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# Legislative Teleconference Network



## TELECONFERENCE CONFIRMATION/CONTACT

INSTRUCTION: Please complete, sign and return by \_\_\_\_\_  
to: Juneau Teleconference Office  
Capitol, Rm. 30

TO: Jody Sutherland / H HESS

RE: TIC Public Hearing on Friday, 1/29

TELECONFERENCE OBJECTIVE/GOAL: to receive input from public who have not yet had the opportunity of testifying on ~~this issue~~ <sup>this issue</sup> before the H HESS committee

### PLEASE ATTACH THOSE ITEMS CHECKED:

- Legislation to be discussed;  
List bill numbers \_\_\_\_\_
- Summaries, position papers, etc.
- Agendas (if applicable)
- Other Special Documents
- Attach List of SPECIAL WITNESSES OR SPEAKERS.  
John Holmes (BAE) 852-2311  
Linda W...loch (BAE)

PUBLICITY: Please attach a copy of your Public Service Announcement. Indicate if you wish to have any of the following additional publicity done by local moderators.

- Call Media
- Call Local Individuals (attach list)
- If Public Hearing, who do you want to hear from? List agencies or people who would be interested in this topic.  
\_\_\_\_\_  
\_\_\_\_\_

PLEASE ADD ANY COMMENTS HERE THAT YOU THINK WILL BE HELPFUL TO OUR MODERATORS AND WHICH WILL ADD TO THE SUCCESS OF YOUR TELECONFERENCE.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

- Continued on Reverse Side -

SPONSOR: House H.E.S.S.  
SUBJECT: Public Hearing on Child Custody  
MAILING ADDRESS: Room 112, Capitol

TAKEN BY: Deborah  
T/C DATE/DAY: 1/29/82  
OFF: Wed  
TIME: 3 PM Pacific

PHONE: 465-3777 CONTACT: Joy Sutherland DURATION OF T/C: 2 hrs.  
zip: \_\_\_\_\_  
TIME: 1 PM Alaska  
TIME: 12 AM Bering

SITES PARTICIPATING:

- |               |                |                  |               |             |                  |
|---------------|----------------|------------------|---------------|-------------|------------------|
| ..LL ALASKAN  | Anchorage      | Dillingham       | <u>Juneau</u> | Mat-Su      | Seward           |
|               | <u>SARROW</u>  | <u>Fairbanks</u> | Ketchikan     | Nome        | Soldotna (Kenai) |
| WASHINGTON DC | Bethel         | Haines           | Kodiak        | *Petersburg | Valdez           |
|               | Delta Junction | Homer            | Kotzebue      | Sand Point  | *Wrangell        |
|               |                |                  |               | Sitka       |                  |

LIO  
Sen. Stevens      \*Off-Net Dial In LTN Locations. Available by special arrangements.  
Sen. Murkowski

Office Governor      SPECIAL OFF-NET LOCATIONS/PHONE NUMBERS: \_\_\_\_\_

*Handwritten note:* if other sites want to testify they can. if notify HESS first

SITE/PERSON Rep Rivas / Rm 112  
[Signature]  
Signature of Sponsor Contact Person

1/18/82  
Date

\*\*\* TELECONFERENCE OFFICE USE ONLY \*\*\*

MODERATOR NOTES

Publicity and Back-up

Technical Problems

Other Comments

POST TELECONFERENCE NOTES

SITE/LOCATION: \_\_\_\_\_

LOCAL MODERATOR: \_\_\_\_\_

T/C Started: \_\_\_\_\_

T/C Ended: \_\_\_\_\_

T/C BROADCAST OVER RADIO OR TV

YES \_\_\_\_\_ NO \_\_\_\_\_

If yes, what stations?

DID SITE RECORD THIS TELECONFERENCE?  
YES \_\_\_\_\_ NO \_\_\_\_\_

TESTIFIED/PARTICIPATED: \_\_\_\_\_

UNABLE TO TESTIFY: \_\_\_\_\_

OBSERVED: \_\_\_\_\_

TOTAL: \_\_\_\_\_

# Memorandum

Alaska Court System

file 100210

TO:

Grant Callow, Staff Counsel

DATE : March 27, 1980

FROM:

Andrew M. Brown <sup>GB</sup> and <sub>WH</sub>  
William D. Hitchcock

SUBJECT: Problems with the Uniform  
Child Custody Jurisdiction Act  
AS 25.30.010 - .900

Two sections of the Act need immediate revision by the legislature in order for the courts to be able to handle certain child custody matters.

First, AS 25.30.020 is the section which states when the courts would have jurisdiction over children. It is different from the model Uniform Act in that the following Section 3(a) of the model Act was not included in Alaska's version:

(2) it is in the best interest of the child that a court of this state assume jurisdiction because (i) the child and his parents, or the child and at least one contestant, have a significant connection with this State, and (ii) there is available in this State substantial evidence concerning the child's present or future care, protection, training, and person relationships;

A significant problem with our present .020 is that we would not have jurisdiction in uncontested divorces or dissolutions of marriage wherein the children never resided in Alaska or did so but left more than six months prior to the commencement of the action even though both parents consent to the court having personal jurisdiction over themselves and have entered into a child custody agreement. The model Act provision would allow us to assume such

jurisdiction because at least one parent would still reside here and through that parent's testimony substantial evidence could be obtained as to the child's interests. However our present §.020 emphasizes the child's present or recent residence regardless of whether it is an amiable, uncontested, fully agreed-upon custody agreement or a contested case.

In those cases which we do not have jurisdiction to render a custody decision, it must be done by the court of the state which has jurisdiction. This means that the parties will probably have to hire attorneys in that state and file new papers there just for a custody decision. This necessitates not only additional costs, but also the real possibility that because of those added costs, the parties will feel disinclined to ask for another state's custody decision, thus leaving the custody issue unresolved by a court. The problem with this is that should there ever be future litigation over custody a court would be hindered in making a decision without there being a proper original custody decree.

A solution to this jurisdiction problem where the parents agree on child custody is for either the model Act's language to be used or the following, which is limited to the uncontested custody cases, be used:

(a)(4) the parents of the child have agreed in writing as to custody and visitation and it is in the best interest of the child that this court assume jurisdiction;

#2

The other problem which needs quick attention is the effect of AS 25.30.040(b) which requires that notice to persons outside the state be in accordance with Civil Rule 4 and "...be served, mailed, delivered, or published at least 20 days before any hearing in this state." It is not unusual for the courts here to be presented with ex parte temporary restraining order motions under Civil Rule 65 or shortened time motions under Civil Rule 77(j) asking that an order be granted prohibiting an out of state parent from seizing a child or interfering with the child's present custodial arrangement. These motions are usually based upon the affidavit of the Alaskan parent that there is an imminent threat the out of state parent is likely to come to Alaska and take the child. Under Civil Rule 65 there must be a preliminary injunction hearing within 10 days of the granting of an ex parte temporary restraining order, however this conflicts with §.040 (b) because the latter says at least 20 days notice is required before there can be a hearing. Civil Rule 77(j) also conflicts with §.040(b) because it allows for a hearing just 24 hours after notice. The court then is left with the alternative of having a preliminary injunction hearing or shortened time hearing pursuant to the Rules of Civil Procedure but in violation of §.040(b) or not holding any substantive hearing until 20 days lapse but granting extensions of an ex parte temporary restraining order.

A possible solution would be amending §.040 so that an emergency hearing can be held in less than 20 days after notice is made. The following language could be added to §.040(b):

except that based upon affidavits stating that a

person outside this state is likely to imminently interfere with the custody or visitation of a child in this state, the court may hear the matter as permitted by the Alaska Rules of Civil Procedure.

This language would allow for there to be preliminary injunction hearings under Civil Rule 65 or shortened time hearings under Civil Rule 77(j) - both of which require there to be notice to the parties, but have less than the 20 days requirement of §.040(b). The children and custodial parent are protected by this proposal since they could have a court hearing on the problem sooner than the present statute allows, and the out of state parent is protected by requiring that notice still be given to him under either Civil Rule 65 or 77(j) and requiring the filing of affidavits showing the likely and imminent custodial interference.

There may be other problems with the Act, but these two are the most pressing in the sense of convenience to the parties and children in uncontested cases and protection of children when a parent is out of state. We would be pleased to answer any inquiries you may have on this matter.



## Trial Courts

County of Alaska  
THIRD JUDICIAL DISTRICT  
303 K STREET  
ANCHORAGE, ALASKA 99501

WILLIAM D. HITCHCOCK  
Master, Trial Courts

The Honorable Donald E. Clocksin  
Chairman  
Health, Education & Welfare Committee  
Alaska House of Representatives  
Pouch V  
Juneau, Alaska 99811

March 25, 1981

Re: House Bill No. 210  
Shared Custody


Dear Mr. Chairman:

It is my understanding that a hearing is being held before your committee on March 26, 1981 concerning the above bill. Although this letter will not have reached you in time for that hearing, I feel I must relay my concerns as to the future fate of the legislation.

As Children's Court Master in Anchorage, I have the additional duty of hearing contested domestic motions and devote approximately one-third of my time to that area. I am concerned that if HB 210 becomes law as it is presently written, there will be substantial negative impact on the welfare of children in divorce custody. Rather than address my concerns in this letter, I wish to instead request that the committee conduct further hearings on the bill here in Anchorage and possibly Fairbanks so that a greater cross-section of professional input can be obtained.

