
NOTES

Protecting Alaska's Children from Neglect: The Appropriate Legislative Response to *In re S.A.* and *R.J.M. v. State*

This Note analyzes two recent Alaska Supreme Court decisions that limit the state from assuming jurisdiction over certain types of neglected children. The Note urges the Alaska Legislature to adopt a proposed amendment to the Children in Need of Aid ("CINA") chapter that will counter the judicial interpretation of the existing chapter and permit the state to intervene on the behalf of neglected children. Specifically, the proposed amendment would provide protection for children who suffer from current and/or prospective emotional and mental neglect. The Note argues that the proposed amendment would allow the state an "appropriate" level of authority to intervene in a family and would permit the state to achieve the original goals of the CINA chapter.

I. INTRODUCTION

The Alaska Supreme Court has jeopardized Alaska's ability to protect its children through two divided opinions that have sharply curtailed when children can be found to be children in need of aid ("CINA") under Alaska statutory law. In January 1996, the supreme court in *In re S.A.*¹ overruled three of its own cases and decided that Alaska courts do not have jurisdiction to intervene on a child's behalf based solely on evidence that a parent is willing but unable to provide for a child's needs.² In September 1997, the su-

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1. 912 P.2d 1235 (Alaska 1996).

2. See *id.* at 1241 (overruling *In re A.M.*, 891 P.2d 815, 824 (Alaska 1995), *In re T.W.R.*, 887 P.2d 941, 945 (Alaska 1994), and *In re J.L.F.*, 828 P.2d 166, 170

preme court in *R.J.M. v. State*³ decided that Alaska courts do not have jurisdiction to intervene to protect a child based solely on evidence that the child has suffered emotional neglect.⁴ While many children in need of aid remain unaffected by these two decisions because they are protected by other subsections of the CINA jurisdiction section,⁵ these decisions decidedly have left children vulnerable in certain cases of neglect.⁶

In response to the first decision, the Alaska legislature considered amending the CINA jurisdiction section to allow the state explicit authority to intervene on behalf of a child who does not have a parent "able to care" for him or her.⁷ The legislation was not adopted because the proposed amendment was too controversial.⁸ Legislators and commentators considered the term "able" too broad,⁹ and they were concerned that the term might lead to discrimination against handicapped parents.¹⁰

The Alaska Department of Law responded to these concerns by proposing a narrower amendment to the CINA jurisdiction section.¹¹ Avoiding the broad language of the earlier legislative approach, the Department of Law's new proposal concentrated on protecting children from emotional, mental, and prospective ne-

(Alaska 1992) "to the limited extent that those cases stated that ability to care may be considered under subsection [(a)(1) of the CINA statute, ALASKA STAT. § 47.10.010 (Michie 1996)]").

3. No. S-7666, 1997 WL 578538 (Alaska Sept. 19, 1997).

4. *See id.* at *6-*11.

5. *See* ALASKA STAT. § 47.10.010(a)(2)-(6) (Michie 1996).

6. *See* Memorandum from Jan Rutherford, Assistant Attorney General for the State of Alaska, to Hon. Kay Brown, Alaska State Representative 1-4 (Mar. 22, 1996) (on file with author); Memorandum from Jan Rutherford, Assistant Attorney General for the State of Alaska, to Hon. Norman Rokeberg, Alaska State Representative 5-10 (Mar. 13, 1996) (on file with author).

7. Judiciary Committee Substitute for H.R. 339, § 2, 19th Leg., 2nd Sess. (Alaska 1996), available in <<http://www.legis.state.ak.us/folio.cgi/me19/query=jump!3a!27hb0339a!27/doc/@1447?>>.

8. *See* Telephone Interview with Hon. Norman Rokeberg, Alaska State Representative (Feb. 13, 1997).

9. *See* Memorandum from Blair McCune, Assistant Public Defender, Alaska Public Defender Agency, to John Salemi, Director, Alaska Public Defender Agency 1 (Mar. 5, 1996) (on file with author).

10. *See* Alaska State Legislature Folio Infobase Web Server, 19th (1995-1996) *Legislature Bill Tracking and Information*, H.R. 339, Feb. 15, 1996 House Health, Education & Social Services Committee Minutes, 21-22 (visited Mar. 2, 1997) <<http://www.legis.state.ak.us/folio.cgi/cm19/query=jump!3A!27hb339hes021596!27/doc/@3002?>> [hereinafter February 15, 1996 Committee Minutes].

11. *See* Memorandum from Jan Rutherford, Assistant Attorney General for the State of Alaska, to Hon. Fred Dyson, Alaska State Representative 2-4 (Mar. 6, 1997) (on file with author).

glect.¹² The amendment would define the term neglect to mean the "deprivation of the child's physical, mental or emotional needs."¹³ The proposal narrowed in on protecting children in certain cases of neglect because children in other harmful situations were still protected by other subsections of the jurisdiction section.

The Department of Law's proposal has become more timely in the wake of the more recent *R.J.M.* decision. The amendment was introduced after *S.A.* because at that time it appeared there were gaps in the state's ability to protect its children. Now, *R.J.M.* has made clear that the CINA jurisdiction section contains a serious gap in its ability to protect children in certain cases of neglect.

This Note encourages the Alaska legislature to adopt the Department of Law's proposal because it provides the statutory foundation necessary for the protection of Alaska's children. Part II of the Note provides a background for the Department's proposal. Part III provides descriptions of the previous legislative proposal and the Department of Law's current proposal. Part IV argues that the Department's current proposal should be adopted because (1) children should be protected from emotional, mental, and prospective neglect, (2) the proposal provides an appropriate standard for intervention, and (3) the proposal is consistent with the rest of the CINA chapter.

II. BACKGROUND

A. Alaska's CINA Jurisdiction Section

The critical issue for an Alaska juvenile court in a child abuse, neglect, or abandonment case is whether a minor qualifies as a child in need of aid under Alaska statute.¹⁴ In making this determination, the court follows the standards laid out in the jurisdictional section of the CINA chapter, which gives the court the legal authority to intervene in the life of a family to protect a child.¹⁵ Ultimately, the section can provide a court with the authority to terminate parental rights.¹⁶

The section delineates the following six circumstances in which a court should find that a child is in need of aid:

- (1) the child being habitually absent from home or refusing to

12. *See id.*

13. *Id.*

14. *See* ALASKA STAT. § 47.10.010(a) (Michie 1996); *see also* TERESA W. CARNS ET AL., ALASKA JUDICIAL COUNCIL, IMPROVING THE COURT PROCESS FOR ALASKA'S CHILDREN IN NEED OF AID 22 (1996). An edited version of the Alaska Judicial Council report may be found at 14 ALASKA L. REV. 1 (1997).

