additional one-year period of custody or supervision past 19 years of age and additional one-year periods of custody that do not extend beyond the person's 21st birthday if continued custody or supervision is in the best interests of the person and the person consents to it.

**Alaska Statute 47.10.110. Appointment of guardian or custodian**

When, in the course of a proceeding under this chapter, it appears to the court that the welfare of a minor will be promoted by the appointment of a guardian or custodian of the minor's person, the court may make the appointment. The court shall have a summons issued and served upon the parents of the minor, if they can be found, in a manner and within a time before the hearing that the court considers reasonable. The court may determine whether the father, mother, another suitable person, or the department shall have the custody and control of the minor. If the minor is of sufficient age and intelligence to state desires, the court shall consider them.

**Alaska Statute 47.14.100. Powers and duties of department over care of child**

(j) For the purpose of determining whether the home of a relative meets the requirements for placement of a child under (e) of this section or under AS 47.10.088(i), the department shall conduct a criminal background check from state and national criminal justice information available under AS 12.62.

. . . .

(m) Prima facie evidence of good cause not to place a child with an adult family member or family friend under AS 47.10.088(i) or under (e) of this section includes the failure to meet the requirements for a foster care license under AS 47.32 and regulations adopted under AS 47.32, taking into account a waiver, variance, or exemption allowed under AS 47.32.030(a)(3) and 47.32.032. Prima facie evidence of good cause not to place a child with an adult family member or adult family friend does not include poverty or inadequate or crowded housing . . . .

(o) Except as provided in (p) and (q) of this section, the department shall continue to search for a suitable adoptive or permanent legal guardianship for a child who is in the custody of the state and who is under 18 years of age.

(p) The department may recommend to the court another planned permanent living arrangement for a child who is in state custody only if

- (1) the child is 16 years of age or older;
- (2) the department has unsuccessfully made intensive efforts to find a permanent placement for the child; and
- (3) the department, after considering reunification, adoption, legal guardianship, or permanent placement with a fit and willing relative, determines that there is a compelling reason that the most appropriate permanency plan for the child is placement in another planned permanent living arrangement, and the department documents for the court the compelling reason for the alternate plan.

- (q) The department may release from state custody a child who has been committed to the custody of the department, before the custody is ordered to end, only if
- (1) the child, if the child is over 16 years of age and available, and the guardian ad litem are notified not less than 30 days before a motion for release is filed unless the parties agree to a shorter notice period;
  - (2) the department files a motion with the court for release of state custody that describes the reasons the release is in the best interest of the child; and
  - (3) a court makes a written finding that release from state custody is in the best interest of the child. . . .
- (r) When custody of a child who has been committed to the custody of the department is due to expire, the department shall file a notice of release with the court 30 days before the date of release unless the parties agree to a shorter notice period and distribute the notice to the parties, including the child if the child is 16 years of age or older and available.
- . . . .
- (t) As used in (p) of this section, “compelling reason” may include circumstances in which
- (1) the child has specifically requested that emancipation be established;
  - (2) a parent and child have a significant bond, but the parent is unable to care for the child because of an emotional or physical disability, and the child's foster parents have committed to raising the child to the age of majority and to facilitating visitation with the disabled parent.
- (u) In this section, “another planned permanent living arrangement” means a permanent living arrangement for a child who is committed to the custody of the department under AS 47.10.080(c)(1) that is an alternative to permanent placement with an adult family member, and to reunification, adoption, and legal guardianship.

**EXCERPTS FROM OCS CHILD PROTECTION POLICY MANUAL**

**3.9.2 CONSENT TO ADOPTION BY PARENT** (issued 1989, revised 2007)

**AUTHORITY:** AS 25.23.060 Execution of Consent; consent as power of attorney, AS 25.23.070 Withdrawal of Consent, AS 47.10.086(b) Reasonable Efforts, 25 U.S.C. 1913 (P. L. 95-608 Indian Child Welfare Act of 1978).

**PURPOSE:** To provide guidelines on the Consent to Adoption by Parent process as an alternative to a relinquishment.

**DEFINITION:** Consent to adoption by parent(s) is a voluntary agreement signed by the child's parent in which the parent agrees that adoption is best for the child. The child's birth parent does not relinquish their rights to the child; instead the parent is able to formally consent to the adoption of their child. The consent to the adoption by the parent is often a thoughtful decision by the parent who feels that the child will benefit from adoption.

**POLICY:**

- a. With the knowledge and approval of the department, all consents for adoption for children in OCS custody that are signed by the parent must be executed in writing and take place before a judge or in the presence of the attorney who represents the parent or in the presence of the social workers and another witness to which the parent agrees. For Indian Child Welfare Act (ICWA) cases, the consent to adoption by parent must be signed or affirmed in state court, as opposed to Tribal court.
- b. For ICWA cases, the parents may change their mind and withdraw the consent to adoption anytime before the finalization of the adoption. This must be done through a written notice to the department, or to the court.
- c. For non-ICWA cases, the parent has ten days from the time of the signed consent to adoption by parent to change his or her mind and withdraw the consent to adoption. This must be done through a written notice to the department, or to the court if it is an ICWA case.
- d. In the consent to adopt, the parent will retain residual rights to the child up to the finalization of the adoption. Once the decree for adoption is signed by the court, the birth parent's rights are terminated at the same time.
- e. The decision to consider consent to adoption by parent rather than a relinquishment or termination of parental rights must be based on what is in the best interest of the child. Additionally, the decision to pursue consent to adoption by parent must be discussed by the Permanency Planning Conference team.