Thank you for your consideration to this matter.

Very truly yours,

  
William D. Hitchcock  
Master, Trial Courts

WDH:ys

cc: Honorable Victor D. Carlson  
Superior Court Judge, Third Judicial District  
Mr. Albert H. Szal  
Area Court Administrator, Third Judicial District

ALASKA LEGAL SERVICES CORPORATION

POST OFFICE BOX 309

BARROW, ALASKA 99723

TELEPHONE (907) 852-2311

November 23, 1981

Rep. Mike Beirne, Chairman  
H.E.S.S. Committee  
700 "H" Street, Suite G  
Anchorage, Alaska 99501

Re: Teleconference on HB 210, November 20, 1981

Dear Representative Beirne:

I was disappointed in the way the above teleconference was organized. I am further frustrated by not knowing for sure how to remedy the matter--whether through your Committee as the sponsors or the Teleconference people. So I will send similar comments to both.

The hearing, as I understand it, was originally set to be aired only in Anchorage and Fairbanks. Then Barrow and Soldotna were added. Perhaps this is where the shortage of time resulted. Whatever the reason, it was poorly handled. People in Anchorage were scheduled to testify until 3:00 p.m., with another two hour period in the evening. People on the teleconference network were to be allowed to testify from 3:00-5:00. As you well know, Anchorage testimony was taken with unlimited time until 4:00 and thereafter, people on the network were only permitted to testify for 5 minutes each. This was unfair to the non-Anchorage people who are vitally concerned about this bill.

My suggestion for future conferences is to either limit everyone's comments to 10-15 minutes, with additional time allowed at the end of a hearing if it is available. Or, especially in the situation where a further evening session was to be held in Anchorage, which was not teleconferenced, to take testimony from the teleconference people first, giving Anchorage people the remainder of the time. In the schedule we had at this last teleconference, Anchorage testimony could have been cut off at 3:00 in order to give sufficient time for the outlying areas to testify. This is, after all the reason for having such a teleconference system to begin with.

I understand that John Holmes of our office has talked to you about these same matters and you suggested that a second conference may be held. I strongly support this idea, but am concerned I

*John*  
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you this cause Jody  
on vacation.*  
*cin*

Page two  
Rep. Bierne  
November 23, 1981

about the time involved. Mr Holmes tells me that in the next few weeks, the majority of the work on the bill will be conducted. Since I believe there are many problems with the bill, I want to be sure that the opinions of the non-Anchorage communities are heard and fully considered--a feeling I did not receive from the last teleconference.

HB 210 has important ramifications in the rural communities, so I am concerned that these communities can offer their full impact.

Sincerely,

*Linda M. Wingenbach*

Linda M. Wingenbach  
Attorney-at-Law

cc: Legislative Affairs

# ALASKA STATE LEGISLATURE - HOUSE OF REPRESENTATIVES

IN SESSION

POUCH V  
JUNEAU, ALASKA 99811  
TELEPHONE: (907) 488-3777



P.O. BOX 4-1539  
ANCHORAGE, ALASKA 99509  
TELEPHONE: (907) 277-6219

REP. M. F. "MIKE" BEIRNE

MEMBER OF:  
FIFTH STATE LEGISLATURE  
NINTH STATE LEGISLATURE  
TENTH STATE LEGISLATURE  
ELEVENTH STATE LEGISLATURE  
TWELFTH STATE LEGISLATURE

COMMITTEES:  
HEALTH, EDUCATION  
AND SOCIAL SERVICES, CHAIRMAN  
AND LEGISLATIVE COUNCIL

December 7, 1981

Linda Wingenbach, Attorney-at-Law  
Alaska Legal Services Corporation  
P.O. Box 309  
Barrow, Alaska 99723

Dear Ms. Wingenbach:

I received your letter regarding House Bill 210 and your concerns about whether those individuals outside of Anchorage were given adequate time to present their testimony. I would have to agree with your observation and as chairman of the H.E.S.S. Committee, I should have limited the comments of the Anchorage group so that you and several other would have received more time.

There is however a reason why I did not do this. I relates to the last two teleconferences which were held on this bill under the previous chairman, Representative Clocksin. Several individuals in Anchorage and Fairbanks expressed concern that they too had not been given enough time or adequate notice and that the testimony was "skewed" in favor of the opponents of the bill. I therefore felt an obligation to allow them as much time as they needed.

While you may not agree with my position, I would hope that you at least understand the reasons for my action. I realize that House Bill 210 has important ramifications in the rural communities, just as it does in the urban areas of the state. Therefore, I plan on scheduling another teleconference from Juneau sometime in January and you can rest assured that everyone will be given adequate notice and time to testify.

You also expressed concern that the majority of the work on the bill will be done in the next few weeks thereby implying that it will be too late for any other input. While it is true that my staff is working on changes in the bill, nothing is ever "written in stone". Legally, the committee cannot adopt a substitute until we are back in session so this still allows plenty of time for additional testimony. You might also note that the bill has a further referral to the House Judiciary Committee and the chances are pretty good that it will go through further changes before it ever reaches the House floor.

Should you have any additional questions or comments, please don't hesitate to give my office a call.

Sincerely,

A handwritten signature in cursive script, appearing to read "Mike Beirne".

Mike Beirne  
State Representative

MB/jz

LAW OFFICES OF

ALASKA LEGAL SERVICES CORPORATION

POST OFFICE BOX 309

BARROW, ALASKA 99721

TELEPHONE (907) 852-2311



November 23, 1981

Rep. Mike Beirne, Chairman  
H.E.S.S. Committee  
700 "H" Street, Suite G  
Anchorage, Alaska 99501

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Sincerely,

*Linda M. Wingenbach*

Linda M. Wingenbach  
Attorney-at-Law

cc: Legislative Affairs



Erased Bond

25% COTTON FIBER

ELLIS, SUND & WHITTAKER, INC.

LAW OFFICES

1285 TONGASS AVENUE  
KETCHIKAN, ALASKA 99901  
907-225-9661

RICHARD WHITTAKER

PETER R. ELLIS

JOHN L. SUND

DENNIS L. McCARTY

LUCY M. LOWDEN

29 June 1979

Honorable John Carr  
White House Conference on Families  
The White House  
Washington, D. C.

Dear Mr. Carr:

I write you to recommend the participation of Rudy Johnson of the Family Law Reform and Justice Council of Alaska, in the upcoming White House Conference on Families.

If ever there was a lay person who earned his spurs the hard way, in learning about the American legal system as it deals with problems of families, it is Rudy Johnson.

I first met Rudy as his attorney, handling at trial level his custody battle for the right to raise his two children. During that time, Rudy made it his business to learn all there was to be known about the law and the courts, and in addition to learning to research and evaluate decisional law, his studies took him to concerns far beyond the law and into the policy questions in this vital area. He became a factor in bringing about legislative change, and most certainly was a factor in changing Alaskan law, both legislative and decisional, to provide a more realistic approach to solving the problems of distressed families.

The work Rudy Johnson has done these past few years, has been of immense benefit to Alaska, and he has turned himself into an important resource on these questions for our state.

As a former Alaskan legislator, I know how distressing legislative action and political leadership is to a person who is truly knowledgeable on a question, but Rudy's actions have been those of leadership, and of providing ideas and information to our legislature, and his zeal and patience have been most important.

Honorable John Carr  
29 June 1979  
Page Two

In short, as an attorney and political person, I cannot recommend him too highly to you as a person who would make an important contribution to the vital work of the conference.

Sincerely yours,



Richard Whittaker

RW:mh

cc: Mr. Rudy Johnson  
Box 4-1646  
Anchorage, Alaska 99509

## JOINT CUSTODY, SOLE CUSTODY: A NEW STATUTE REFLECTS A NEW PERSPECTIVE

The legislative evolution of the new California custody law; origins and intent as a guide to understanding and administering joint or sole custody.

James A. Cook\*

The greatest impact of California's new child custody Statute is the effect it will have upon the expectations and conduct of parents prior to a court hearing. Secondarily, the new law modifies the options available to the court and the considerations which must be weighed in disposing of custody cases. Transition into the new concept may initially be difficult for the courts. However, the burden of change will be lessened as the divorcing public becomes aware in advance of custody proceedings, of the Statute's intent. The new Statute facilitates preservation of the child's needs for contact with both parents; it reduces use of the courtroom by one parent to destroy the other parent, to the detriment of the child's best interests. This new Statute's emphasis on joint custody is intended to alleviate other problems frequently generated under the former law:

### 1. Defusing child-stealing and support-avoidance

This legislative recognition of joint custody and its implementation by the courts may defuse and reverse the increasingly menacing recourse by excluded parents to "child stealing" and/or abandonment of financial support for lack of meaningful, frequent and extensive contact with their children. Legal practitioners have been reluctant to apply punitive or confiscatory sanctions in cases of child-

stealing or abandonment of support. Observers have been uneasy about a legal solution that focused solely on punishment and support-collection on behalf of custodial parents, when many custodial parents share the responsibility for the provocation. Instead, joint custody provides an opportunity to demonstrate and increase respect for equality under the law while effecting a possible reduction of child-stealing and support-avoidance.