15. *See* ALASKA STAT. § 47.10.010(a).

16. *See id.* § 47.10.080(c)(3).

accept available care, or having no parent, guardian, custodian, or relative caring or willing to provide care, including physical abandonment by . . . [the child's parent or parents;]

(2) the child being in need of medical treatment to cure, alleviate, or prevent substantial physical harm, or in need of treatment for mental harm as evidenced by failure to thrive, severe anxiety, depression, withdrawal, or untoward aggressive behavior or hostility toward others, and the child's parent, guardian, or custodian has knowingly failed to provide the treatment;

(3) the child having suffered substantial physical harm or if there is an imminent and substantial risk that the child will suffer such harm as a result of the actions done by or conditions created by the child's parent, guardian, or custodian or the failure of the parent, guardian, or custodian adequately to supervise the child;

(4) the child having been, or being in imminent and substantial danger of being, sexually abused either by the child's parent, guardian, or custodian, or as a result of conditions created by the child's parent, guardian, or custodian, or by the failure of the parent, guardian, or custodian adequately to supervise the child;

(5) the child committing delinquent acts as a result of pressure, guidance, or approval from the child's parents, guardian, or custodian;

(6) the child having suffered substantial physical abuse or neglect as a result of conditions created by the child's parent, guardian, or custodian.¹⁷

Most of these subsections have not created substantial controversy and have been afforded their plain meaning by the courts.¹⁸ Subsections (a)(1) and (a)(6), however, have provoked litigation concerning their coverage.¹⁹ The *S.A.* case and the original proposal concern subsection (a)(1).²⁰ The *R.J.M.* case and the Department's current proposal concern subsection (a)(6).²¹ This note will concentrate primarily on these two subsections.

B. Subsection (a)(1) and the *In re S.A.* Decision

The core question under subsection (a)(1) is whether the inability of a parent to provide care authorizes a court to find a child in need of aid. The subsection states that a child is in need of aid as a result of "the child . . . having no parent, guardian, custodian,

17. *Id.* § 47.10.010(a)(1)-(6). The term "neglect" is not defined in the "Delinquent Minors and Children in Need of Aid" chapter. *See id.* § 47.10.

18. *See* CARNS ET AL., *supra* note 14, at 23.

19. *See, e.g., R.J.M. v. State*, No. S-7666, 1997 WL 578538, at *6-*11 (Alaska Sept. 19, 1997); *In re S.A.*, 912 P.2d 1235, 1239-42 (Alaska 1996).

20. *See S.A.*, 912 P.2d. at 1239-42.

21. *See R.J.M.*, 1997 WL 578538, at *6-*11.

or relative caring or willing to provide care”²² “Caring” and “care” are defined as “provid[ing] for the physical, emotional, mental, and social needs of the child.”²³ Subsection (a)(1) clearly protects three types of children: (1) a child who has run away from home; (2) a child who has been abandoned; and (3) a child whose parent is unwilling to care for him. A question that has arisen repeatedly is whether the subsection protects a fourth type of child: one whose parent is unable to care for him or her.²⁴

Inconsistent messages from the Alaska Supreme Court between 1988 and 1995 created confusion over the subsection’s interpretation. The supreme court indicated in four cases that subsection (a)(1) permits a court to find a child in need of aid due to parental inability to care for him or her.²⁵ In one case, the court quoted an earlier decision stating that “a finding of inability to care would be grounds for jurisdiction under subsection [(a)(1)]”²⁶

Yet, during the same period, the court indicated in another decision that the subsection permits a finding of jurisdiction only when a parent is both unable *and* unwilling to provide care.²⁷ In that case, the court specifically examined the parent’s willingness to care for the child.²⁸ The court rejected the State’s attempt to combine willingness and ability to care, explaining that “the State’s conflation of willingness to care and ability to satisfy needs leads to absurd conclusions.”²⁹

In *S.A.*, a divided supreme court thoroughly analyzed the subsection for the first time and concluded that subsection (a)(1) does not allow a court to protect children solely on evidence that the parents are unable to care for them.³⁰ It explicitly overruled three of the cases that had stated courts could make a CINA determination simply based on evidence that the children’s parents were unable to care for them.³¹

22. ALASKA STAT. § 47.10.010(a)(1).

23. *Id.* § 47.10.990(1).

24. *See, e.g., S.A.*, 912 P.2d at 1239; *In re A.M.*, 891 P.2d 815, 824 (Alaska 1995); *In re T.W.R.*, 887 P.2d 941, 945 (Alaska 1994); *F.T. v. State*, 862 P.2d 857, 861 (Alaska 1993); *In re J.L.F.*, 828 P.2d 166, 169-70 (Alaska 1992).

25. *See A.M.*, 891 P.2d at 824; *T.W.R.*, 887 P.2d at 945; *J.L.F.*, 828 P.2d at 170; *R.C. v. State*, 760 P.2d 501, 504-05 (Alaska 1988).

26. *T.W.R.* 887 P.2d at 945 (quoting *J.L.F.*, 828 P.2d at 170).

27. *See F.T.*, 862 P.2d at 861.

28. *See id.*

29. *Id.*

30. *See In re S.A.*, 912 P.2d 1235, 1238-42 (Alaska 1996).

31. *See id.* at 1241-42 (overruling *In re A.M.*, 891 P.2d 815, 824 (Alaska 1995); *In re T.W.R.*, 887 P.2d 941, 945 (Alaska 1994); *In re J.L.F.*, 828 P.2d 166, 170 (Alaska 1992)). The court did not mention *R.C.*, which had also stated that a

The court based its decision on the plain language of the subsection and on the structure and purpose of the CINA statute.³² It concluded from its plain-language analysis that the provision “caring or willing to provide care” means that a parent needs to either be able to care or be willing to care, not both.³³ The court rejected the State’s argument that the legislative definition of the terms “care” and “caring” for this subsection changes this reading.³⁴ The court noted that

plugging the definition [of “care” and “caring” into the subsection] . . . results in the following: “having no parent . . . providing for the physical, emotional, mental, and social needs of the child or willing to provide for the physical, emotional, mental, and social needs of the child.” The statute still would not require ability to care — willingness is enough.³⁵

The court also concluded that its interpretation of subsection (a)(1) fits into the structure and purpose of the jurisdiction section, which is intended to protect children from specific instances of “severe parenting deficiencies.”³⁶ The court explained that the subsequent subsections cover the inability to provide medical treatment, conduct that causes or creates a substantial risk of substantial physical harm, sexual abuse, a parent’s encouragement of a minor’s delinquent acts, and physical abuse and neglect.³⁷ The court stated that subsection (a)(1) fits into this structure because it covers “situations where the parent abandons the child, the child runs away, or the child refuses to accept the parent’s care.”³⁸

Based on this analysis, the court gave three reasons why, given the structure and purpose of the jurisdiction section, ability to care is not relevant under the subsection.³⁹ First, the State’s interpretation that the subsection allows jurisdiction based on parental inability “would permit CINA adjudications based on parenting deficiencies much less severe than those covered” in the other subsections.⁴⁰ Second, the other subsections “set clear, specific standards for adjudicating a child [to be a child in need of aid] based on a parent’s inability to care,”⁴¹ distinguishing them from

CINA determination could be based on parental inability. *See* R.C. v. State, 760 P.2d 501, 504-05 (Alaska 1988).