**PROCEDURES:**

- a. At the point the worker believes reunification is no longer possible, and it is in the child's best interest that a different permanent plan be considered, the worker will staff the case with the supervisor and the Permanency Planning Conference team. If the team agrees that reunification is no longer possible and recommends a permanency plan of adoption, a decision should be made how to plan for the child's adoption. The three alternatives are:
  1. acceptance of a relinquishment of parental rights, followed by a termination of parental rights order which is based on the relinquishment;
  2. termination of parental rights through a termination trial; or
  3. acceptance of a consent to adoption by parent.
  
- b. Consent to adoption by a parent can be considered in cases in which there is agreement on the child's adoptive placement. Any contacts after the adoption between the child and birth parents are at the discretion of the adoptive parents, unless otherwise legally agreed upon between parties.
  
- c. If the Permanency Planning Conference recommends an adoption subsidy for the child, a judicial determination (court order) is needed to qualify the child for an adoption subsidy. The judicial determination must include language that reasonable efforts to reunify the child with the parent have been made by the OCS but the efforts have been unsuccessful and the child cannot or should not return home. The necessary language may be stipulated in the consent to adoption agreement that is signed by the child's parents; however this language needs to be ordered by the court based on the conditions as they are stipulated in the consent for adoption signed by the child's parents.
  
- d. The OCS will work with the parent(s) and the parent's attorney to have the parent sign the consent to adoption by parent. The parent must be fully informed that in signing the consent to adopt by parent, the parent is consenting to the permanent adoption of the child with an identified adoptive family. Additionally, the worker will inform the parent that the residual rights to consent to marriage, military enlistment, non-emergency medical care, visitation, and adoption, as well as the residual responsibility of child support continue until the point that the adoption is finalized. The parent must also be fully informed that once the adoption is finalized, the parent's rights to the child are terminated based on the decree of adoption or birth certificate.

*See also* OCS Policy Manual 4.6.1 (consent to adoption by parent) and 4.7 (relinquishment by parent)

**EXCERPTS FROM OCS CHILD PROTECTION POLICY MANUAL**

**3.12 GUARDIANSHIP** (issued 1989, revised 2007)

**AUTHORITY:** AS 47.10.084 Legal Custody, Guardianship, and Residual Parental Rights and Responsibilities, AS 13.26.030 Status of Guardian of Minor; General, AS 13.26.035 Testamentary Appointment of Guardian of Minor, AS 13.26.045 Court Appointment of Guardian of Minor; Conditions for Appointment, AS 13.26.070 Powers and Duties of Guardian of Minor; AS 47.10.115 Permanent Fund Dividend, 7 AAC 53 Child Foster Care Payments, Subsidized Adoption and Subsidized Guardianship Payments

**PURPOSE:** To establish a permanent placement for children in OCS custody when permanency through adoption is not an appropriate permanent plan for the child.

**POLICY:**

- a. A plan for guardianship may be considered for all children in OCS custody who are in an alternate family living situation that appears to be safe and permanent as documented in an approved homestudy. Guardianship carries some legal risk of the arrangement being reversed. Consequently guardianship is not the preferred permanent plan for children under age 10. Certain guardianships may be subsidized. (See Administration Chapter, section 6.2.2.6.B Guardianship Subsidies for procedures.)
- b. Adoption is the preferred permanent plan for children, regardless of age, when reunification with the parents is not possible. When adoption is not an option for permanency, guardianship may be considered. Guardianship must be the permanent plan for the child, not a temporary arrangement for reunification with the parents pending changes in parental behavior. Open contact with birth parents in guardianship arrangements is encouraged in all cases except where birth parents would seriously interfere with the permanence of the placement or present a danger to child and guardian.
- c. In a legal guardianship, the biological parents retain the following residual parental rights and responsibilities, unless the parental rights have been terminated, or any residual parental right or responsibility has been delegated to the guardian by court order:
  1. reasonable visitation;
  2. consent to adoption;
  3. consent to marriage;
  4. consent to military enlistment;
  5. consent to major medical treatment except in cases of emergency;
  6. the responsibility for support.
- d. When to consider a legal guardianship for a child: Guardianships should be implemented only in limited circumstances, and these circumstances have been reviewed at the permanency planning conference. The following circumstances will be reviewed when considering a plan for

guardianship.

1. Every effort has been made to place the child with a relative who wants to adopt. If not available for adoption, then a relative has been identified as the proposed guardian and they agree to safely and permanently parent the child until majority.
  2. The social worker has demonstrated efforts to place the child for adoption, this includes:
    - A. counseling for the prospective permanent family and child around the issues of guardianship and adoption;
    - B. a completed relative search has explored potential relative adoptive placements, and is documented in ORCA;
    - C. the worker has documented in ORCA discussion of adoption plan vs. guardianship plan with prospective permanent family;
    - D. if no relative resource exists; efforts to identify an adoption placement have been explored and documented in ORCA.
  3. Other special circumstances for guardianship will be reviewed and approved by the regional adoption specialist and State Office adoption staff.
  4. The legal opinion by the AAG does not support termination of parental rights, based on the facts of the case.
- e. Requirements for Families: In order to become guardians, the guardian must:
1. have cared for the child a minimum of six months, or have previously cared for the child at least six months, in order to assess adjustment and attachment in the family; and
  2. agree to assume guardianship duties and responsibilities and provide a stable home for the child until he/she reaches age 18; and
  3. receive an approved guardianship homestudy; and
  4. if applicable, sign the Guardianship Subsidy Agreement; and
  5. agree to make reports to the court on an annual basis.
- f. Duties and Responsibilities of a Legal Guardian
1. The rights and responsibilities of the guardian are specified in the court order appointing the guardian. Generally, the guardian is responsible for the child's property, and can apply for assistance and/or benefits on behalf of the child. The guardian is also usually responsible for the physical care and control of the child, the determination of where and with whom the child will live, the right and duty to protect, train and discipline the child, and the duty of providing the child with food, shelter, education and medical care.
  2. Any Permanent Fund Dividends for the child that are held in trust by the OCS during the period of time that the child is in OCS custody, will remain in trust until the child reaches the age of 18 years of age. Once the child reaches 18 years of age, the Permanent Fund Dividends held in trust will be released to the child. See 6.2.3.2.B Releasing PFD Trust Account.
  3. The guardian is responsible for applying for Permanent Fund Dividends on behalf of the child for any and all years subsequent to the finalization of the guardianship, so long as