### 2. Redressing the imbalance between mother vs father custody fights.

Additionally, it is intended that this new emphasis upon joint custody will result in tempering a recent trend of fathers to strive for sole custody. While the opportunity for fathers to compete for sole custody tests the equality of the sexes insofar as sole-custody decrees are concerned, the result is increasingly hostile custody battles because of a heightened expectation of unilateral victory by both parents. The new law will shift the view of equality - from a statistical determination of how frequently fathers rather than mothers achieve sole custody - to a decision based on protecting a child's access to both parents and on encouraging parental sharing of responsibility for the child.

\*James A. Cook initiated and authored the initial version of AB 1480, secured sponsorship by California Assemblyman Charles Imbrecht of Ventura, encouraged the fourteen additional Senators and Assemblymen who became cosponsors, and coordinated and monitored the endorsements, hearings and amendments that resulted in passage and signature into law of AB 1480.

James A. Cook, 10606 Wilkins Avenue, Los Angeles, California 90024  
Home: (213) 475-5352. Office: (213) 772-4200

### 3. Discouraging the use of child custody for intimidation.

The most immediately apparent feature of California's new child custody law is "the message it sends in advance to divorcing parents": a power-play for exclusive child custody, either for purposes of intimidation or to force subservience in negotiation, is less likely to be tolerated by the court. Therein, the new Civil Code Section 4600 and 4600.5 is regarded as one of the most significant evolutions of California's family law since the advent of "no fault" divorce in 1970, which eliminated the airing of "faults" as justification for divorce. Henceforth, the new child custody Statute will largely dissolve the recourse to winner-take-all custody litigation that has heretofore been substituted for the catharsis of airing "faults."

Preference is likely to favor joint custody, or sole custodianship for that parent who demonstrates the most cooperation and tolerance for the child's frequent and continuing contact with the alternate parent. Consequently, an antagonistic and covetous parent is likely to be denied sole custody and may jeopardize the opportunity to participate equally in joint custody.

The intentions and consequences of the legislation, as they evolved during the legislative process and as amended into Section 4600 and Section 4600.5 of the Civil Code, are itemized below. The itemization is not necessarily in the order of importance to petitioners or counselors. For ease of reference the items are in the same sequence as the issues occur in the new Statute.

#### Policy Statement

##### Intent

The intention of the original version of AB 1480 was to establish a guide, a goal, and a preference for divorcing parents. By making sole custody less likely to be decreed by the courts, the intent of the original as well as the final version of AB 1480 is to caution divorcing parents who would otherwise be prone to pursuing sole parent custody for pur-

poses of vindictiveness, leverage or extortion. Since the advent of California's "no fault" divorce a decade ago, there has been widespread supposition that the battleground has subtly shifted from personal accusations to custody and visitation fights thus confounding rather than resolving the divorce process.

While serving as a guide to divorcing parents, the original version of AB 1480 placed no restraints on the discretion of the judiciary other than a first preference consideration of joint custody before recourse to sole parent custody.

As an early endorser of AB 1480, Professor Jay Folberg of the Lewis & Clark College, Portland, Oregon, and Executive Director of the Association of Family Conciliation Courts, characterized the intent succinctly: "We too often forget that one of the most noble functions of law is to provide a model of what is expected of people. I believe that the approach of AB 1480, creating a 'preference' for joint custody, is the best alternative."

SB 477, which also made joint custody available to the court, placed constraints of justification on the court's selection of sole parent custody rather than making joint custody a preferred alternative. SB 477 requires that the court must state the reasons denying joint custody in cases where (a) both parents sought joint custody, (b) one parent petitioned for joint custody, (c) or a termination or modification of joint custody was objected to by a parent. The legislative conference which resulted in the final version of AB 1480, and which incorporated most of the provisions of SB 477 to assure the likelihood of passage, resulted in AB 1480 adopting these same restraints upon the court's discretion. Thus, although sole and joint custody are co-equal preferences in the new law, the court must justify its decision to award sole custody in specified situations.

The policy statement which introduces the new Statute makes clear the intent of the new law, despite the court's continued discretion to award sole custody.

## Frequent and continuing contact

*Section 1. Section 4600. The Legislature finds and declares that it is the public policy of this state to assure minor children of frequent and continuing contact with both parents after the parents have separated or dissolved their marriage. . . .*

\* Originally, a policy statement describing custody intent appeared as a concluding paragraph of SB 477, while a briefer policy statement intending "equal access" by a child to both parents appeared at the outset of AE 1480.

In the final version of AB 1480, the policy statement of SB 477 was adopted as the opening and guiding heading to the statute: "... to assure minor children of frequent and continuing contact with both parents . . ."

Prior to amendment, the policy statement contained the phrase "close and continuing contact." However, it was conjectured that "close" might be erroneously interpreted to imply a requirement of physical proximity of residence for both parents and, as such, place a proximity qualification on the availability of joint custody. But it was subsequently stressed that physical proximity was not essential for implementation of joint custody, given the availability of modern transportation, and that "frequent and continuous contact" was a goal worthy of precluding any possible misinterpretation of "close" contact.

## "Equal access" succumbs to reasonableness

Fairness has been an influential stimulus in the quest for joint custody legislation. Consequently, equality of contact by each parent with the child or children was an initial preoccupation of the proponents. Nevertheless, the proponents also did not want to obscure or jeopardize this humanitarian concept by attempting to define with precision an equal allocation of time. While balance of contact is encouraged by the new law, the limiting requirement of "equal" has been removed, and instead parents are encouraged to seek, and to offer, time with the child or children on the basis of that which is practically and conveniently

available. Parents are encouraged not to be exclusively concerned with equitability. This opportunity for flexibility should allow both parents an escape-hatch from the slavery of equitability if it is within their ability to assume more time with a child, or to offer more of such time to the alternate parent.

## Encourage parents to share

*Section 1, Section 4600 . . . and to encourage parents to share the rights and responsibilities of child rearing in order to effect this policy.*

Encouragement of joint custody, in the opening policy statement, occurs because of the desire by proponents to enlist the aid of judges, Conciliation Court counselors, and private practitioners to encourage divorcing parents to opt for or acquiesce to the joint custody solution.

The necessity of encouragement and the preferable goal of joint custody now places upon the State, in the form of a policy statement, the obligation to develop imaginative methods for inducing parents to voluntarily prefer joint custody. While the Statute has not specified the mechanism for doing so, the new law may cultivate imaginative means of encouragement.

Initially, the burden will fall heavily upon Conciliation Courts and jurists during hearings. Eventually, a more widespread awareness of the Statute by the divorcing public is likely to precondition divorcing parents to an expectation of joint custody.

The combination of "no fault" divorce and equal division of community property had diminished the courtroom airing of "faults" and reasons for unequal divisions. Faults and contentions are still voiced, but to a lesser degree. Similarly, although reasons for not granting an alternate parent joint custody are likely to be aired, it is hoped that courtroom practice will reflect the spirit and intent of this Act, as occurred with the "no fault" law, with expectation of a joint custody resolution of child care by divorcing parents.

**Order of preference: To both parents jointly or to either parent**

*Section 1. Section 4600. In any proceeding where there is at issue the custody of a minor child, the court may, during the pendency of the proceeding or at any time thereafter, make such order for the custody of the child during minority as may seem necessary or proper. If a child is of sufficient age and capacity to reason so as to form an intelligent preference as to custody, the court shall consider and give due weight to the wishes of the child in making an award of custody or modification thereof. Custody should be awarded in the following order of preference, according to the best interests of the child:*

*(a) To both parents jointly pursuant to Section 4600.5 or to either parent.*

The new law did not spring full blown without attention to previous phraseology. On the contrary, if there was any single phrase in the prior Statute that spawned AB 1480's concept, it was the long adhered-to directive which is repeated in the new law, "Custody should be awarded in the following order of preference." The previous statute permitted no other alternatives than: (a) To either parent. (b) To the person or persons in whose home the child has been living, (c) To any other person or persons deemed suitable.

Proponents of joint custody assumed that the most desirable goal with the least likely trauma for child and parents would be to list joint custody as the first preference, ahead of the other alternatives. An interim version of SB 477 specified "to either parent or to both parents jointly." The word order was reversed when adopted from SB 477 into the final version of AB 1480, so that "To both parents jointly" appears prior to the alternative of "to either parent."

No single issue within this legislation was more vigorously debated than whether "To both parents" should be listed separately and unequivocally as the first preference, or if there should be equal consideration, within the same paragraph, of the alternative of sole parent custody. Ultimately, the "both parents jointly" provision was further

secured as a preferred goal by provisions in Section 4600.5 and by the addition of a qualification that if joint custody is not decreed the court must consider which parent will be most likely to facilitate contact between the child and non-custodial parent.

The intention of the proponents for a separate, unequivocal and first preference of joint custody is worth reporting. The intent was to establish a goal that would minimize the necessity for adversary litigation. Presumably, a parent seeking joint custody and willing to tolerate the alternate parent in joint custody would be less likely to conduct an aggressive, adversary litigation attack and consequently be less effective as a litigant. A preference for joint custody was also viewed as the best way to guarantee equal protection of both parental roles in those cases where two parents are competing for the exclusive care of their child.