32. *See* S.A., 912 P.2d at 1239.

33. *See id.*

34. *See id.* at 1239-40.

35. *Id.* at 1240.

36. *Id.*; *see also* ALASKA STAT. § 47.10.010(a)(2)(B)-(F) (Michie 1995), *amended by* ALASKA STAT. § 47.10.010 (a)(2)-(6) (Michie 1996).

37. *See* S.A., 912 P.2d at 1240.

38. *Id.* at 1241.

39. *See id.* at 1240.

40. *Id.*

41. *Id.*

the State's broad interpretation of the first subsection.⁴² Third, the remaining subsections would be virtually "superfluous" if a court could base a CINA adjudication simply on ability to care.⁴³

The dissent, which was written by Justice Eastaugh and joined by Justice Compton, had a different interpretation of the subsection.⁴⁴ The dissent read the subsection as focusing on two problems:

- (1) conduct of the child which deprives the child of available care ("the child being habitually absent from home," i.e., running away, or "refusing to accept available care"); and (2) want of a person (parent, or guardian, custodian, or relative) to provide care to the child ("the child . . . having no parent . . . caring or willing to provide care").⁴⁵

The dissent reasoned that the subsection addresses two situations but concerns one problem: deprivation of care.⁴⁶

Using this analysis, the dissent disputed what it deemed the majority's conclusion "that *willingness* to provide care can substitute for *delivery* of care."⁴⁷ The dissent argued that "caring" and "willing to provide care" were not equal alternatives, but were both conditions that have to be met in order for CINA jurisdiction to exist.⁴⁸ It reasoned that "jurisdiction exists if the child's needs . . . are not currently being met (no one is now 'caring' for the child), and . . . will not be met by other eligible persons (no one is 'willing to provide care' in the future)."⁴⁹ The legislature, according to the dissent, did not want good intentions to substitute for a child's receipt of care.

The Alaska Supreme Court has followed the *S.A.* decision in subsequent cases.⁵⁰ The court has clarified its interpretation of willingness,⁵¹ most recently in *R.J.M.*, finding that a lower court may look at more than just a parent's statement that he is "'willing to care for a child.'"⁵² A court must instead "look to objective conduct in determining whether a parent is willing to provide

42. *See id.*

43. *See id.*

44. *See id.* at 1243-45 (Eastaugh, J., dissenting).

45. *Id.*

46. *See id.*

47. *Id.* at 1244 (Eastaugh, J., dissenting).

48. *See id.*

49. *Id.*

50. *See In re J.L.F.*, 912 P.2d 1255, 1260 (Alaska 1996); *R.R. v. State*, 919 P.2d 754, 756-57 (Alaska 1996).

51. *See O.R. v. State*, 932 P.2d 1303, 1310 (Alaska 1997).

52. *R.J.M. v. State*, No. S-7666, 1997 WL 578538, at *13 (Alaska Sept. 19, 1997) (quoting *O.R.*, 932 P.2d at 1310).

care.”⁵³ This clarification did not change *S.A.*'s central holding that a court may not consider ability in subsection (a)(1).⁵⁴

C. Subsection (a)(6) and the *R.J.M. v. State* Decision

According to subsection (a)(6), a child who has “suffered substantial physical abuse or neglect as a result of conditions created by the child’s parent, guardian, or custodian” is a “child in need of aid.”⁵⁵ In *R.J.M.*, the supreme court considered whether the language of subsection (a)(6) limits the term neglect to substantial physical neglect.⁵⁶ In another divided decision, the supreme court in *R.J.M.* held that the “phrase ‘substantial physical abuse or neglect’ means ‘substantial physical abuse’ or ‘substantial physical neglect,’” thus removing CINA coverage from children who are the victims of emotional and other types of non-physical neglect.⁵⁷

There are three possible interpretations of the subsection: (1) “substantial” and “physical” could modify *both* abuse and neglect; (2) “substantial” could modify *both* while “physical” could modify *only* abuse; and (3) “substantial” and “physical” could modify *only* abuse.⁵⁸ The court reasoned that its reading was proper “as a matter of syntax alone.”⁵⁹ According to the court, placing the adjective “substantial” *both* with abuse and neglect while placing the adjective “physical” *only* with abuse strains the reading of the subsection.⁶⁰

The court also stated that the common definitions of “abuse” and “neglect” support its reading of the subsection.⁶¹ According to the court, “‘abuse’ means ‘wrong, bad, or excessive use[;] . . . mistreatment; [or] injury,’ while ‘neglect’ means ‘lack of sufficient or proper care; negligence[; or] disregard.’”⁶² The court reasoned that there is no difference between the quality or quantity of the harm here; the only difference is between active and passive harm.⁶³ Because of the similarity of abuse and neglect, the court reasoned that the same modifiers should be read for both.⁶⁴

The court also found this narrow reading to be consistent with

53. *Id.*

54. *See id.* (citing *In re S.A.*, 912 P.2d 1235, 1242 (Alaska 1996)).

55. ALASKA STAT. § 47.10.010(a)(6) (Michie 1996).

56. *See R.J.M.*, 1997 WL 578538, at *6.

57. *Id.* at *6.

58. *See id.* at *17 (Eastaugh, J., dissenting).

59. *Id.* at *6.

60. *See id.*

61. *See id.*

62. *Id.*

63. *See id.* at *6-*7.

