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SENATE FAMILY LAW REVIEW TASK FORCE

REPORT

JANUARY 24, 1991

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I. BACKGROUND

The Family Law Review Task Force was created in June 1990 during the special session of the Alaska State Legislature. In response to growing concerns from citizen's groups which had several different but overlapping concerns - child support and custody issues, family court procedures, child protective services and the conduct of Judge Victor D. Carlson - Senator Jack Coghill (Nenana) accepted the position of chair of the Task Force. The Task Force was not immediately funded however, and operated with a single volunteer staff person until August 1, 1990 when this person became a full-time Special Assistant.

The Task Force held a series of three public hearings in Anchorage which were teleconferenced to several other sites. Senator Paul Fischer (Kenai) and Representative Walter Furnace (Anchorage) joined Senator Coghill for these hearings. Over 250 people submitted testimony, both in written and oral form. Twenty-eight people testified confidentially, fearful primarily of reprisals from either agency or court personnel who were still involved in their cases. The mission statement, summaries of the testimony and complete transcripts are available for review.

The Task Force had originally scheduled a fourth hearing to receive public comments on administrative rules and regulations as well as suggested legislative changes in the area of family law. This hearing was replaced with a workshop scheduled for early February. The Task Force is soliciting public opinion on legislative changes and will submit this material to the workshop participants. Their draft will then be available for public comment before it is submitted to the Legislature.

With the submission of the draft from the workshop, the mission of the Task Force will be completed. Without the authority of a Committee, it will be difficult if not impossible to continue the work that the Task Force and many citizens have begun. Even a casual review of the testimony given reveals the pain, anguish and anger of many Alaskans who have become embroiled in this state's family law system, the very system that is supposed to help them. The people who testified, many of whom were afraid for their families, many of whom did not expect justice to prevail in their own cases but simply did not want anyone else experience their pain, these people will certainly be disappointed if not enraged if the Task Force's work product is reduced to yet another report on the shelf.

To quote one Sitka woman who submitted testimony,

"Politicians are fond of referring to the "silent majority." I ask that you and the Task Force keep in mind the silence of poverty and that it lasts for generations. Please do not

consider laws less strict than those in place for to do so would ensure that the poor remain without the hope of a voice except the one which some day may howl in rage."

II. CONCLUSIONS

It is clear from the six days of testimony and the voluminous amount of written material that the Alaska family law system is often hindering families more than it is helping them. The current family court system is viewed by those testifying as overburdened, disinterested in families, inadequately informed on family and child issues and oriented toward adversarial and litigious solutions rather than mediation and cooperation. The heavy caseload, the current backlog and the fact that family cases are pre-empted by criminal cases can prolong divorce and custody cases for months and even years, adding emotional stress and financial burden to already distressed families.

The referral agencies include the Guardian Ad Litem program (GAL) run by the Office of Public Advocacy, Child Support Enforcement Division (CSED), and the Division of Family and Youth Services (DYFS). Generally speaking, they are viewed as not accountable for their actions, more interested in protecting the agencies than in providing adequate services, nonresponsive, obstructionist and disingenuous. They are also viewed as seriously understaffed, overburdened and poorly trained, with their mandates and attendant responsibilities and problems underappreciated and often ignored by the legislature and the administration.

III. RECOMMENDATIONS

A. The Task Force

The Task Force should become a Legislative Committee. The workshop activities are certainly the concerns of a committee rather than a task force. A committee would also have the power of subpoena, thus making possible the investigation of cases presented by testimony, the investigation of alleged wrongdoing by state workers, access to confidential records of DFYS and the court and, if deemed appropriate, further investigation of the actions of Judge Carlson. A committee would also have more power to effect the suggested legislative and administrative changes.

B. Legislative Changes

1. Family law issues must become a higher legislative priority.
 - i. Custody, visitation, mediation, disillusionment issues need comprehensive legislation.