When given equal ranking with joint custody, the presence of a sole custody alternative inspires an ominous spectre of needing to attack the alternate parent as unfit to be a sole custodian. In addition, an apprehensive parent who would otherwise consider joint custody as acceptable, may be fighting for sole custody because of a fear that an uncertain evaluation between joint and sole custody may result in their loss of custody together.

Conscientious jurists, mindful of the public policy goal of the new Statute, will have to discern whether a parent litigating custody is doing so for purposes of protective self-defense because the new Statute has not clearly and separately itemized joint custody as a first priority consideration of the court.

**Considering the parent most likely to allow frequent and continuing contact**

*Section 1. Section 4600. In making an award of custody to either parent, the court shall consider which parent is more likely to allow the child or children frequent and continuing contact with the noncustodial parent . . .*

The caveat of cooperation as a character trait in selecting a sole custodian, if joint custody is not to prevail, had its origin in simple wisdom.

Responding to the wrangles and dissension that evolved from the leverage inherent in sole parent custody, Dr. Jose Santiago of the University of Arizona Department of Psychiatry suggested (during a Phoenix, Arizona conference on May 22, 1976, at a time when the joint custody concept was still a rarity), "give the child to the parent who will tolerate the most the child's relationship with the other parent." This proposal became known colloquially as 'favoring the most tolerant parent' as a means of both rewarding and inducing cooperation.

The opportunity of giving this proposal the force of law occurred during a final amending session of AB 1480, in August 1979, when Dr. Diane Trombetta of Los Gatos, California suggested this terminology in the version of AB 1480 that succeeded SB 477. This particular provision favoring the tolerant and cooperative parent in sole custody decisions could become one of the most significant and influential changes in evaluating the suitability of sole custodians. As a minimum, it may inspire more guarantees and demonstration of tolerance and cooperation than has been customary of sole custody seekers heretofore.

At a concluding amendment conference, Judge David B. King of the San Francisco Superior Court's Domestic Law Court cautioned that, although important, he didn't consider the cooperation criterion as overriding, that there were also other worthy considerations, and that demonstrated tolerance of the alternate parent should be "among other considerations" and not the sole determinant.

No preference of a custodian because of that parent's sex

*Section 1, Section 4600. In making an award of custody to either parent, the court . . . shall not prefer a parent as custodian because of that parent's sex.*

This qualifier was adopted during an early amendment to SB 477 and ultimately included in its entirety within AB 1480.

In the court's discretion, a plan for implementation of custody

*Section 1, Section 4600. (b) (i) The court, in its discretion, may require the parents to submit to the court a plan for implementation of the custody order.*

One of the unique effects of allowing the court to require a custody implementation plan is that it may also require the submission of a plan for the implementation of sole custody before, or after, decreeing sole custody. In addition, the opportunity of the court's discretion in requiring a custody plan is another means to discern how cooperatively an individual parent would subsequently administer custody.

Heretofore, although the court might hear all manner of testimony about the worthiness, or lack thereof, of a parent to be sole custodian, it was neither required nor customary for the sole custodian to give any of his/her plans for implementing sole custody. Implementation decisions were solely at the discretion of the recipient of custody, frequently to the pain of the excluded noncustodial parent. Challenges and a return to court for new hearings were often fomented by implementing sole custody, without such a plan.

The genesis of a discretionary requirement for submission of a plan was an outgrowth, however, of hearings and debate about provisions suggested for inclusion in an early version of SB 477. The initial version of SB 477 also proposed topics for evaluation within mandatory joint custody plans, while such topics may be prudent for divorcing parents to consider voluntarily when creating a joint custody plan, they were ultimately eliminated from SB 477 as being too great a potential incursion into private decision-making, as being culturally biased against some parents upon whom they would impose, and as requiring more flexibility to accommodate changing economic conditions and the evolution of growing children's interests.

The plan provisions amended into SB 477 in April, 1979, but later removed in response to objections during hearings, were not mandatory

nor essential to the court's granting of joint custody. The provisions were suggested to enable parents to determine the manner of carrying out (a) "the child's education," (b) "daily routine," (c) "association with friends," (d) "religious training," (e) "and other activities." Considering the differences of opinion that most couples ordinarily experience during divorce, the itemization was sardonically characterized as a new selection of controversial topics that the divorcing couple might not have otherwise considered, and sufficiently provocative to make joint custody agreement virtually unattainable. If consensus on such topics is not forthcoming, it may be prudent merely to allow most or all of these considerations to be resolved by each parent for that period of time when the child is in the respective parent's care.

The fact that the plan topics were eliminated from SB 477 during its legislative processing and were never a requirement of AB 1480 may imply to the court that, as such, these topics are not an influential determinant of joint custody but that divorcing parents are prudently advised to consider these issues voluntarily even though they do not influence a decision for or against joint custody.

Out of state residence not a barrier to joint custody. An initial version of SB 477 excluded joint custody when one of the parents lives out of the state and also provided for termination of joint custody if a parent established or was likely to establish a residence in another state. Both of those provisions were eliminated during the amendment process of SB 477. The reasons for their elimination are a useful instruction to individuals administering or adjudicating the new law.

First, the provision would have provided a perverse opportunity for a recalcitrant parent to defeat the implementation of joint custody merely by leaving the state.

Second, a requirement of residence within the state for both parents and children could defeat the availability of joint custody for the numerous families living in California border communities wherein one parent might be living a short distance away in the bordering state. The family would be denied the opportunity of joint custody while

other parents residing hundreds of miles apart within California could avail themselves of joint custody.

Third, the prevalence and availability of travel and transportation, regardless of state borders, is already facilitating an exchange of children between parents that should not be denied future petitioners of joint custody.

#### Plans subsequent to custody orders

*Section 1. Section 4600. (b) (1) The court, in its discretion, may require the parents to submit to the court a plan for the implementation of the custody order.*

The version of AB 1480 that was ultimately passed was careful not to specify that, as a condition of granting joint custody, a custody plan must first be submitted to and approved by the court.

A requirement of a plan in advance was considered as potentially hamstringing the goal of joint custody for at least two reasons: First, plans prior to order could tend to inspire the thwarting of joint custody if one party or the other took that opportunity to insist on implementing provisions that would make joint custody unfeasible. Second, the requirement of a plan in advance might redirect the court's energies from the preferred public policy goal of encouraging joint custody into being an arbiter of plan details — a time-consuming task that might make the court long for the expediency of the past wherein a sole parent was decreed custodian, the alternate parent was restrained to visitation, and the custodian was given the relatively unexamined implementation of a plan.

Thus, in the new law, the court is permitted to discern whether joint custody would be in the best interests of the child, to so decree, and to require a plan from the parents subsequently.

On the other hand, during the first several months of hearings under this new Code Section, courts may be asking for plans in advance as a means of determining how cooperative the parents

are likely to be, and which parent is more likely to facilitate frequent and continuing contact with his or her co-parent. Since non-cooperation could jeopardize custody altogether, the request of a plan in advance of order could induce cooperation for fear of the alternate consequences.

Custodianship in the home where the child has been living.

*Section 1. Section 4600. (b) (2) If to neither parent, to the person or persons in whose home the child has been living in a wholesome and stable environment.*

With the exception of the opening phrase, "If to neither parent," the remainder of the statement is derived, in its entirety, from the prior law. Customarily, and almost universally, this decision is applied when the child is not awarded jointly or to either parent.

The opening qualifier, "If to neither parent," was added as a precaution just in case a narrow interpretation of the statement without that phrase gave an undue opportunity for sole parent custodianship to the parent who had obtained initial and temporary custody, pending resolution in trial, because of the advantage of an interim period of residence. AB 1480 proponents urging such a qualifying phrase were painfully aware of how influential upon an ultimate custody decision the obtaining of temporary but exclusive custody has been in administering the prior statute.

Custody to other persons; no new 4600 changes

*Section 1. Section 4600. (b) (3) To any other person or persons deemed by the court to be suitable and able to provide adequate and proper care and guidance for the child.*

*(c) Before the court makes any order awarding custody to a person or persons other than a parent, without the consent of the parents, it shall make a finding that an award of custody to a parent would be detrimental to the child and the award to a nonparent is required to serve the best interests of the child. Allegations that parental custody would be detrimental to the child, other than a state-*

*ment of that ultimate fact, shall not appear in the pleadings. The court may, in its discretion, exclude the public from the hearing on this issue.*

This section is repeated, without change, from the prior law.

A presumption of joint custody where both parents agree.

*Section 2. Section 4600.5 is added to the Civil Code to read: 4600.5 (a) There shall be a presumption affecting the burden of proof, that joint custody is in the best interests of a minor child where the parents have agreed to an award of joint custody or so agree in open court at a hearing for the purpose of determining the custody of the minor child or children of the marriage.*

Reportedly, there have been instances of the court previously refusing to grant joint custody although both parents had volunteered a joint custody resolution of the custody decision. The reasons for refusal covered a broad spectrum, ranging from a lack of authority for the court to do so in the previous law to a supposition about the inability of divorced parents to share parenting decisions.