64. *See id.*

the five other jurisdiction subsections.⁶⁵ Otherwise, according to the court, “we would convert subsection [(6)] from a provision stating a ‘clear specific standard[,]’ and describing a ‘serious form . . . of parental misconduct,’ into a general provision that would enable the State ‘to assume custody over any child who had needs the child’s parents could not meet.’”⁶⁶

Finally, the court rejected the State’s argument that the definition of neglect in the Child Protection chapter creates a different interpretation of the subsection because the court noted that the definition is restricted to that chapter alone.⁶⁷ Neglect is defined in the Child Protection chapter as “the failure by a person responsible for the child’s welfare to provide necessary food, care, clothing, shelter, or medical attention for a child.”⁶⁸ The court explained that the legislature could have a logical reason for having an expanded definition of neglect in that chapter for reporting purposes due to a desire for more information.⁶⁹ It also pointed out that the adjective *physical* would still be added to neglect even if the definition was used.⁷⁰

In another strong dissent, Justice Eastaugh joined by Chief Justice Compton disagreed with the court’s interpretation of the subsection, reading “substantial” to modify *both* abuse and neglect, but reading “physical” to modify *only* abuse and noting that the syntax does not preclude such a reading.⁷¹ The dissent further interpreted the subsection to include emotional neglect because “otherwise it would leave a substantial gap in coverage.”⁷² Such a gap would not fit with the jurisdiction section as a whole, according to the dissent, because the section provides “comprehensive protection.”⁷³

III. PROPOSED LEGISLATION

In response to the *S.A.* decision, two legislative proposals were made to protect the children left vulnerable by that decision. The first proposal was eventually withdrawn because it was too broad. The second proposal is the Department of Law’s proposal, which has become more timely as a result of the *R.J.M.* decision.

65. *See id.* at *8.

66. *Id.* (quoting *In re S.A.*, 912 P.2d 1235, 1240-41 (Alaska 1996)).

67. *See id.* at *10-*11.

68. ALASKA STAT. § 47.17.290 (10) (Michie 1996).

69. *See R.J.M.*, 1997 WL 578538 at *10-*11.

70. *See id.*

71. *See id.* at *17 (Eastaugh, J., dissenting).

72. *Id.*

73. *Id.*

A. Previously Proposed Legislation to Amend Subsection (a)(1)

After the *S.A.* decision, the legislature considered changing the CINA jurisdiction section, but withdrew the proposal when it became controversial.⁷⁴ At the time *S.A.* was decided, Representative Norman Rokeberg had already proposed legislation to deal with another problem within the CINA sections.⁷⁵ In its original form, the bill proposed to enable courts to terminate the rights of parents who were incarcerated for long periods of time.⁷⁶

When the *S.A.* decision was issued, Representative Rokeberg amended his bill.⁷⁷ The amendment proposed to change the language of subsection (a)(1) to allow CINA jurisdiction when a child has no parent willing *and* able to care for him or her,⁷⁸ reflecting the statute's interpretation before the *S.A.* decision.⁷⁹ The proposal garnered support from the Department of Law and the Director of the Division of Family & Youth Services ("DFYS").⁸⁰

Despite these endorsements, a number of legislators and the public defender's office raised concerns about the proposal. Specifically, two legislators were concerned that the term "able" might provoke discrimination against the handicapped.⁸¹ There was also a general concern that the amendment was too broad and would expand too substantially the number of children for whom the state could intervene.⁸² In the end, these concerns caused Representative Rokeberg to withdraw the section of the bill responding to *S.A.*,⁸³ deciding that he did not want to jeopardize the original bill.⁸⁴ The legislature passed the termination of parental rights bill into law on April 27, 1996, without a section responding to the *S.A.*

74. See February 15, 1996 Committee Minutes, *supra* note 10; see also Memorandum from Jan Rutherford to Hon. Norman Rokeberg, *supra* note 6; Telephone Interview with Hon. Norman Rokeberg, *supra* note 8.

75. See Act Relating to Children-In-Need-of-Aid Proceedings, H.R. 339, 19th Leg., 1st Sess. (Alaska 1995), available in <[http://www.legis.state.ak.us/folio.cgi/cm19/query=\[jump!3a!27hb0339a!27\]/doc/{@1447}?>](http://www.legis.state.ak.us/folio.cgi/cm19/query=[jump!3a!27hb0339a!27]/doc/{@1447}?>).

76. See *id.*

77. See February 15, 1996 Committee Minutes, *supra* note 10.

78. See *id.*

79. See *id.*

80. See *id.*

81. See Alaska State Legislature Folio Infobase Web Server, 19th (1995-1996) Legislature Bill Tracking and Information, Judicial Committee Substitute for H.R. 339, Feb. 22, 1996 House State Affairs Committee Minutes (visited Sept. 20, 1997) <[http://www.legis.state.ak.us/folio.cgi/cm19/query=\[jump!3A!27hb339sta022296!27\]/doc/{@4608}?>](http://www.legis.state.ak.us/folio.cgi/cm19/query=[jump!3A!27hb339sta022296!27]/doc/{@4608}?>).

82. See Memorandum from Blair McCune to John Salemi, *supra* note 9.

83. See Telephone Interview with Hon. Norman Rokeberg, *supra* note 8.

84. See *id.*

decision.⁸⁵

B. The Department of Law's Recent Proposal to Amend Subsection (a)(6)

In response to the concerns raised about the Rokeberg bill, the Department of Law proposed a new amendment to respond to the *S.A.* decision.⁸⁶ While the Department proposed the amendment before the *R.J.M.* decision, its proposal is even more timely in the wake of that decision.

The Department proposes that the legislature amend subsection (a)(6), rather than subsection (a)(1), and that it add a definition of neglect.⁸⁷ Specifically, the Department urges the legislature to amend subsection (a)(6) to state that a child is in need of aid as a result of "the child having suffered or being at substantial risk of suffering substantial neglect as a result of conditions created by the child's parent, guardian, or custodian."⁸⁸ The Department proposes that the legislature define neglect as "the failure to provide for a child's physical, *emotional*, or *mental* needs, including the failure to provide necessary food, clothing, shelter, or medical attention, or the failure to provide for the child's *emotional or intellectual* development."⁸⁹

This amendment would make a number of changes to subsection (a)(6).⁹⁰ It first would remove the previous language regarding "physical abuse."⁹¹ The term "physical" should be removed because it is covered already by subsection (a)(3)⁹² and because it ex-

85. See Act Relating To Children-In-Need-of-Aid Proceedings, H.R. 339, 19th Leg., 2nd Sess. (Alaska 1996), available in <[http://www.legis.state.ak.us/folio.cgi/me19/query=\[jump!3a!27hb0339a!27\]/doc/{@1447}?>](http://www.legis.state.ak.us/folio.cgi/me19/query=[jump!3a!27hb0339a!27]/doc/{@1447}?>).

86. See Memorandum from Jan Rutherford to Hon. Fred Dyson, *supra* note 11.

87. See *id.* at 3-4. By focusing on neglect, the proposal avoids the overly broad term "able" that was part of the Rokeberg bill. See *id.* at 2-4.

88. *Id.*

89. Alaska Department of Law, Proposed Amendments to ALASKA STAT. § 47.10.990, at 3 (1996) [hereinafter Department of Law Proposed Amendments] (emphasis added). This definition of neglect would be added to Alaska Statutes section 47.10.990 and pertain to Alaska Statutes section 47.10.010(a)(6). See Memorandum from Jan Rutherford to Hon. Fred Dyson, *supra* note 11, at 4.