the child remains eligible for the Permanent Fund Dividend benefit.

4. The guardian may be removed from the guardianship duties and responsibilities only by court order.

5. As required in AS 13.26.070 (4), the guardian must file a brief annual report to the court on the welfare of the minor and the condition of the minor's estate.

**PROCEDURES:**

- a. Recommendation to, and approval by, the Permanency Planning Conference of guardianship as the goal. For children under 10 years of age, the Director or designee must approve the goal of guardianship for the child. (See section 3.12(i)(4)).
- b. After a permanency planning conference has determined a goal of guardianship, the worker will review the plan with the child, when age appropriate, and complete discussions with the child, the proposed guardians, and the birth parents to ensure agreement with the plan of guardianship.
- c. The social worker will obtain a guardianship homestudy that will be approved by the regional adoption specialist.
- d. If a subsidy is recommended for the child at the Permanency Planning Conference, negotiate the guardianship subsidy with the guardian family (See Negotiating Subsidies 6.2.2.6.C).
- e. Review Court Procedures chapter, section 4.(i) Guardianship of Minors for information about court procedures for guardianship.
- f. Contact the AAG for direction in filing appropriate legal proceedings. If time constraints prevent the AAG from taking action, proposed guardians may obtain their own attorney and file the court action.
- g. Be sure guardians understand their legal obligations as guardians, as well as the fact that after the guardianship is finalized and OCS custody ends, the AAG can no longer represent the case. Any subsequent court actions would require the guardians to obtain their own attorney.
- h. Department staff may not stipulate to a guardianship until:
  1. A Permanency Planning Conference has been held approving the goal of guardianship, and
  2. If applicable, the guardianship subsidy has been approved by the Director or designee.
- i. The child must also meet one of the following criteria to be eligible for a guardianship:
  1. For children over the age of ten, in order of preference, which is based on the highest degree of permanence for the child:
    - A. The child is not legally free for adoption, but desires a guardianship plan and the birth parents agree and/or prefer guardianship; or
    - B. The child is legally free for adoption but does not want to be adopted; or guardianship is preferred over adoption due to compelling cultural or other reasons as outlined in P&P 4.4.(i)(5)(B).
    - C. The child is not legally free for adoption and agrees to guardianship, and the birth parents, although they will not agree, are not likely to interfere with the guardianship plan (as based on previous experience with the birth parents.)

2. Children under the age of ten will only be considered for guardianship if:
  - A. Guardianship is the recommended permanency plan for the child as documented in the permanency planning conference in ORCA, and the plan has been approved by the Director or designee; and
  - B. The child is part of a sibling group where one or more children is over the age of ten and the plan is for the sibling group to remain together under the guardianship with the proposed guardian; or
  - C. There are compelling cultural or other reasons which make guardianship the preferred choice over adoption as outlined in P&P 4.4.(i)(5)(B).
3. All subsidized guardianships of children under the age of ten must be pre- approved by the Director's designee after the Permanency Planning Conference has made the recommendation. The primary factor to be considered is whether the plan will reasonably assure permanence for the child until the age of 18 years.
4. Approval Process for Children under Age 10:
  - A. Guardianships for children under the age 10 do not reflect best practice for placement of young children. Careful consideration must be given for implementation of a guardianship plan for children under age 10.
  - B. The worker will write a memo to justify why the guardianship is in the best interest of the child, and document efforts made toward a plan of adoption. The documentation in the Permanency Planning Conference in ORCA should reflect why the goal of guardianship is most appropriate (instead of adoption). This should also be referenced in the memo.
    - i. It is expected that the memo should be sent within 10 working days of the permanency planning conference.
    - ii. The memo and Permanency Planning Conference form will be routed to the Director or designee, through the S.W. IV, S.W. V, and the Regional Adoption specialist.
  - C. When the State Office review of the request has been completed, the Director or designee will document approval or disapproval of the guardianship plan within 10 working days in an activity note in ORCA.
- j. If approval for guardianship is not granted, the worker will need to schedule a permanency planning conference to discuss an alternate permanency plan for the child and the guardianship family.
- k. Legal Issues: When parental rights have not been terminated, it is necessary to exercise caution and implement the plan only after careful consultation with parents, AAGs, and the proposed guardians to assure that either the biological parent agrees with the plan or will not interfere with the permanence of the guardianship arrangement. Contested guardianships should only be entered into after careful consultation with AAG and Permanency Planning Conference. The worker should include in the guardianship petition the request to transfer residual parental rights, if any, to the guardian. The worker should also ensure that the order provides for notice to OCS in the event that the parent seeks to have the guardianship set aside.