This portion of 4600, granting joint custody to parents who so agree, was the least controversial provision of the proposed joint custody legislation. Both AB 1480 and SB 477 started with this assumption, and from this base of agreement some of the less tractable proposals emanated.

One observer commented, "It hardly seems necessary to lecture the court about presumption when both parents agree."

"... or so agree in open court..." is the provision within this portion that will probably give jurists the greatest opportunity to advise, guide, caution and to strike a phrase for 4600's policy statement. At the moment of court appearance, the tension and emotion of the events is frequently a high-water mark of both resentments and expectations wherein the voice of authority, prudently

restrained, may elicit the agreement resulting in joint custody. For this reason, the proponents of this measure purposely did not limit agreement solely to that achieved prior to appearance in court.

Court statement of reasons for denial of joint custody.

*Section 2. Section 4600.5 (a) If the court declines to enter an order awarding joint custody pursuant to this subdivision, the court shall state in its decision the reasons for denial of an award of joint custody.*

This is the first of three times within 4600 wherein the court is required to state reasons for denying joint custody. This portion refers to situations wherein both parents agree to joint custody. The addition of this "reasons for denial" requirement occurred midway in the amendment process, and was accepted without objection when referring to two parents who agreed to joint custody.

Later, during the concluding amendment sessions that led to acceptance of an AB 1480 that would be superseding SB 477, the "reasons for denial" requirement became a vigorously pursued last minute addition to subsequent portions of 4600.5.

Philosophies are legislated as much by coincidence as by deliberate intent. The evolution of the "reasons for denial" requirement is an interesting case in point. Originally, AB 1480 sought a clearcut first-priority, preferential consideration of joint custody by the court before recourse to other custody alternatives. Options other than joint custody were not foreclosed from the court's discretion, however. The intent had been encouragement and inducement toward a joint custody consideration, first. Opponents contended that AB 1480 was imposing mandatory joint custody, presumably in every case, although there was no word or phrase combination in the original version of AB 1480 that imposed a categorical demand upon the court for joint custody. Most significantly, there was no requirement upon the court to justify why joint custody had not been ordered.

On the other hand, SB 477, which was being attacked as not sufficiently assuring of joint custody placated some opponents by amending-in the "reasons for denial" obligations, at least within the portion wherein both parents have agreed to joint custody.

Ironically, SB 477 which initially imposed the least change from prior practice, ultimately became the vehicle that would require the court to justify its 'no joint custody' reasons. In other words, these obligations upon the court's discretion were ultimately to be adopted by AB 1480, a bill which did not originally require the court to justify decisions, but which superseded SB 477 in passage through the legislature.

The effect of this present legislation seems to be a Statute that more narrowly defines the court's goal and discretion, as well as justification for doing otherwise, than any party to the legislation at the outset had envisioned.

But, does a "reasons for denial" requirement make joint custody any more assured? A theory, voiced at the time the phrase was amended-in, contended that such a requirement provided a specific record that could be questioned upon appeal, that it might lead to more joint custody decisions because of the appeal scrutiny and, to a certain extent, diminish the frequency of "reasons for denial" in situations wherein both parents were more nearly equal and fit.

The prime aim: application for joint custody by either parent

*Section 2. Section 4600.5 (b) Upon the application of either parent, joint custody may be awarded in the discretion of the court in other cases.*

No other issue was so vigorously debated than whether an individual parent (as compared to both parents petitioning concurrently) could apply for and successfully achieve joint custody.

Given the competitive and adversary dynamics of divorce, proponents of joint custody contended that joint custody would be less likely to occur if

agreement by both parents were required; such a requirement would leave the power of decision solely within the hands of the least cooperative parent to the disadvantage of children and an alternate cooperative parent.

Altruism rather than antagonism is more likely to "win" something for each parent by permitting either to apply. The new Act encompasses a principle of successful negotiation: an opportunity for either party to propose a solution that results in both "winning" something from a less than ideal situation.

Heretofore, the decree of sole custody resulted in the appearance of a "winner" and an excluded parent who resentfully nurtured plans and hopes that fueled repeated court appearances. While joint custody may not entirely eliminate return engagements in the courtroom, it is likely that most such hearings will revolve around plan modification rather than another round of the zero-sum game of "exclusion" versus "access."

#### The court may investigate

*Section 2. Section 4600.5 (b) For the purpose of assisting the court in making a determination whether an award of joint custody is appropriate under this subdivision, the court may direct that an investigation be conducted pursuant to the provisions of Section 4602.*

This provision, enabling the court to initiate and direct an investigation to determine the appropriateness of joint custody, resulted from the amendment of a slightly different concept contained in SB 477. SB 477 permitted either party to initiate such an investigation through a request to the court. However, it was feared that giving opposing parties the opportunity to initiate investigations might inspire a wave of costly investigations strategically initiated to catch the other party at a moment when they are less equipped to accommodate joint custody, such as shortly after they are excluded from the former home and while one party had possession of the child's customary living quarters.

By giving the court the discretion of initiation, it was intended to relieve the excluded parent from the implied pressure of scrambling to establish and assume the expense of creating living quarters that would appear, upon investigation, as suitable for a joint custodian even before the parent had been assured of the likelihood of a joint custody decree. Although it is hoped that investigation would center on the quality and sincerity of the eventual joint custodian's parenting, it is recognized that the politics of investigation, as inspired by opponents, seek to reveal inadequate physical quarters, inconveniently located and at variance with the child's pre-separation home.

#### The court's denial reasons when one parent applies for joint custody.

*Section 2. Section 4600.5 (b) If the court declines to enter an order awarding joint custody pursuant to this subdivision, the court shall state in its decision the reasons for denial of an award of joint custody.*

This is the second of the three provisions in the new statute requiring the court to spell out justifications if joint custody is denied. Some observers concluded that this provision would permit a parent who had applied for joint custody, and who had been denied, the opportunity to evaluate the possibilities of appeal.

The intent of this statute is not to increase the incidence or provocation of appeal.

It is hoped that, in those situations wherein a denial of joint custody is likely to occur, the court will probe the reasons for denial during hearings wherein interpretations may be resolved, or confirmed, rather than entering the order and leaving appeal as the only recourse for clarifying misinterpretations.

## Sharing physical custody, integral to 'joint custody'

*Section 2. Section 4600.5 (c) For the purposes of this section, "joint custody" means an order awarding custody of the minor child or children to both parents and providing that physical custody shall be shared by the parents in such a way as to assure the child or children of frequent and continuing contact with both parents;*

During drafting, this paragraph became the so-called "definition" of joint custody that links physical custody with the goal of the opening policy statement: "assure the child or children of frequent and continuing contact with both parents." The purpose of the paragraph is primarily aimed at an understanding, and consideration of the physical aspect of joint physical custody. However, the paragraph purposely does not elaborate with constraining prerequisites such as scrupulously equal contact or conditions of residence. Instead, the parents are encouraged to work out personally the details of sharing physical custody as best befits their circumstances, or through counselors or other helpful intermediaries who will aid the parents in traversing the antagonisms of the just-divorcing period into the implementation of joint custody.

## Joint legal custody for parents unavailable for joint physical custody

*Section 2. Section 4600.5 (c) ... provided, however, that such order may award joint legal custody without awarding joint physical custody.*

Of all the provisions of Section 4600 and 4600.5 that may be productive of mischief, or antagonistic interpretation or decree, the opportunity for the court to award joint legal custody without awarding joint physical custody could intrigue the most litigious of counselors and parents.

Curtailment of the opposite parent's 'access' in joint custody to mere legal participation was not the intent of this wording. The opportunity for joint legal custody was inserted in response to the few requests of divorced parents who wished to

participate jointly in the legal decisions of custody but, by reason of distance, isolation, circumstances of remarriage or other restraints, were unable to participate in joint physical custody.

Three months after AB 1480 and SB 477 were underway in the legislative process and had left their respective legislative houses of origin, Division Four of California's First Appellate District, on May 9, 1979, handed down a decision In Re Marriage of Neal. In view of the extensiveness of the comments within In Re Marriage of Neal, readers can draw innumerable inferences from the ruling. For divorcing parents the most anxiety-producing observation was that joint legal custody was, in effect, meaningless in comparison with the practical, day-to-day presence of sole parent physical custody. The few individual parents who had joint legal custody were increasingly apprehensive that their sharing opportunities were non-existent. (AB 1480, which was legislatively considered after the In Re Marriage of Neal decree of May 9, 1979 and chaptered on September 21, 1979, supersedes In Re Marriage of Neal as well as imposes a policy that a child must be assured of frequent and continuing contact with both parents regardless of joint legal custody.)

Furthermore, there was, and is, concern that a joint legal custodian will have acquired all the legal responsibilities and obligations of a child's conduct, encounters with the law, creditors and litigants but with none of the frequent and continuing physical relationship that might enable such a custodian to forestall or ameliorate in advance the delinquency resulting in the child's legal problems.

A succinctly worded resolution of this phraseology problem was proposed during the final amendment scramble, and practitioners may wish to adopt the intent of the proposal, although this particular phrase did not find its way into the final text in competition with numerous other considerations elsewhere in the legislative bill. The resolving proposal: That joint legal custody be awarded to a parent who requests joint legal custody only, without awarding joint physical custody.