90. The Department of Law also proposes that the legislature amend subsection (1) by deleting the language "including physical abandonment" and inserting in its place "or having been physically abandoned." Department of Law Proposed Amendments, *supra* note 89, at 1. This Note does not address this particular part of the amendment.

91. See Memorandum from Jan Rutherford to Hon. Fred Dyson, *supra* note 11, at 2-4.

92. See ALASKA STAT. § 47.10.010(a)(3) (Michie 1996).

cludes other types of harm.

However, the removal of “abuse” is more problematic. While child victims of “abuse” would still be covered by the term “neglect” — as the supreme court pointed out in *R.J.M.*, abuse and neglect are “little more than two sides of the same coin” and “these labels are often interchangeable”⁹³ — leaving “abuse” in the subsection would provide added protection. While “neglect” would provide explicit protection for those children harmed through a caregiver’s inaction, the term “abuse” would provide explicit protection for children physically, emotionally, or mentally harmed through a caregiver’s action. Therefore, this Note departs from the Department’s proposal on this one point and encourages the legislature to leave the term “abuse” in the subsection.

The Department of Law’s proposal also would change subsection (a)(6) to cover emotional and mental harm by adding the definition of neglect.⁹⁴ Finally, it would cover prospective neglect in the same way subsections (a)(3) and (a)(4) cover other types of prospective harm.⁹⁵

IV. THE LEGISLATURE SHOULD PASS THE DEPARTMENT OF LAW’S NEW PROPOSAL

As a result of the *S.A.* and *R.J.M.* decisions, the CINA jurisdiction section no longer protects children in cases of prospective, emotional, or mental neglect. Before these two decisions, such children were protected because the state had the authority to protect children whose parents were unable to care for them. Now that the supreme court has determined that the jurisdiction section does not allow such broad protection, the legislature should amend the state’s neglect jurisdiction. The legislature should pass the Department of Law’s new proposal.

This part of the Note will outline why the legislature should take this action. First, it will argue that the state should have the authority to protect children from prospective, emotional, and mental neglect. It will also discuss specific types of children who would be protected by the amendment. Next, it will indicate why the proposal provides for an appropriate standard of intervention. Finally, it will illustrate how the structure of the Department’s proposal is consistent with the rest of the CINA chapter.

93. *R.J.M. v. State*, No. S-7666, 1997 WL 5758538, at *7 (Alaska Sept. 19, 1997).

94. See Department of Law Proposed Amendments, *supra* note 89, at 3.

95. See Memorandum from Jan Rutherford to Hon. Fred Dyson, *supra* note 11, at 2-4.

A. Alaska Should Protect Children from Emotional, Mental, and Prospective Neglect

The Alaska legislature has stated that one of the purposes of the CINA sections is to serve the mental and emotional welfare of Alaska's children.⁹⁶ Despite this stated purpose, Alaska currently does not protect children from emotional or mental neglect as a result of the *S.A.* and *R.J.M.* decisions.⁹⁷

Experts believe that emotional harm is an extremely serious threat to a child's well-being.⁹⁸ Children who are deprived of emotional and mental support may suffer lasting damage, including behavioral problems, low school performance, pathology, dependency, and lack of self-control.⁹⁹ The legislature, therefore, should protect children from mental or emotional neglect — just as it protects children from physical neglect — by adopting the proposed amendment.

The amendment also would protect children from prospective neglect. Alaska currently protects children from prospective physical harm and prospective sexual abuse.¹⁰⁰ These children do not have to actually suffer harm before they are protected. In neglect cases, on the other hand, the state cannot protect children until they actually suffer harm.¹⁰¹ For instance, if a parent has three children and has physically harmed two of the children, the state can intervene on behalf of the third child, in addition to the first two children, if there is a substantial risk that the third child will suffer physical harm. However, in a similar scenario, if a parent neglects two of his children, the state cannot intervene on behalf of the third child until the third child actually suffers the neglect her siblings suffered.

Neglect may cause long-term harmful effects on children just as do physical harm and sexual abuse.¹⁰² Neglected children may

96. See ALASKA STAT. § 47.05.060.

97. See *R.J.M.*, 1997 WL 5758538, at *5-*9; *In re S.A.*, 912 P.2d 1235, 1241 (Alaska 1996).

98. See, e.g., James Garbarino, *Future Directions*, in CHILDREN AT RISK: AN EVALUATION OF FACTORS CONTRIBUTING TO CHILD ABUSE AND NEGLECT 291, 292 (Robert T. Ammerman & Michel Hersen eds., 1990) ("As research moves forward, there is growing recognition that psychological maltreatment is the common thread that binds together all forms of maltreatment and accounts predominantly for developmental outcomes.").

99. See generally Byron Egeland, *A Longitudinal Study of High-Risk Families: Issues and Findings*, in THE EFFECTS OF CHILD ABUSE AND NEGLECT: ISSUES AND RESEARCH 33 (Raymond H. Starr, Jr. & David A. Wolfe eds. 1991).

100. See ALASKA STAT. § 47.10.010(a)(3)-(4).

101. See *id.* § 47.10.010(a)(6).

102. See, e.g., NATIONAL RESEARCH COUNCIL, UNDERSTANDING CHILD ABUSE

suffer from failure to thrive, absence of physical growth, dwarfism, defiance, hostility, and risk of psychological harm.¹⁰³ If the state has convincing evidence that children are at grave risk of substantial neglect, the courts should have the power to authorize intervention to protect them before they are harmed.

While neglect laws vary widely in other states, a majority of states have laws that protect the type of children the proposed amendment would protect in Alaska.¹⁰⁴ Alaskan children deserve this same protection.

In order to illustrate the importance of the proposed amendment, the following will describe three types of children who could be protected by this amendment. These types of children are (1) children who witness domestic violence, (2) children of parents with substance abuse problems, and (3) children whose older siblings were previously neglected. This list is illustrative, not exhaustive.

AND NEGLECT 210, 210-11 (Anne C. Petersen et al. eds., 1993); Egeland, *supra* note 99, at 51-52.

103. See NATIONAL RESEARCH COUNCIL, *supra* note 102, at 210-11.

104. These states have laws in the following categories. Ten states protect children whose physical or mental health is endangered seriously due to parental inability, acts or omissions. See CAL. HEALTH & SAFETY CODE § 300(c) (West 1992); FLA. STAT. ch. 415.503(3) (1993); IND. CODE ANN. § 31-6-4-3(a)(1)-(2) (Michie 1987 & Supp. 1996); LA. CHILDREN'S CODE ANN. art. 603 (14) (West 1995); MD. CODE ANN., FAM. LAW § 5-701(p)(1)-(2) (1991 & Supp. 1996); MONT. CODE ANN. § 41-3-102(5)(a)-(b) (1995); S.C. CODE ANN. § 20-7-490(2)-(3) (Law Co-op. 1976 & Supp. 1996); VT. STAT. ANN. tit. 33, § 4912 (1974 & Supp. 1996); VA. CODE ANN. § 63.1-248-2(1),(5) (Michie 1995); W. VA CODE § 49-1-3(g)(1) (1996).