I. Disruption of Placement: The possibility of disrupted guardianships exists. Birth parents may challenge the guardianship legally, after it is awarded by the court. This risk needs to be clear to the guardians, although the birth parents would have to obtain the services of an attorney and file action in the court. A Guardian ad Litem would be appointed, but the guardians would have to hire their own attorney.

**EXCERPTS FROM OCS CHILD PROTECTION POLICY MANUAL**

**3.20.3 CULTURAL ADOPTION WITH OCS CONSENT** (issued 2002, revised 2007)

**AUTHORITY:** AS 25.23.040(3) Persons Required to Consent to Adoption, AS 25.23.080(a)(c) Petition for Adoption, AS 25.23.130(1)(2)(c) Effect of Adoption Decree, 25 U.S.C. 1913(a), 1915(a) & (c), 1951(a) & (b) (P. L. 95-608, Sec. 103(a), Sec. 105(a)(c), Sec. 301(a)(b) Indian Child Welfare Act of 1978), AS 18.50.220 New Certificate of Birth, AS 47.10.080(d) Consent for Adoption by OCS.

**PURPOSE:** To provide guidelines and instructions on when to recognize cultural adoptions that have been recognized by custom for ICWA-eligible children.

**POLICY:** ICWA-eligible children who are in the custody of the OCS may be culturally adopted. The recognition of a cultural adoption by the child's Tribal court or council can lead to the issuance, by the Bureau of Vital Statistics of a new birth certificate pursuant to 7 AAC 05.700(b). Customary Adoptions are completed at the request of the adoptive family. The adoptive family may choose to finalize the adoption in the State court as outlined under AS 25.23. If the child is culturally adopted, the choice of whether to seek a state court adoption order or apply directly to the Bureau of Vital Statistics for a substitute birth certificate is made by the adoptive parents.

Historically and as a matter of custom, Alaska Native Tribes have conducted cultural adoptions for Tribal children who are being adopted by another family/Tribal member in the Tribal Court or council proceedings. In these proceedings, there is an agreement among the child's family and Tribe that it is in the best interests of the child for the adoption to be finalized. This option for ICWA-eligible children in OCS custody honors the child's cultural traditions for adoption and allows for the adoption to be finalized in a Tribal setting.

Cultural adoptions do not require a termination of parental rights prior to the finalization of the adoption; however once a Tribal Decree of Adoption and a new state birth certificate is issued with the new adoptive parents' names on the birth certificate, the adoption is considered finalized by OCS.

**PROCEDURE:**

- a. If the child is of Alaska Native heritage and born in Alaska, the worker meets with the adoptive parents and explains the options of finalizing a cultural adoption in either the State court or in the Tribal court or council.
  
- b. Once the adoptive parents have decided to pursue the adoption in the Tribal court or council, contact the Tribal court or council to discuss the procedures for finalizing the adoption. Explain to the Tribal court or council that:

1. A homestudy must be completed and approved by OCS for the adoption;
  2. The adoption cannot be finalized until the OCS has approved the adoption subsidy (if applicable) and a Stipulation to Permanency is entered into in court; and
  3. The adoption cannot be finalized until the OCS issues the OCS Consent to Adoption as outlined in AS 47.10.080(d).
- c. Follow the Adoption finalization procedures as outlined in section 3.20.2(a), (b), (c), and (e)(1-7).
- d. To finalize an adoption by the Tribal court or council, the worker should cooperate with the tribal court or council and the adoptive parents to prepare the documents necessary to obtain a new birth certificate by the Bureau of Vital Statistics pursuant to 700 AAC 05.700(b).
- e. The Tribal court or council will meet to approve the adoption of the child by the adoptive parent. The Tribe may issue a Decree of Adoption and they must prepare the written affirming statement required by 7 AAC 05.700(b)(3). The adoptive parents must present the affirming statement to the Bureau of Vital Statistics with a request to change the child's birth certificate to reflect the child's new adoptive name (if applicable) and change the parents' names from the birth parents' to the adoptive parents' names.
- f. The OCS must receive from the Tribe the signed Decree of Adoption and a copy of the new birth certificate as issued by the Bureau of Vital Statistics in order to close the CPS family case or Post-TPR case.
- g. Once the worker has received the new birth certificate from the Tribal court or council, the worker will proceed with the case closure processes as outlined in 3.20.1B Closing CPS Family and Post-TPR Cases for Adoption and Guardianship Cases.

**EXCERPTS FROM OCS CHILD PROTECTION POLICY MANUAL**

**4.8 TERMINATION OF PARENTAL RIGHTS** (revised 2010)

AUTHORITY: AS 25.23.180 AS 47.10.080 AS 47.10.088 25 U.S.C. 1912 42 U.S.C. 675(5)(e) Alaska Child in Need of Aid Rule 18

Relinquishment and Termination of Parent and Child Relationships Judgments and Orders  
Involuntary Termination of Parental Rights and Responsibilities Indian Child Welfare Act of 1978 (P.L. 95-608)

Definitions (Title IV-E)

**BACKGROUND, POLICY, AND PROCEDURES:**

A. Purpose of Termination of Parental Rights: The parental rights of one or both parents of a child may be permanently terminated in order to free the child for adoption or other permanent placement. Termination of parental rights means the complete severance of the legal parent-child relationship. Proceedings to terminate the parental rights of a parent are initiated by filing a Petition for Termination of Parental Rights.