- ii. Child welfare issues of the required standards for the removal of children from their homes, confidentiality, runaway children and reporting guidelines need greater specificity.
 - iii. Child support guidelines which are currently established by a court ruling, need to be adopted by the Legislature.
2. A separate family court system should be re-established.
 3. State statutes must be made consonant with federal statutes.
 4. A Family Commission should be established.

C. Administrative Changes

1. The potential for costly and embarrassing litigation by disgruntled clients is very high. An investigation into some of the cases described in the testimony is warranted, possibly by Legislative Committee staff. Agencies should have an external compliance units responsible for future inquiry of their cases.
2. All agency staff must be accountable for their actions.
3. The Division of Family and Youth Services seems to be in a state of crisis. Major changes in its administration, caseload, case management system, training and supervision of line staff, foster care, after-care and in-home services must be made.
4. The agencies must work to improve their public relations. While working with families in crisis is stressful, a level of compassionate professionalism is to be expected. These agencies exist to serve the public.
5. The issue of confidentiality must be addressed, both by the legislature and by the agencies. While the safety of children must not be compromised, families must not feel that they are denied significant information in their own cases.

IV. SPECIFIC AREAS OF CONCERN

A. Judge Victor D. Carlson

Testimony was given at all three hearings concerning Judge Victor D. Carlson. These complaints outnumbered the total number of complaints on all other judges. This may be due, in part, to the fact that he was the family court judge in Anchorage for so many years. He also has the highest rate of overturned decision. The testimony included request for his removal from the bench, impeachment, and investigation into his alleged personal contact

with minor males. Several people requested that his judicial decisions should be investigated. The Task force is submitting a complaint to the Commission on Judicial Conduct. This confidential complaint does not include information about Carlson's judicial decisions, since investigating these decisions is beyond the jurisdiction of the Commission.

B. Family Court

The court's methods for handling Interim custody procedures are often viewed as peremptory and unfair, particularly since this interim stage can be so lengthy. Some of the participants charged the court with condoning perjury in domestic cases. Often they had trouble differentiating between the problems caused by the court and problems which were in reality caused by angry and occasionally vicious spouses.

The Custody investigator's office, which is under the jurisdiction of the court also received attention. Several people thought that the custody investigators were not sufficiently thorough or neutral in their investigations. The most frequent complaint concerned the length of time it took to schedule and complete an interview. The current waiting period for the first appointment is 4 months.

Suggestions:

1. The current system needs to be evaluated carefully with the goal of re-establishing separate family court.
2. Better training for family court staff is necessary.
3. The caseload of the custody investigator's office needs review to determine the reason for its backlog and delay in processing cases.
4. The suggestions on changing the system for election and retention of judges, preemptory challenge of judges, limiting the terms of office, etc. should be considered.

C. Referral Agencies

a. Child Support Enforcement Division (CSED)

CSED is viewed as a collection agency with little or no concern for families and which views all obligors as willfully and maliciously withholding support from their routine or require further investigation are often delayed. Conflicting and constantly changing federal and state statutes exacerbate this problem, particularly if the individual caseworkers are not familiar with the changes. If the participants are

uncooperative, combative or malicious, the staff is often disinterested in working with them, perhaps with some justification. The issue of child support payments becoming a hardship on subsequent families was fiercely debated.

Suggestions:

1. Child support guidelines must be established by legislation rather than by court ruling.
2. Caseworkers must have training in new regulations and reasonable caseloads.
3. If arrearage have accrued while the obligee was on Public Assistance, payments should be made first to the obligee and family rather than taken by the state as reimbursement for previous welfare payments.
4. The right of a child to a reasonable relationship with both parents must be protected as rigorously as that child's right to reasonable financial support.
5. Obligees who do not receive support payments regularly and without valid reason must have recourse.
6. The total number of children supported by an obligor must be considered so that subsequent children are not impoverished by support to previous children and that first children are guaranteed reasonable financial care. Existing circumstances of both parents must be considered.

b. Guardian Ad Litem program

The most frequently heard complaint of the Guardian as Litem program concerned the training, supervision and accountability of the staff. GALs were viewed as not working in the best interests of the child but rather biased toward one parent. Non-attorney GALs were praised for their compassion, but criticized for their lack of training.