Four states and the District of Columbia protect children who are without proper parental care or control for their physical, mental, or emotional health. See D.C. CODE ANN. § 16-2301(9)(B) (1981); KAN. STAT. ANN. § 38-1502(a)(1)-(3) (1993 & Supp. 1994); MISS. CODE ANN. § 43-21-105(1) (1993 & Supp. 1996); N.H. REV. STAT. ANN. § 169-C:3XIX(b) (1984); N.D. CENT. CODE § 27-20-02(5)(a) (1991 & Supp. 1995).

Two states' statutes protect a child of a parent who is unable to provide for the physical, mental, or emotional needs of the child. See ARK. CODE ANN. § 12-12-503(6)(D) (Michie 1995); WASH. REV. CODE ANN. § 13.34.030(4)(c) (West 1993 & Supp. 1997).

Finally, several states have general statutes which protect children who lack adequate parental care. See ARIZ. REV. STAT. ANN. § 8-546(A)(6)-(7) (1989 & Supp. 1996); IDAHO CODE § 16-1602(t) (1979 & Supp. 1996); KY. REV. STAT. ANN. § 600.020(1) (Banks-Baldwin 1996); MO. REV. STAT. § 210.110(8) (1996); N.M. STAT. ANN. § 32A-4-2 (Michie 1978); N.C. GEN. STAT. § 7A-517(21) (1995); OHIO REV. CODE ANN. § 2151.03(A)(2)-(3) (1993 & Supp. 1997); OKLA. STAT. ANN. tit. 10 § 1101(4) (West 1987); OR. REV. STAT. § 419B.100(1)(e)(D) (1987); R.I. GEN. LAWS § 40-11-2(e) (1990); S.D. CODIFIED LAWS § 26-8A-2(2)-(5) (Michie 1992); UTAH CODE ANN. § 62A-4a-101(14) (1997).

1. *Children who witness domestic violence.* By providing jurisdiction over cases involving “substantial emotional neglect,” the proposal would reach children who suffer from long-term exposure to domestic violence. Courts in other states have begun to recognize the harmful emotional and psychological effects on children who witness their parents physically or verbally abuse each other over a long period of time and allow the protection of children in these situations.¹⁰⁵ Alaskan children should have this same protection.

A child's exposure to domestic violence may have extreme adverse impacts upon him or her.¹⁰⁶ Recent research has shown that witnessing domestic violence may affect a child as much as if the child actually had been physically harmed.¹⁰⁷ The child may suffer post-traumatic stress disorder (“PTSD”) or have emotional or behavioral problems that approach the severity of PTSD.¹⁰⁸ Witnessing domestic violence may also interfere with the child's development and cause the child to suffer from sleeplessness, poor grades, and/or substance abuse.¹⁰⁹ Male children who witness domestic violence are more likely to become abusers than other male children.¹¹⁰ Finally, child abuse and neglect are more likely to occur in families where spousal abuse occurs.¹¹¹

In 1996, more than 5,000 domestic-violence victims in Alaska sought services from programs funded by the Council on Domestic Violence and Sexual Assault.¹¹² The state should have the ability to protect children who repeatedly witness such domestic violence

105. See *In re B.M.*, 679 A.2d 891 (Vt. 1996); *Adoption of Ramon*, 672 N.E.2d 574 (Mass. App. Ct. 1996); *In re Heather A.*, 60 Cal. Rptr. 2d 315 (Ct. App. 1996); *In re Michael M.*, 591 N.Y.S.2d 681 (Fam. Ct. 1992); *In re Theresa*, 576 N.Y.S.2d 937 (App. Div. 1991).

106. See Phyllis E. Federico & Dr. Robert Kinscherff, *Custody of Vaughn: Impact of Domestic Violence on Child Custody: Children Are No Longer the Forgotten Victims*, 40 BOSTON BAR J. 8, 21 (1996) (“It is no longer scientifically controversial that exposure to violence may have profound and persisting adverse impacts upon children.”).

107. See Barry Zuckerman et al., *Silent Victims Revisited: The Special Case of Domestic Violence*, 96 PEDIATRICS 511, 511 (1995).

108. See *id.*

109. See *id.*

110. See David A. Wolfe & Barbara Korsch, *Witnessing Domestic Violence: Dusting Childhood and Adolescence: Implications for Pediatric Practice*, 94 PEDIATRICS 594, 597 (1994).

111. See *id.* at 594.

112. See Memorandum from Derrick Cedars, Administrative Clerk for the State of Alaska Council on Domestic Violence and Sexual Assault, to Janice Hill at the Department of Law (Apr. 3, 1997) (estimating the number of domestic violence victims for 1996 to be 5,196) (on file with author).

to help the children avoid emotional damage and to break the continuing cycle of violence.¹¹³

2. *Children of parents with substance abuse problems.* While the Alaska Supreme Court recently has allowed substance abuse to be considered in a CINA proceeding,¹¹⁴ the proposed amendment would more clearly allow courts to protect children of substance abusers from prospective neglect.¹¹⁵ Protecting such children is particularly important in Alaska. Of the children involved in CINA cases in Anchorage, 83% come from families where at least one parent has a serious substance abuse problem.¹¹⁶ Of the children in Alaska who were removed from their homes by DFYS, 13% were removed specifically because their parents were intoxicated at that time.¹¹⁷

While the state currently can gain custody of these children when a parent is under the influence of drugs or alcohol, the *S.A.* decision may enable the parent to regain custody if he shows a willingness to care for the child.¹¹⁸ For instance, a parent may have neglected a child on numerous occasions when the parent was under the influence of drugs or alcohol. This parent may have entered rehabilitation to regain custody of his child. If the parent begins to use drugs or alcohol again, the state may not be able to intervene until the child is actually neglected again. The proposed amendment would allow a court to determine before the child is neglected again whether there is a substantial risk that the child will suffer neglect due to the parent's relapse.¹¹⁹

113. See Memorandum from Jan Rutherford to Hon. Norman Rokeberg, *supra* note 6, at 9.

114. See *In re J.W.*, 921 P.2d 604, 608 (Alaska 1996) (stating that substance abuse is conduct sufficient to support a termination of parental rights, even when the person's status as an alcoholic is only an illness).