B. When to File a Petition:

1. A petition to terminate parental rights to a child in the department's custody may be filed with, or at any time after the filing of, a Petition for Adjudication of Child in Need of Aid. The process for determining whether the department should seek termination of parental rights in a particular case is outlined in section 3.10 Preparation for Termination of Parental Rights. The best interest of the child is the primary consideration.

2. Under certain circumstances, the department is required by law to file a petition to terminate parental rights. Unless an exception applies (see paragraph B.3 below), the department must file a petition if one or more of the following circumstances exists:

a. The child has been in foster care for a total of at least 15 of the most recent 22 months.

1) The date of entry into foster care is defined by state law as the earlier of: the date of the first judicial finding of child abuse or neglect, or 60 days after the date of removal from the home. The department's policy is that the date of entry into foster care is the date of the first finding of child abuse or neglect, i.e. the first probable cause hearing.

2) Trial home visit periods are excluded from the time calculation.

b. The court has determined that the child is abandoned and the child is younger than six years of age, in which case the petition must be filed within 60 days of the judicial finding of abandonment.

c. The court has made a finding that the best interests of the child do not require further reasonable efforts by the department toward reunification with the parent.

d. The parent has made three or more attempts within a 15-month period to remedy the parent's conduct or conditions in the home that cause the child to be in need of aid, without lasting change.

- e. The parent has made no effort to remedy the parent's conduct or conditions in the home that cause the child to be in need of aid by the time of the permanency hearing.
  - f. The parent has been convicted of: (1) murder or manslaughter of another child of the parent; or (2) aiding or abetting, attempting, conspiring, or soliciting to commit such a murder or manslaughter; or (3) a felony assault that results in serious injury to the child or another child of the parent; in which case the petition must be filed within 60 days of a judicial determination that reasonable efforts to reunify the child and parent are not required.
3. There are exceptions to the requirement that a petition to terminate parental rights be filed under the circumstances described in paragraph B.2. The department is not required to file a petition if the department:
- a. is required to make reasonable efforts but has not provided to the parent, consistent with the time period in the department's case plan, the family support services that the department has determined are necessary for the safe return of the child to the home; or
  - b. has documented a compelling reason, as decided at a permanency planning conference, for determining that filing a petition would not be in the best interests of the child. Compelling reasons not to file a petition may include, but is not limited to, the following:
    - 1) The parent has made substantial progress in eliminating the problems causing the child's continued placement in foster care, it is likely that the child will be able to safely return home within three months, and no prior extension has been granted.
    - 2) The child is over the age of 14 and
      - has a close and positive relationship with the parent, and an alternative permanent plan that does not require termination of parental rights will provide the most secure and appropriate placement for the child; or
      - is firmly opposed to termination of parental rights, thus making it likely that any adoptive placement will result in disruption. (To help the child make an informed decision about termination and adoption, the worker must make certain that the child has received meaningful counseling about the benefits of adoption and that the child is aware of the possibility of an adoption which allows for continued contact with members of his or her birth family. Counseling must take place before this compelling reason is invoked and cannot be provided by an employee of the Office of Children's Services.)
    - 3) There are insufficient grounds for the termination of parental rights.
    - 4) Where the child is an Indian child as defined in the Indian Child Welfare Act, the child's tribal culture does not acknowledge termination of parental rights as a viable option, and the tribe has identified and offered an alternative permanent placement plan for the child that is in the best interest of the child.
    - 5) The parents' actions or inactions are not the cause of the child being in need of aid (e.g., the child is developmentally disabled, delinquent, or otherwise has

needs that simply cannot be met by the parents without assistance from the state despite appropriate parenting).

6) The child is 16 years of age or older, and the permanency plan is another planned permanent living arrangement. (To help the child make an informed decision, the worker must make certain that the child has received meaningful counseling about becoming self-sufficient. Counseling must take place before this compelling reason is invoked and cannot be provided by an employee of the Office of Children's Services.)

7) The child has sibling(s) who will not be the subject of termination proceedings, and it is not in the best interest of the child to separate from the other sibling(s).

. . . .

J. Effect of Termination of Parental Rights: Once the court issues an order terminating a parent's parental rights, the parent's legal relationship with the child is ended, and the parent is no longer a party to the case. Neither the parent nor the parent's attorney should be served with further documents, unless otherwise ordered by the court.

K. Post-Termination Reports: If a permanent placement for the child was not approved at the time of the termination trial, the following post-termination reports to the court are required:

1. The worker must file a report within 30 days after the termination order is issued describing the efforts being made to recruit a permanent placement for the child.
2. Thereafter, the worker must file a report every 90 days describing the efforts being made to find a permanent placement for the child.

## **OTHER RELEVANT AUTHORITY**

### **From Children's Defense Fund and Child Focus, *Myths and Facts Related to Use of the Guardianship Assistance Program*, June 2010**

[\*Myths and Facts Related to Use of the Kinship Guardianship Program.\*](#)

#### **Myth 1: Subsidized guardianship undermines reunification efforts.**

**Fact:** Research from states that had kinship guardianship waivers shows that the availability of guardianship does not impact the rates at which children are reunified. In Illinois, Tennessee, and Wisconsin, reunification rates were not significantly different between families offered subsidized guardianship and those denied this choice.<sup>1</sup> For example, in Tennessee, 13.7% of children who were offered subsidized guardianship returned home as compared to 12.6% of children who did not have access to subsidized guardianship. In Illinois, after 10 years of offering subsidized guardianship, 5.2% of children offered subsidized guardianship returned home compared to 7.7% of children who did not have access to subsidized guardianship.