Suggestions:

A more comprehensive training program for both supervisors and line staff should be implemented.

c. Division of Family and Youth Services

The complaints about DFYS covered a wide range of topics:

1. DFYS staff take custody of children unnecessarily and then to justify the actions with additional minor charges.

2. DFYS is adversarial and authoritarian toward parents and does not work to reunite families.

3. The burden of proof in abuse cases, primarily sexual abuse cases, should be on the state, not the accused. DFYS has a lower standard of proof for removing children for abuse than exists for criminal prosecution. If criminal charges are pending, in accordance with Judge Carlson's MJG decision the state must wait until the case is prosecuted before addressing the child custody issue. The state will often drop the charges or not prosecute in the case of a very young child, but this child will not be returned home. Thus a parent can lose custody of a child based on DFYS' accusations, but must prove innocence rather than the state proving guilt. DFYS, in its legitimate attempts to protect the child, may be violating the constitutional rights of the parent, including the right for the accused to face the accuser.

4. If the non-offending parent does not think that the accused parent is responsible for the abuse or does not agree that abuse has taken place, DFYS will often deny that parent custody or visitation as well, since the non-offending parent's stance is viewed as "non-supportive" to the child.

5. DFYS staff is untrained in identifying child victims of sexual assault, thus leading to the overzealous removal of children in some cases and the improper dismissal of significant signs and symptoms in others.

6. Damage done to the child during the investigative process can be more injurious than the original damage done by parents.

7. The caseloads are far too large to provide adequate services, 1-1/2 to 2 times larger than the accepted norm. DFYS staff can only respond to cases where there is an apparent immediate risk of harm. This has resulted in inadequate case management, poor placement plans, faulty communication with parents, incomplete or poorly structured treatment plans, the hasty and often unnecessary removal of children from their homes and painful delays in returning them. The high caseload as well as personal liability, risk of personal injury, high stress and poor management have caused a very high rate of staff turnover. This constant change in caseworkers also causes stress to the clients.

8. DFYS has confidentiality guidelines which do not allow for the parent to follow their case or receive information about their child which they as parents deem a necessity and their parental right. DFYS is also reluctant to release any information, even that which is not confidential.

9. There is no comprehensive or effective program for victims of child sexual assault. It is widely recognized that these victims require more services than others, are more likely to commit

crimes than non-victims and have a greater chance of becoming perpetrators themselves.

10. Problems with foster care have led to complaints by parents of poorly trained, unqualified and abusive foster parents, and complaints by foster parents of ineffective, hostile, uncooperative social workers and a dysfunctional system which does not support their work nor adequately fund them.

11. There is a large and growing number of children who are not properly cared for by their families and who do not receive adequate services. The Alaskan rates of child sexual assault, adolescent suicide and adolescent substance abuse are among the highest in the nation.

Suggestions:

1. As discussed in the Recommendations, DFYS seems to be in state of crisis. This division must address its management problems immediately, possibly by increasing its field staff and decreasing its large number of administrators.

2. Caseloads must be reduced to a reasonable and manageable level.

3. Foster parents should receive better training, greater recognition and should be more involved with the case plans.

4. Special services for sexual abuse victims is essential.

5. Case workers need better training, including training in the identification of sexual assault victims. Supervisors need more supervisory experience and training.

6. Caseworkers must be relieved of their paralegal responsibilities so that they can concentrate on providing good social work.

D. Miscellaneous Concerns

a. The Commission on Judicial Conduct is viewed as secretive and protective of judges rather than the public.

b. Alaska Legal Services is viewed as understaffed and biased against men.