115. See Memorandum from Jan Rutherford to Hon. Norman Rokeberg, *supra* note 6, at 5-10.

116. See CARNES ET AL., *supra* note 14, at 49 (citing CITIZEN'S REVIEW PANEL FOR PERMANENCY PLANNING, 1995 ANNUAL REPORT 16 (1996)). According to the report, "[a]lcohol, cocaine and marijuana were the most frequently abused drugs." *Id.*

117. See *id.*

118. See Memorandum from Jan Rutherford to Hon. Norman Rokeberg, *supra* note 6, at 8-9.

119. In this circumstance, a court may find it has jurisdiction over the child under subsection (1) because the parent's relapse demonstrates a lack of willingness to care for the child. See *O.R. v. State*, 932 P.2d 1303, 1310 (Alaska 1997). This may not provide enough protection for the child due to the subjectivity of this test. The proposed amendment would provide further protection for such a child by making it clear that the court has jurisdiction if the child is in substantial dan-

3. *Children whose siblings were found to be neglected.* Finally, by providing jurisdiction over cases involving prospective neglect, the proposed amendment would enable an Alaska court to exercise jurisdiction over a child if the court determines that the child is in substantial danger of neglect due to a prior neglect adjudication of the child's sibling. For instance, the proposed amendment would cover a parent found guilty of substantially neglecting her children due to a severe psychiatric problem. If the parent has another child, and the parent's condition has not changed, then the proposal would allow a court to determine whether the new child is at substantial risk of suffering neglect.

Research on the correlation of sibling neglect to neglect of another child is surprisingly scarce. However, one commentator has noted that "one of the most obvious features of neglectful families is that everyone is neglected."¹²⁰

As a result of the *S.A.* decision, Alaska courts probably do not have jurisdiction to protect a child born to parents who already have substantially neglected their other children until she herself suffers substantial neglect.¹²¹ While courts may have sound reasons not to intervene in such a situation, the legislature should give courts the discretion to intervene when it is determined that there is a substantial probability that the child will suffer the same harm as the child's sibling. Neglect can cause severe and permanent harm to a child.¹²² The legislature should not force the courts to wait for a child to suffer such harm before it gives them authority to act.

B. The Proposal Provides An Appropriate Standard For Intervention

The legislature correctly refrained from passing the original proposal to change subsection (a)(1) to allow CINA jurisdiction when a parent is unable to care for a child.¹²³ The original proposal would have given the state too much authority to intervene in the life of a family. Now the legislature should avoid making the opposite mistake. If the legislature fails to pass the Department's current proposal, the state may be helpless to intervene on behalf of a child who is legitimately in need of aid.

ger of substantial neglect.

120. Patricia M. Crittenden, *Research on Maltreating Families: Implications for Intervention*, in THE APSAC HANDBOOK ON CHILD MALTREATMENT 158, 162 (John Briere et al. eds., 1996).

121. See Memorandum from Jan Rutherford to Hon. Fred Dyson, *supra* note 11, at 3.

122. See, e.g., Egeland, *supra* note 99, at 51.

123. See *supra* notes 81-85 and accompanying text.

Since the 1970s, legal scholars and child advocates have debated the extent to which states should have authority to intervene in the lives of families to protect a child.¹²⁴ Since no advocates argue that the state should have broad authority to intervene in the life of a family, the debate is limited to advocates of “minimum intervention” and advocates of “appropriate intervention.”

Advocates of minimum intervention argue that the state should have only the authority to protect a child in the most extreme cases of abuse and neglect.¹²⁵ These commentators have three principal concerns with intervention. First, they believe that intervention is harmful to a child.¹²⁶ Each child, they argue, has an innate need for a continuous bond with his or her parents.¹²⁷ If the bond is broken, a child will suffer permanent emotional damage.¹²⁸ Second, minimal interventionists believe intervention is not helpful to a child.¹²⁹ One commentator argues that a state does not have the resources to improve a child’s situation when it provides services to the parent or when it removes a child from her home.¹³⁰ In addition to a belief that states do not have the resources to help children, this commentator has considered the possibility that children in abuse and neglect situations may not need help. He questions the extent of the detrimental effects that non-life-threatening physical abuse, sexual abuse, or neglect has on children.¹³¹ Third,

124. See, e.g., Connie K. Beck et al., *The Rights of Children: A Trust Model*, 46 *FORDHAM L. REV.* 669 (1978); Michael Wald, *State Intervention on Behalf of “Neglected” Children: A Search for Realistic Standards*, 27 *STAN. L. REV.* 985 (1975); JOSEPH GOLDSTEIN ET AL., *BEYOND THE BEST INTERESTS OF THE CHILD* (1973) [hereinafter GOLDSTEIN, *BEYOND THE BEST INTERESTS*].

125. See James Donald Moorehead, *Of Family Values and Child Welfare: What is in the “Best” Interests of the Child?*, 79 *MARQ. L. REV.* 517, 521-26 (1996).

126. See JOSEPH GOLDSTEIN ET AL., *BEFORE THE BEST INTERESTS OF THE CHILD* 9 (1979) [hereinafter GOLDSTEIN, *BEFORE THE BEST INTERESTS*] (“When family integrity is broken and weakened by state intrusion, . . . [a child’s] needs are thwarted and his belief that his parents are omniscient and all-powerful is shaken prematurely. The effect on the child’s developmental progress is invariably detrimental.”).

127. See *id.* at 8-11.

128. See GOLDSTEIN, *BEYOND THE BEST INTERESTS*, *supra* note 124, at 20.

129. See, e.g., Wald, *supra* note 124, at 993.

130. See *id.*

131. “Except in cases where the beatings are so severe that death or maiming is likely to occur, it is difficult to predict the long-term negative consequences for the child that might be associated with having been abused.” Wald, *supra* note 124, at 1010. “[W]e cannot predict the consequences for a child of growing up in a home environment that lacks affection or stimulation, or with a parent who suffers from alcoholism, drug addiction, mental illness, or retardation.” *Id.* at 1022-23. “[D]espite an abundance of theoretical material about the harm of sexual activity within the family, there are very few studies demonstrating the negative im-

minimal interventionists believe the parents' right to autonomy should generally outweigh the state's interest in protecting a child.¹³²

For these reasons, minimal interventionists argue that the state should intervene only in the most extreme cases of abuse and neglect. One noted group of minimal interventionists advocate intervention only when (1) the parents inflict, attempt to inflict or repeatedly fail to prevent the infliction of serious bodily injury upon their child, (2) there is a conviction of a sexual offense against the child, (3) medical neglect arises, or (4) abandonment occurs.¹³³ In all other situations, this group believes the risk of intervention exceeds the potential benefit.¹³⁴

Advocates of "appropriate intervention," on the other hand, argue that such extreme limitations on the authority of a state to protect a child would place many children at too great a risk of harm.¹³⁵ Instead, these advocates argue intervention is necessary and appropriate when a child has suffered or is in danger of suffering substantial maltreatment.¹³⁶

According to recent research, it is clear that maltreatment causes significant harm to a child.¹³⁷ A maltreated child has substantially more problems than a similar child who has not suffered maltreatment.¹³⁸ Studies also show that a maltreated child is more likely to maltreat his or her own children.¹³⁹ An appropriate level of intervention is necessary to stop the furtherance of these harms to a child.