It is also important that to be eligible for federal assistance under GAP, reunification (and adoption) first must be determined not appropriate. There must also be efforts made to have discussions with the child's birth parent about guardianship before there can be a guardianship agreement.

#### **Myth 2: Relative guardianship is not permanent enough and should not be considered a permanency option.**

**Fact:** Research has shown that the availability of the guardianship option increases overall family permanence. And early on, the prospect of guardianship actually increases the number of relative adoptions. Relatives are more likely to consider adoption when they have a chance to seriously consider its impact on permanence for the child. The Fostering Connections to Success and Increasing Adoptions Act (Fostering Connections Act) requires that there be a determination before guardianship can be approved that return home and adoption are not appropriate permanency options for the child. It specifically requires that adoption must be discussed with potential relative guardians. It also makes it easier for guardians who are caring for children with special need to adopt these children at a later time, should they want to do so.

Research from Illinois, the state with the longest standing guardianship waiver, found no appreciable differences in stability and well-being among comparable groups of adopted and guardianship children. The Illinois research looked at four important qualities of permanence: intent, continuity and commitment, sense of belonging and respected social status and guardianship did at least as well as adoption on all of them. The children in guardianship intended to stay with their caregivers, were still residing with them when evaluated, and felt like part of the family, as children in adoption did.<sup>2</sup>

#### **Myth 3: Guardianship assistance will displace adoption.**

**Fact:** The Fostering Connections Act requires that adoption must be determined to be inappropriate for the child before considering guardianship assistance. It also requires that the agency discuss adoption with the prospective guardian as an alternative to legal guardianship

and that the agency document the prospective guardian's reasons for not pursuing adoption in the child's case plan. Federal law now also makes clear that if a child is eligible for federal adoptions assistance when placed with a guardian that the child would continue to be eligible should the guardians decide later to adopt.

Research in Wisconsin demonstrated no displacement of adoption by subsidized guardianship. However, research from Illinois and Tennessee that showed that subsidized guardianship did displace adoption for some children. If these children would have remained in foster care longer with relatives, some eventually would have been adopted by them, but those children would have spent more time in foster care and those not adopted would have been left to languish in foster care.

States must consider the respective benefits of adoption and guardianship for individual children in terms of stability, well-being, and reduction in the length of stay in foster care. From Illinois there is evidence that if you control for age the stability for subsidized guardianship and adoption assistance is the same. Evidence from Illinois, Tennessee, Minnesota, and Montana have demonstrated no evidence that suggests children who exited care with adoption assistance are more safe or have better well-being outcomes than children who exited to subsidized guardianship.<sup>3</sup>

The availability of both also reduces the length of stay for children in foster care.

**Myth 4: The availability of the Guardianship Assistance Program will result in more relatives bringing children into the child welfare system so they can qualify for GAP assistance.**

**Fact:** There is no evidence from states that have implemented state subsidized guardianship programs that foster care caseloads have risen as a result of making subsidized guardianship available. In fact, research from Illinois and Tennessee show a decline in foster care caseloads after the implementation of guardianship.<sup>4</sup>

Most relatives raising grandchildren, nieces and/or nephews see themselves doing it temporarily until the children's parents are able to resume parenting, and hope that the children and their parents can be reunited. Many relatives only consider formal foster care as a last resort when they cannot access needed supports for the children they are raising in other ways. Even then, relative caregivers may be reluctant to ask for help for fear of having the children removed from their care. There are also safeguards in place, including court oversight, to ensure that children generally only enter foster care when their safety is at risk.

**Myth 5: The Guardianship Assistance Program option will end up costing more money in the long-run in our state.**

**Fact:** The federal Guardianship Assistance Program is most likely to result in cost savings when a state has previously been providing assistance to relatives caring for children in foster care so they can care for them permanently. Thirty eight states and the District of Columbia were doing so before the Fostering Connections Act was passed. States that opt into GAP will receive federal dollars to help support the program. This will allow these states to redirect state dollars previously used to support their state guardianship programs.

Evaluations of GAP-like efforts also have demonstrated that offering such assistance to families resulted in a reduced average length of stay, which has resulted in cost savings for the

states. Research from Illinois and Wisconsin shows that subsidized guardianship reduces the number of days a child is in foster care. After 10 years of testing in Illinois, findings demonstrated that offering subsidized guardianship to families reduced the average length of stay in foster care by 22 percent (269 days).<sup>5</sup> After three years in Wisconsin, offering the subsidized guardianship option reduced the average length of stay in foster care by 32% (133 days).<sup>6</sup>

Minnesota's guardianship waiver demonstration showed a reduction in length of time in care between those children that had guardianship available to them as a permanency option and those that did not. Children in the experimental group with guardianship as an option spent an average of 435 days in care after assignment versus an average of 567 days for those assigned to the control group without guardianship as an option.<sup>7</sup>

States with guardianship programs also have seen administrative savings result when foster care cases are closed and children are moved to guardianship without the administrative oversight that was formerly required. States opting into GAP that have not previously supported guardianship programs will also likely see savings in administrative costs. For example, case plans, case reviews, and other efforts made to oversee the care of the children are no longer necessary. Worker visits and arrangements for parent child visits are no longer required either. In Illinois, the accumulated administrative savings amounted to \$54.4 million at the end of the first five years of the demonstration for the 30,781 children ever assigned to the intervention group.<sup>8</sup>

In Tennessee, the state would have spent over \$1 million in unnecessary foster care costs without subsidized guardianship.<sup>9</sup>

In the end though, even if there were not savings, the cost of keeping a child in foster care with federal dollars could end up costing at least as much as placing a child with a guardian with federal GAP assistance but guardianship is certainly the better investment for the child and the state.