## Modification or termination of joint custody orders upon petition

*Section 2. Section 4600.5 (d) Any order for joint custody may be modified or terminated upon the petition of one or both parents or on the court's own motion if it is shown that the best interests of the child require modification or termination of the order.*

Of all the paragraphed provisions within AB 1480, few are more cautionary to parents about assuring "the best interests of the child" than that regarding modification or termination of joint custody orders.

One parent, both parents, or the court can move for modification or termination, but the operative consideration for change is a showing of detriment to the child's best interests. Heretofore, an excluded parent frequently "gunnysacked" a reserve of complaints about the sole custodial parent's presumed violation of the child's best interests, as ammunition toward a reversal of sole custody or liberalization of visitation rights. At least in joint custody situations the parents can "keep brook on each other" with some equality, and perhaps eventually with tolerance and practicality as each experiences similar responsibilities. If each is nevertheless tempted to scrutinize the other parent's child-rearing toward the goal of threatening modification or termination, the overall effect may be a better attention to parenting, responsibility, and moral and ethical conduct than occurs in conventional families. The spectre of "answering up" in court is chastening.

But the deciding proof will lie in "the best interests of the child." There is no certainty that "best interests" are served by isolating a child from experience with conflict, by imposing sameness rather than diversity, by labeling one parent to be "visited" and the other to be custodian, and by depriving a child from access to the alternate parent for substantial periods of time.

Previous interpretations of "best interests" placed more emphasis on routine, discipline and isolation than upon tolerance, forgiveness and

accommodation. The latter trio may be among the better interests in preparing a child for survival in a crowded, changing adult world.

Contentions for and against joint custody will probably unearth more novel and provocative insights into a child's best interests than we have heard in the past.

Unilaterally, the court by its own motion will have some difficulty demonstrating that a modification or termination of joint custody is in the best interests of the child if both parents have agreed to joint custody, since Section 4600.5 (a) presumes that under circumstances of such agreement joint custody is in the best interests of a minor child.

### Opposition by a parent to modification requires a court's justification

*Section 2. Section 4600.5 (d) The court shall state in its decision the reasons for modification or termination of the joint custody order if either parent opposes the modification or termination order.*

The third situation in which the court is required to state reasons substantiating orders other than joint custody comes into play if either parent opposes modification or termination of joint custody. Consequently, there is a strong likelihood that for purposes of appeal or remodification, attorneys representing clients about to be excluded from joint custody will oppose modification from joint custody as a matter of protective procedure.

The penalties for objection to an alternate parent who desires to cooperate in joint custody are so uncertain, and so potentially counterproductive as implied by 4600 (b) (1) with its favoritism for the cooperative parent that, rather than moving directly for modification or termination, an unhappy co-custodian is better advised to first test the possibilities of drawing a tighter fence around the alternate parent's freedom of action or of negotiating tradeoffs during conciliation.

## Previous orders modifiable to joint custody

*Section 2. Section 4600.5 (e) Any order for the custody of the minor child or children of a marriage entered by a court in this state or any other state may, subject to the jurisdictional requirements set forth in Sections 5152 and 5163, be modified at any time to an order of joint custody in accordance with the provisions of this section.*

Will the court be swamped with requests for modification to joint custody? Probably, but requests will be tempered by a consideration of the expense of successful modification, or by apprehension about how successful modification is likely to be. Non-custodial parents who have adapted to the expectation that sole parent custody would always prevail and who have developed another lifestyle may not now seek joint custody.

Because of the incessant requests for information about retroactivity during the legislative process, an accommodation for modification was assured. Since divorce is better comprehended in retrospect than in prospect, and though AB 1480 is intended to benefit children and parents who are not yet aware they will be divorced, it is understandable that most of the followers of this legislation were doing so from retrospect.

The court may not necessarily bear the brunt of the first wave of modification actions. A parent desirous of joint custody may find it expensive, antagonistic, and of uncertain outcome to make the first overture to the alternate parent through court ordered hearing. Instead, the resourceful, parent who does not enjoy easy rapport with the other parent may find it productive to have a counselor (marriage, family, religious or legal) make the initial overture for exploratory conversations leading to joint custody. Joint custody implementation plans worked out between parents, as directly as possible, are probably preferable to risking the court's arbitrariness in decreeing implementation.

## California's joint custody decree affecting another state's

*Section 2. Section 4600.5 (e) Any order for . . . custody . . . entered by a court in . . . any other state may, subject to the jurisdictional requirements set forth in Sections 5152 and 5163, be modified at any time to an order of joint custody . . .*

Qualms about the ability to enforce a California custody decree in other states led proponents of SB 477 to author into an early version the provision that joint custody could not be ordered if one parent lived in another state, and that joint custody could be terminated if one of the co-custodians moved to another state. A similar restraint was not a part of AB 1480, and AB 1480 proponents opposed such provisions in SB 477. The outcome was to mesh these considerations with the protections of the Uniform Child Custody Jurisdiction Act.

Section 5152 of California's Civil Code is similar to Section 3 of the Uniform Child Custody Jurisdiction Act, while Section 5163 is similar to Section 14 of the Uniform Child Custody Jurisdiction Act. Section 5152 requires that California be the home state of the child at the time of commencement of the proceedings or within six months prior to commencement of the proceedings. Or, California could assume jurisdiction if the child and the child's parents have a significant connection with California. Physical presence of the child within the state is influential but that criterion alone is not sufficient to confer jurisdiction.

Section 5163 restrains California from assuming jurisdiction over custody decrees made by another state unless it appears that the court which rendered the decree does not now have jurisdiction or has declined to assume jurisdiction. Even so, California is obligated to give due consideration to the transcript and proceedings that have occurred in another state if California assumes jurisdiction.

Thirty-nine states have now adopted the Uniform Child Custody Jurisdiction Act drafted in 1968. California adopted the UCCJA in 1973. States adopting in 1979 include Arkansas, Illinois,

Maine, Nebraska, New Jersey, North Carolina, Tennessee, Virginia and Washington.

The states that are outside of the UCCJA agreement, as of Fall 1979, are Alabama, District of Columbia, Kentucky, Massachusetts, Mississippi, New Mexico, Oklahoma, Puerto Rico, South Carolina, Texas, Utah, Vermont and West Virginia.

If a parent intends to use the new California law to achieve a joint custody decree not awarded in another state, the provisions of the UCCJA are the first of the obstacles to be considered.

On the other hand, the UCCJA will assist in protecting a California decree in other UCCJA-endorsing states as long as the parents and child adhere to the prerequisites for California to retain jurisdiction.

#### Using conciliation to ease the court's burden

*Section 2. Section 4600.5 (f) In counties having a conciliation court, the court or the parties may, at any time, pursuant to local rules of court, consult with the conciliation court for the purpose of assisting the parties to formulate a plan for implementation of the custody order or to resolve any controversy which has arisen in the implementation of a plan for custody.*

The new law could facilitate access to conciliation court consultation regarding any custody plan, whether sole parent or joint. "Local rules of court" may limit the availability of court-assisted conciliation as well as the procedures for such access. In California only the larger metropolitan jurisdictions maintain conciliation court services thus far.

At least five consequences are likely to evolve from the new statute, and in particular from paragraph 4600.5 (f):

1. **Burden reduction.** Utilization of conciliation court assistance will likely have the potential of substantially reducing the hearing court's burden, the consumption of time through adherence to courtroom procedure, and the issuance of decrees

that may be unpalatable to one or both parents.

2. **Active assistance.** "... assisting the parties to formulate a plan . . ." places the conciliation court in a more active, goal-oriented role than it has occupied since an earlier era when the court was known colloquially as reconciliation rather than conciliation court. In other words, rather than primarily serving as an instrument for the parties to recognize, accept and "live with" a pending or previous court order, the possibility now exists for a conciliation court to assist parties in formulating plans for submission to the court.

3. **Resource accumulating.** Implementation plans, particularly for joint custody, are expected to be diverse, individualized, and probably novel. Since parents are invited to participate in the planning, the relative simplicity of the traditional sole parent custody decree will no longer prevail. Consequently, conciliation court personnel are likely to become repositories and resources for a wide range of concepts that can be used to stimulate parental imagination about ways to resolve and implement joint custody. Information exchange about joint custody planning will, by necessity, increase dramatically.

4. **Private counseling.** There was no known or purposeful intent to exclude access to privately-reimbursed conciliation counseling or to impose exclusive recourse to public, tax-supported conciliation court services. Although passage of the new law will increase the clamor for expansion of conciliation court services, the availability of funds and competing political considerations may restrain the ability of the public system to expand in the same ratio as parental interest in achieving joint custody decrees. The result will probably be increased gravitation to privately-paid counseling as well as that available from non-governmental charitable organizations. The new custody law implies the potential of considerable growth for such private and philanthropic services.

5. **Stature opportunity.** Since so much of the possibility for success in joint custody planning and implementation will hinge on negotiation effectiveness during the planning process, and since

this conciliation service can be such an important assist to jurists, there is now a substantial opportunity for conciliation courts and counselors to achieve a greatly increased appreciation and recognition.