Furthermore, intervention does not cause as much harm to a child as the minimal interventionists argue. Minimal interventionists have failed to provide evidence for the theory that state intervention into a child's life harms the child by breaking up the conti-

part of sexual 'abuse.'" *Id.* at 1024-25.

132. *See, e.g., id.* at 991-93.

133. *See* GOLDSTEIN, *BEFORE THE BEST INTERESTS*, *supra* note 126, at 193-95.

134. *See generally id.*

135. *See generally* Moorehead, *supra* note 125, at 526-30.

136. *See generally id.* at 526-30.

137. *See* Egeland, *supra* note 99, at 51.

[F]indings indicate that children who are maltreated experience significant problems. Controlling for the effects of poverty and other aversive environmental conditions associated with maltreatment, the maltreated children showed maladaptation at each period of assessment. The range of outcomes varied, but each child showed some negative effect of maltreatment. No one was immune or invulnerable to the effects of maltreatment.

Id.

138. *See id.*

139. *See* NATIONAL RESEARCH COUNCIL, *supra* note 102, at 116-18.

nunity of his bond with his parent.¹⁴⁰ According to one commentator, "available evidence does not suggest continuity is essential for normal childhood development. Quite the contrary — although the research data is not yet definitive, separation from a disturbed home, which produces an improvement in the child's care, is often preferable to a child's remaining in the disturbed environment."¹⁴¹ She also notes that "[i]nadequate parental care appears to outweigh discontinuity as a determinant of long-range psychological problems"¹⁴²

Also, a state should place the needs of a child above the right of parental autonomy when these interests conflict. One advocate argues that "[t]he current system is weighted toward giving mother and dad a chance to get their life together. . . . It puts the family first. . . . [The system should put] the child first."¹⁴³ Another advocate suggests "[f]amily must always be examined as the most important option for our children. . . . But if it is dangerous then we should discard it as a possibility. The absolute best interest of the child must guide our decision making."¹⁴⁴

A policy of appropriate intervention is consistent with the Alaska legislature's policy for the CINA sections. The legislature has stated that the purpose of the CINA sections and other sections relating to children in the same title

is to secure for each child the care and guidance, preferably in the child's own home, that will serve the moral, emotional, mental, and physical welfare of the child and the best interests of the community; [and] to preserve and strengthen the child's family ties *unless efforts to preserve and strengthen the ties are likely to result in physical or emotional damage to the child*¹⁴⁵

The legislative purpose prefers a child's family unless the child will suffer physical or emotional damage with the family. In this way, the legislative purpose strikes a balance between the child's family and the child's need for safety.

The Department's current proposal provides this same balance. It does not create the broad authority to intervene that the original proposal would have created. At the same time, it does not leave the state helpless to protect a child from prospective, emotional, or mental neglect when protection is warranted. In ef-

140. See Marsha Garrison, *Child Welfare Decisionmaking: In Search of the Least Drastic Alternative?*, 75 GEO. L.J. 1745, 1764 (1987).

141. *Id.* at 1779-80.

142. *Id.* at 1786.

143. Marilyn Gardner, *Tide Shifts on How to Protect Abused Children*, CHRISTIAN SCI. MONITOR, Mar. 21, 1996, at 12 (quoting Richard Gelles, director of the Family Violence Research Program at the University of Rhode Island).

144. *Id.* (quoting Jerry Stermer, president of Voices for Illinois Children).

145. ALASKA STAT. § 47.05.060 (Michie 1996) (emphasis added).

fect, it provides the state with the appropriate amount of authority to intervene when and only when a child is in danger.

C. The Proposal is Consistent with the Rest of the CINA Chapter

The legislature also should pass the Department of Law's proposal because it is consistent with the rest of the CINA chapter. As stated earlier, one of the purposes of the CINA sections is to serve the mental and emotional welfare of Alaska's children.¹⁴⁶ The Department's proposal fulfills this purpose by protecting children from emotional and mental neglect.

Also, for the most part, the CINA jurisdiction section focuses on the condition of the child rather than on parental fault. In contrast to the original legislative proposal that focused on parental ability, the Department's proposal follows the structure of the jurisdiction section by focusing on the condition of the child.

Finally, the proposal's inclusion of prospective neglect is consistent with other subsections of the jurisdiction section. Subsections (a)(3)¹⁴⁷ and (a)(4)¹⁴⁸ cover prospective physical harm and prospective sexual abuse to a child. The legislature has made the policy choice not only to protect children who have been harmed, but also to protect children in substantial and imminent danger of being harmed. It follows, then, that the legislature should protect both children who have been neglected and children who are in substantial danger of being neglected.

V. CONCLUSION

Before the *S.A.* and *R.J.M.* decisions, Alaska had the authority to protect children who did not have parents able to provide for their physical, mental, emotional and social needs.¹⁴⁹ By restricting this authority, the *S.A.* and *R.J.M.* decisions left the state helpless

146. *See id.*

147. The subsection creates jurisdiction in cases of the child having suffered substantial physical harm or if there is an imminent and substantial risk that the child will suffer such harm as a result of the actions done by or conditions created by the child's parent, guardian, or custodian or the failure of the parent, guardian, or custodian adequately to supervise the child

Id. § 47.10.010(a)(3).

148. The subsection creates jurisdiction in cases of the child having been, or being in imminent and substantial danger of being, sexually abused either by the child's parent, guardian, or custodian, or as a result of conditions created by the child's parent, guardian, or custodian, or by the failure of the parent, guardian, or custodian adequately to supervise the child.

Id. § 47.10.010(a)(4).

149. *See In re A.M.*, 891 P.2d 815, 824 (Alaska 1995); *In re T.W.R.*, 887 P.2d 941, 945 (Alaska 1994); *In re J.L.F.*, 828 P.2d 166, 169-70 (Alaska 1992).

to protect children in certain neglect situations. The Department's proposal to amend subsection (a)(6) would restore a limited amount of this authority. Most other states have laws similar to the proposed amendment to protect their children.¹⁵⁰ Alaskan children deserve this same protection.

Charles Talley Wells, Jr.

150. *See supra* note 104 and accompanying text.