#### **Myth 6: Subsidized guardianship is only appropriate for older children.**

**Fact:** In the past, a small number of states have restricted guardianship to older children because they felt it was inappropriate for younger children who would be more likely to be reunited with their parents or adopted from foster care. GAP protects against the inappropriate use of guardianship in another way. It requires that reunification and adoption must be determined to be inappropriate for a child before guardianship may be considered. As a result, it is not necessary to limit eligibility by age or in other ways and in fact federal law does not permit such a limitation. Families that choose guardianship most often do so because they are uncomfortable with severing the child's family ties – a requirement for adoption and a concern that transcends a child's age. Guardianship preserves family relationships for children of all ages and allows grandma to stay grandma and not legally require her to become "mom".

#### **Myth 7: If children move from foster care to guardianship with relatives they will likely re-enter care.**

**Fact:** Experience to date in states has shown that relative guardianship appears to be about as stable as adoption. Kinship guardianships are no more likely to disrupt than are adoptions. The

state of Iowa reported no significant differences in the stability of guardianship placements between experimental and control groups in placement disruptions or foster care re-entries. In 2009, research in Illinois shows that there is little difference in the stability of children living with guardians and adoptive parents two years post finalization (96% and 98% stability, respectively); five years after finalization, the stability of guardianships and adoptions was 89 percent and 95 percent, respectively).<sup>10</sup>

There are also a number of protections in GAP that are intended to help ensure that the guardianship will ensure the child a permanent home. There must be prior discussions about guardianship, where possible, with the birth parent and with the guardian, and youths 14 years or older must be consulted as guardianship is being considered. All of these are intended to promote the permanence of guardianship.

**Myth 8: If a child is placed in guardianship with a relative, the child will never be able to be adopted.**

**Fact:** It is incorrect to say that a child in a guardianship will never be able to be adopted. Even though adoption must be determined inappropriate initially, federal law anticipates that a guardian may later decide to adopt the child for whom he or she is caring. In fact, the Fostering Connections Act specifically provides that if a child is eligible for federal adoption assistance payments at the time guardianship is ordered, the child would continue to be eligible for adoption assistance should the child later be adopted by the guardian.

**Sources:**

<sup>1</sup> Subsidized Permanent Guardianship Assessment and Evaluation, Submitted to the Tennessee Department of Children and Family Services on January 15, 2010 by Children and Family research Center and Westat; Testa, M. Subsidized Guardianship: Testing the Effectiveness of an Idea Whose Time Has Finally Come, May 2008 on Children and Family Research Center Web Site; SUBSIDIZED GUARDIANSHIP ASSESSMENT AND EVALUATION Interim Evaluation Report, May 30, 2008, Submitted to: Wisconsin Department of Health and Family Services, Division of Children and Family Services, Submitted by: Westat; Children and Family Research Center, School of Social Work, University of Illinois at Urbana-Champaign; and Institute for Research on Poverty, University of Wisconsin- Madison.

<sup>2</sup> Testa, M and Cook, R. (2001). The Comparative Safety, Attachment, and Well Being of Children in Kinship Adoption, Guardianship and Foster Homes. Paper presented at the Annual Research Conference. Association for Public Policy, Analysis, and Management. Washington DC, November 3, 2001.

<sup>3</sup> Profiles of the Title IV-E Child Welfare Waiver Demonstration Projects prepared for Children's Bureau by James Bell Associates, June 2010.

<sup>4</sup> Assisted Guardianship Waiver Demonstrations: Lessons in Implementing a New Permanency Alternative and key Evaluation Findings. Presented at the Agency and Courts Meeting, Washington DC, August 2009, Mark Testa, George Gabel, John Tuohy, Elizabeth Black, Leslie Cohen, Erwin McEwen.

<sup>5</sup> Testa, M. Subsidized Guardianship: Testing the Effectiveness of an Idea Whose Time Has Finally Come, Children and Family Research Center, May 2008...on Children and Family Research Center Web Site.

<sup>6</sup> Assisted Guardianship Waiver Demonstrations: Lessons in Implementing a New Permanency Alternative and key Evaluation Findings. Presented at the Agency and Courts Meeting, Washington DC, August 2009, Mark Testa, George Gabel, John Tuohy, Elizabeth Black, Leslie Cohen, Erwin McEwen.

<sup>7</sup> Summary of Subsidized Guardianship Waiver Demonstration, prepared for the Children's Bureau ACYF, Prepared by James Bell, July 2009.

<sup>8</sup> Illinois Subsidized Guardianship Waiver Demonstration: Final Evaluation Report *Testa, M.F., Cohen, L., & Smith, G. with Westat, Inc, July, 2003.*

<sup>9</sup> Subsidized Permanent Guardianship Assessment and Evaluation, Submitted to the Tennessee Department of Children and Family Services on January 15, 2010 by Children and Family research Center and Westat.

<sup>10</sup> Conditions of Children in or at Risk of Foster Care in Illinois: An Assessment of Their Safety, Stability, Continuity, Permanence and Well-Being, In Press 2009) Editors Tami Fuller.