Furthermore, the "resolving of controversy" portion of paragraph (f) could shunt to the conciliation court first those requests for modification or termination that might ordinarily go directly to the hearings court. Arrangement for and success of joint custody is a highly personal matter for the participants. However, skeptics are likely to question the efficacy of joint custody, based on the statistical reoccurrence of hearings requests. The magnitude of those statistics may be affected substantially by how readily joint custodial parents can utilize the conciliation courts prior to hearings.

#### Access to records by noncustodial parents

*Section 2. Section 4600.5 (g) Notwithstanding any other provision of law, access to records and information pertaining to a minor child, including but not limited to medical, dental, and school records, shall not be denied to a parent because such parent is not the child's custodial parent.*

The statute's concluding paragraph requiring records about the child to be accessible to noncustodial parents was also one of the last amendments proposed as a concluding amendment-drafting session. As such, the proposal represented the reaction of noncustodial parents to that which

they have perceived as an abuse of the exclusivity of sole parent custody. Some observers contended that the provision was not strictly necessary in view of other means available to achieve the same effect. As a caution to the custodial parent, however, the paragraph does imply a measure for evaluating the cooperation of a custodial parent with a noncustodial parent.

Since the paragraph does not limit information to merely medical, dental and school records, it does open up the possibility of seeking information about such other topics as diet, clothing purchases, income, religious activity, clubs and camps, work and rest, and similar inquiries.

#### Evaluate in its entirety

Because the version of AB 1480 that ultimately passed into law has so many more provisions than the simplicity of the originally introduced version, there may be a tendency to become preoccupied with the ramifications and opportunities for litigation in specific clauses. Therefore, it behooves all parties to pause, place in perspective, and view the statute in its overriding intent. AB 1480 affords a rewardable premium for cooperation and accommodation, to the advantage of a child's continued access to both parents. Frequent and continuing contact, through joint custody or sole custody, is preferred. The opportunity is now available to parents and the court to reduce post-divorce tension and antagonism through joint custody.

## Background

### Fate of the 1977 proposal

During the 1976-77 two-year session of the California legislature a Joint Senate-Assembly Committee on Judicial Equality was created to examine inequality in California laws and to propose rectification. California's 'no fault divorce' Family Act of 1970 was particularly singled-out for examination. The lack of a joint child custody option was regarded as the single greatest inequity left unrectified when 'no fault' divorce was imposed in 1970. In 1974 the "mother's preference doctrine" (regarding children of tender years) was modified to permit the designation of either parent as custodian based on the child's best interests. But, the statute still provided that custody could be awarded only to either parent or to an outsider just as it had when so-called 'fault' was a consideration in designating a custodian. Thus a parent who demanded it of the court would receive a divorce without showing of cause, while the other parent (who may not have been consulted or wittingly given cause for divorce) could promptly be excluded from the child's life, except for 'visitation' based on a schedule decreed by the court without consulting the excluded parent.

Consequently, a joint custody bill, AB 3475, was submitted and processed through the California legislature in 1977. The bill captured wide public attention when enroute from passage by the Assembly to the Senate it was discerned that the measure capitalized on the humanitarianism of joint custody but made the achievement of joint custody virtually unattainable. 1977's AB 3475 required that both parents agree to petition the court simultaneously for joint custody before the court would consider decreeing joint custody. Instead of facilitating agreement and cooperation toward a goal of benefit to the child, the measure gave a unilateral power of veto to the most recalcitrant, possessive and uncooperative parent with no similar or offsetting advantage for the cooperative and sharing parent.

Several individuals, groups and organizations, including the southern California representative of the National Organization for Women coalesced to

endorse and seek a single amending phrase permitting either parent to petition for joint custody. Such an amendment would have cultivated a socially desirable goal: recognition by the court for a cooperative and accepting parent. The California legislative system permits a bill's sponsor to refuse an amendment and to refuse to carry a bill further, regardless of majority legislative support for the amendment and for an amended bill. Amendment of 1977's AB 3475 was categorically refused and the bill remained in the Senate Judiciary Committee until the end of the session a month and a half later whereupon the joint custody issue was effectively dead, legislatively.

Although no publicly outspoken opposition to joint custody was identified at any legislative forum or hearings, the legislative quest for joint custody was foreclosed at the end of 1977 for another year and a half because of doubt that a sponsoring legislator could be identified who would dedicate the energy required to assure passage of such a measure.

### Postponement builds demand for specificity

The new California statute is unique in its constraints on the court's latitude, although California is not the first state with a joint custody statute. The intensity of demand for and scrutiny of joint custody legislation in California during 1979 probably spawned the specificity missing in the statutes of the five other states recognizing joint custody: (Iowa, Maine, North Carolina, Oregon and Wisconsin.) Most of the five passed joint custody legislation starting in 1977, before the demand had become so insistent as to place specific procedural requirements on the court, as does the California statute. Generally, the other five states simply grant a court the power to decree joint custody or imply the availability of joint custody by defining joint custody.

Pressure for specific legislative support of joint custody and specific constraints on the court's discretion came from a wide range of sources. The initiating or authoring of AB 1480 was not the product of a fathers' rights group, although remarks by opponents following passage of AB 1480 might

lead the public to believe so. At the time AB 1480 was submitted and acquired its initial endorsers I was not an active member of such a group, although as the following implies, their support was crucial. The earliest supporters were among the professionals. A number of professionals in the psychiatric, sociological and counseling fields endorsed the concept of joint custody. A gratifyingly large number of lawyers also endorsed the necessity of joint custody. But the intensity of the need was most vividly evident in both the ad hoc and the formal groups of divorced fathers. I was also to find this intensity matched by divorced mothers who, (voluntarily and involuntarily) did not have custody. The divorced mother without custody has an interest in joint custody as intense as the divorced fathers who have garnered the lion's share of publicity for warranting joint custody.

The indignation of the ostracized parent has the intensity of the self righteous because a tenet of "no fault" divorce is that a parent can be divorced and deprived of access to an offspring. Hence, innumerable fathers' rights groups are populated by law-abiding and otherwise circumspect fathers who have been deprived of access to their children through imposition by the legal system of a "no fault" divorce.

The net effect was that law abiding fathers whose conduct as fathers and husbands was theoretically not in question, were nevertheless severed from a normal relationship with their children in decrees as severe as if these men had committed a crime. The result was acute disdain for the law as practiced from the bench.

Politicians and propagandists sense the power inherent in justified indignation. Scholars know the dangers to a nation when its legal system is more convenient for severing a family than preserving it.

A rage from righteousness is also dangerous and dedicated. It can also transcend personal safety and self-preservation, as was evident among fathers who spoke threateningly.

Such was the atmosphere within which the ameliorating proposal that became AB 1480 was

introduced, and none too soon. As I indicated to the California Senate Judiciary Committee's Advisory Committee at their March 5th San Diego meeting, "It is imperative that the Legislature enact a genuinely equitable joint custody statute before the summer is out because dedicated but disenfranchised fathers are becoming so numerous and the anguish so intense that the reaction is cresting toward personal, unilateral action that will be widely evaluated as justified."

The disdain for "the system" and the skepticism of effecting any peaceful change through the legislature (after the 1977 experience) had become so widespread that, as I told a May 9th Assembly Judiciary Committee hearing, "More than once I have been grabbed by the lapel in men's group meetings with a demand that my diversion of their anxieties toward AB 1480 better damn well not be just another hoax!"

Such was the pressure valve threatening release, or resolution, in early 1979.

Satisfactory joint custody legislation would have another virtue, or diversion . . . depending on your view . . . as expressed to me by Vert Vergon, the pioneer organizer of Fathers Demanding Equal Justice and advocate of joint custody since 1974: "If you succeed in getting joint custody implemented, most of the men's rights groups will probably cease to exist since child custody is the single most important issue that holds them together."

Thus, the scrutiny of the judiciary's latitude that occurred during legislation of AB 1480 might not have been nearly so specific if California had adopted the milder version sought two years earlier.

#### Sponsorship in 1979

In February and March, 1979, Assemblyman Charles Imbrecht of Ventura offered to assure that the concept and wording proposed to him would be submitted to the Legislative Counsel's office for review and deposited in the legislative bill hopper. Assemblyman Imbrecht's position as Vice Chairman of the Assembly Judiciary Committee was crucially important since that Committee was the legislative forum in which the bill would first be

heard. Thirteen additional Assembly members and Senators were encouraged to become co-sponsors. The first of those co-sponsors was Assemblyman Art Torres of Los Angeles, also a member of the Assembly Judiciary Committee.

The extensive burden of bills processed by California legislators requires that the obligation of sponsoring and guaranteeing a new measure is not lightly assumed. 3,546 measures were introduced into the California legislative process during 1979, of which 1,843 were passed during the 139 days the legislature was in session. As a consequence, the sponsor's burden is numerically large for nearly every legislator. Assemblyman Imbrecht's legislative burden is typical. At any one time during the 1979 legislative session he was sponsoring over 100 different bills and was the primary and lead sponsor of over 30 measures of varying degrees of complexity. In view of these obligations, it is important to a legislator's credibility and effectiveness that a bill's initiating constituents be prompt in response, accurate in representations, comprehensive in gaining adherents, and cooperative in accommodating a legislator's schedule.