**ALTERNATIVES TO TERMINATION WORKSHOP**  
 Statewide CINA Conference: Safe Children, Strong Families  
 Wednesday, October 10, 2012

From: <http://www.elders.uaa.alaska.edu/reports/>

Comparison Table: Three Types of Adoptions Source

Cultural Adoption	Tribal Adoption	Western Adoption
Culture Inherent sovereignty, Montana v. United States, 450 U.S. 544, 564 (1981)	Federal Indian Law recognizing the modern day successors to historical bands of Natives. Concurrent jurisdiction with State 25 USC 1322(c)	Alaska State Statutes Title 25, Chapter 23 Note the State of Alaska judicial law does not necessarily recognize full concurrent Tribal jurisdiction over child custody

Examples

Cultural Adoption	Tribal Adoption	Western Adoption
Most Inupiat middle aged adults living today on the North Slope have a sibling or a cousin who was adopted in this manner. It could be as simple as a young mother passing a child to an elder "because that elder had no little ones at home." This was a legal adoption where the traditional culture recognized the resulting relationship between the grandparent and grand child as similar to a western parent – child relationship.	This is rarely done in Alaska but is more common among lower 48 tribes. The legal basis is the federal Indian civil rights act which recognizes the inherent jurisdiction of recognized tribal governments over their members. Legal Basis 25 USC. 1903(5)	Most non-Natives think of this process as an adoption. The process usually involves attorneys, some degree of governmental administrative review, and then court system implementation resulting in a court order. 7 AAC <a href="#">05.700(b)</a> AS. Title 25.Chapter 23 AS 47.10

Structures and Process

Cultural Adoption	Tribal Adoption	Western Adoption
Can be carried out by individuals. Culturally defined recognized traditional process within the tribe, or cultural band, Native village or traditional clan authority such as an Elders Council. Or simply individuals acting consistent with recognized cultural tribal norms as in the above example. The adoption is complete when the community consensus accepts it as consistent with the traditions and culture. No writing is required. Many Western entities will recognize these adoptions though sometimes requiring additional information from church records, medical records or affidavits. The state of Alaska generally requires that Tribal adoption process also occur and that Western Administrative action also occur.	Tribal council or by an entity such as a tribal court or an elders council with delegated authority. In Alaska Tribal Councils have use this process to simply convert a cultural adoption into a tribal adoption by a short Tribal Resolution that recognizes a prior cultural adoption. Tribal Adoptions in the lower 48 mimic the administrative and legal procedures and formality of the state systems. State of Alaska will recognize Tribal Adoptions carried out consistent with this process (even cultural adoptions that have been formalized by a tribal process). 15 AAC 125.845	Executive and Judicial Action The process often requires the assistance of an attorney. The process is explained in a detailed attachment. 25.23.173 25 USC 1951 ICWA(sec 301(a)

Values

Cultural Adoption	Tribal Adoption	Western Adoption
Best interests of the community based on Traditional cultural values	Depends on which process was used	Standard: best interests of the child based on western values.

Cultural Outcome

Cultural Adoption	Tribal Adoption	Western Adoption
Does not terminate birth relationships, but rather expands significance of new relationships.	A hybrid system results when the preliminary process was an outgrowth of an ICWA custody process.	Terminates prior family cultural relationships AS 25.23.180 Secrecy 25.23.150

## **ADDITIONAL RESOURCES**

### **National Resources**

American Bar Association, *Judicial Guide to Implementing the Fostering Connections to Success and Increasing Adoptions Act of 2008* available at [www.childrensdefense.org](http://www.childrensdefense.org)

Annie E. Casey Foundation, *Child Welfare/Permanence Knowledge Center* (variety of publications and fact sheets related to permanency options, support for kinship care, and older youth available at [www.aecf.org/KnowledgeCenter/ChildWelfarePermanence.aspx](http://www.aecf.org/KnowledgeCenter/ChildWelfarePermanence.aspx))

National Conference of State Legislatures, *Moving Children Out of Foster Care*, available at [www.ncsl.org/documents/cyf/movingchildrenoutofcare.pdf](http://www.ncsl.org/documents/cyf/movingchildrenoutofcare.pdf)

National Resource Center for Permanency and Family Connections, *Guardianship: A Web-Based Primer*, available at <http://www.nrcpfc.org/toolkit/guardianship/continuum4.htm> (web-based program describing differences between delegations of parental authority, temporary guardianships and permanent guardianships)

Pennsylvania Child Welfare Center, *Achieving Permanency for Children in Kinship Foster Care*, available at <http://www.pacwrc.pitt.edu/DiversityTaskforce.html> (online training curriculum with handouts on determining permanency options and extended family supports)

United States Department of Health and Human Services, *Child Welfare Information Gateway, Achieving and Maintaining Permanency* available at [www.childwelfare.gov](http://www.childwelfare.gov) (wealth of information on different permanency options and various publications with evidence-based assessments of what works from various states and national organizations)

### **Alaska Specific Resources**

Child Welfare League of America (CWLA), *Alaska's Children 2012*, Fact Sheet on child welfare in Alaska, available at [www.cwla.org/advocacy/statefactsheets/2012/alaska.pdf](http://www.cwla.org/advocacy/statefactsheets/2012/alaska.pdf)

Office of Children's Services, *Adoption & Guardianship Information*, <http://www.hss.state.ak.us/ocs/Publications/default.htm>

University of Alaska Elder Education Project, *Grandparents Raising Their Grandchildren: Cultural Adoption*, available at <http://elders.uaa.alaska.edu/pubs.htm>

## **NOTES ON CASE HYPOTHETICALS**