In a search for legislator sponsors, the text that eventually became AB 1480 was delivered to all Assembly members and Senators who had seats on the Judiciary Committees in their respective houses. Support for the concept was expressed informally and provisionally during personal follow-up visits with the Assembly members and Senators. During this routine procedure we learned that the Senate Judiciary Committee staff was researching the joint custody topic for possible submission of such a bill by the Senate Judiciary Committee Chairman. Copies of joint custody measures legislated by other states and a copy of 1977's AB 3475 had been received by that staff.

Several months prior, a blue ribbon Citizens' Advisory Committee had been created by the Senate Judiciary Committee to meet monthly for the evaluation of a broad range of proposed family law legislation topics. The Advisory Committee consisted of two Superior Court judges, a law professor, a director of counselling for a county conciliation court, a deputy county clerk, a psychologist and a family law attorney. Los Angeles County

Superior Court Judge Robert Fainer served as the Chairman.

Monday, March 5th was indicated as the date for consideration in San Diego by the Committee of child custody concepts, presumably to be considered in creating a joint custody bill. But that presumption subsequently appears to have been misinterpreted. Proponents of the text that became AB 1480 appeared at the March 5th San Diego Advisory Committee meeting, but on the previous Thursday, March 1st, SB 477 had already been placed in the Senate's bill hopper by Judiciary Committee Chairman Jerry Smith. Consequently, the Advisory Committee moved on to family law topics other than child custody during the March 5th meeting after the Advisory Committee Chairman recommended to the proponents of the alternate text that they deliver their concept to the Assembly Judiciary Committee since a Senate version was already underway.

Prior to March 1st, the text that became AB 1480 was already being favorably considered for sponsorship by several Assembly members. While the extensiveness of support was being evaluated, Assemblyman Imbrecht's office temporarily held the text in abeyance until the last calendar date for submitting a text to the Legislative Counsel's office for approval prior to delivery of a bill to the Assembly. Consequently, SB 477 started the formal legislative cycle (on March 1) ahead of the temporarily delayed AB 1480, which was filed with the Assembly on March 29. The effect of this lack of synchronization was that the two bills never coincided for simultaneous consideration in the respective policy committees. Examination and eventual passage of SB 477 occurred without concurrent comparison with AB 1480. Thereupon, AB 1480 became the bill for making changes in SB 477 because it became the last of the two bills to be considered for passage.

That which some observers characterized as the distinctly opposing character of both bills, in their initial versions, increased the intensity of debate and attention to the topic by child custody advocates.

**Comparisons & consequences: the original AB 1480**

The original version of AB 1480 was succinct. The original merely added new subparagraphs (a) and (b) to the order of preference statement in California's long standing Section 4600 of the Civil Code:

"Custody should be awarded in the following order of preference:

(a) to both parents in joint physical and legal custody.

(b) to either parent if a preponderance of the evidence establishes that it is in the best interest of the child that custody should be awarded to one parent or if the parents agree that one parent shall assume custody."

Subsequently there was concern that subparagraph (b) imposed the burden of an evidence test on custody litigation. Persia Woolley, author of "The Custody Handbook", had a similar proposal: place the burden of proof on the parent seeking sole custody.

Ultimately, the criteria for sole custody that evolved from amended versions of SB 477 were adopted within AB 1480. For no discernible reasons, the one seemingly agreeable second criterion for sole custody of the original AB 1480, "if the parents agree that one parent shall assume custody" disappeared during hearings and amendment sessions.

**Comparisons & consequences: the original SB 477**

The original version of SB 477, which was lengthier, did not amend Section 4600 of the Civil Code with its order of preference awarding custody to either parent. Instead SB 477 added Section 4600.5 to the Civil Code spelling out the circumstances wherein joint custody would be presumed in the best interests of the child, "... where all of the following factors are present:

1. The parties have agreed in writing to an award of joint custody or so agree in open court. . .

2. The parties have submitted to the court for its approval a written plan for the implementation of the joint custody arrangement.

3. Both parties presently reside in this state and state that they intend to reside in this state in the future."

The proposal also defined joint custody as, "... an arrangement whereby the minor child or children of the parents shall be in the physical custody of each parent for a period of time with the parents having equal control of the care, upbringing, and education of the child or children."

Additionally, SB 477 proposed that "... joint custody shall be terminated by the court if one parent establishes his or her principal residence in another state." The proposed bill also permitted termination of joint custody by the court after consideration of "... evidence of any substantial failure of a parent to adhere to the plan for implementation of the joint custody arrangement . . ."

The ensuing hearings and amendment debates substantially changed most of those provisions. The reasons for doing so are instructive of the legislative intent behind Chapter 915 as enacted in the Statutes of 1979. The major changes to SB 477:

- A coincident series of preconditions were not required to establish a presumption for joint custody.

- Agreement by the parents to joint custody was not to be required since it gave a disproportionate leverage to the recalcitrant parent, to the disadvantage of children and of a cooperative parent.

- Implementation plans are not necessarily required in advance by the court and may be developed subsequent to court order, but the requirement of a plan in advance could result in delays by a litigious parent.

- Residence within the state, and the opportunity to terminate joint custody by moving or threatening to move from the state, were also

dropped since they suggest mechanisms for defeating joint custody, to a child's disadvantage, and with no compensating opportunity for the other parent to protect and ensure joint custody.

- The emphasis on "equal" periods of physical custody or of control in care, upbringing and education were also dropped. The qualifying word "equal" was eliminated so that the focus of the parents would be on such practical considerations as sharing the available time and apportioning responsibilities reasonably rather than scrutinizing the division of time and responsibilities. Trading of duties and responsibilities, one for the other, was considered as desirable as the splitting of a particular duty.

- Failure to adhere to a joint custody plan was eliminated as a cause for terminating joint custody lest antagonistic parents "keep book on each other" with the intent of contesting for sole custody based on plan performance rather than accommodating the vagaries of life.

Following the passage of AB 1480, proposals are now being offered for counseling of parents by public and private counselors about the creation of custody implementation plans. Simultaneously, another conclusion for the disposal of such parenting provisions is being voiced: let each parent determine the parenting decisions and styles that take place while the child is with the respective parent.

The omissions that were debated and determined during amendment are as instructive as the final version of AB 1480 which passed into law. The omissions dealt with so many issues that are likely to arise during hearings brought under the new statute that the reasons for eliminating such provisions provide an additional guide to the intention of the statute.

#### Dissimilar bills but unanimous votes

It is presumptive of me to assign simplistic but different motives to each of the two bills that were so dissimilar at the outset. At the risk of ignoring the complexities, I will assert that AB 1480 sought a clearcut acceptance of joint custody (as the first

in a series of considerations) on the confident assumption that there was sufficient approval of the concept to assure the necessary legislative votes in both houses for passage. On the other hand, SB 477 with its many preconditions and hurdles to joint custody, appears to have been predicated on a belief that there were insufficient votes for joint custody to assure passage, that SB 477 could overcome objection by selling it as a modest change merely confirming the few joint custody decrees that were occurring recently in the courts, and that SB 477 could become the first in a series of amendments that would make joint custody legislation more unequivocal in subsequent years, in the style of AB 1480.

The vote intrigues observers. The vote particularly baffles observers who were concerned about the distinctly different consequences of the two bills. Each measure, SB 477 and AB 1480, was voted on, separately, five different times (both Judiciary Committees, both houses, and concurrence). And although slightly out-of-synchronization, the legislative processing alternated back and forth (first on SB 477, then upon AB 1480, back to SB 477, etc.), but never in the same forum simultaneously. Yet, if I am correct in recall, both measures always received a unanimous approval, each of five times, with no objection publicly voiced in debate. (Observers are reminded that the amendment battles, which were vigorous, took place in the respective Judiciary Committees.)

Explanation for such voting patterns depend upon one's point of view. One explanation is that the legislature was prepared to accept any joint custody bill, with the content a matter for the proponents to negotiate. Both passed and both were signed by Governor Brown, although AB 1480 had the more tortuous requirement of passing through the Senate Judiciary Committee, at the expense of assuming many of the provisions of the previously-passed SB 477, whereupon AB 1480 prevailed to become California's second joint custody statute within a month and a half. The competitiveness of the two brought more enlightened debate than might have occurred if only one bill was heard, the exercise worried proponents of AB 1480 into taking less for granted about passage, and it is a credit to the legislators that the competitive nature

of the measure was not allowed to rigidify into a stalemate or stand-off that might once again have killed joint custody legislation.

**A mandatory appellation becomes a mandatory assumption**

Why is the measure so frequently referred to as California's "mandatory" joint custody law?

Midway in the legislative debates, AB 1480 was offhandedly characterized as "mandatory" joint custody, an appellation most often bestowed by opponents in an attempt to rationalize support toward SB 477. Followers of joint custody have also assumed the statute to be "mandatory".

The reasons for such an opinion seem to lie in an interesting amalgam of law, legislature and literature.

Just prior to introduction of AB 1480 to the legislature, Woodland Hills, California, lawyer Burton Bach had been counseling a divorced, non-custodial mother, who wished to seek the sharing of joint custody with her former husband. Earlier, upon divorce, she had opted for giving custody to the father since she was apprehensive about her ability to obtain work and establish a home and to assume the obligations of custody. But, prior to passage of AB 1480, and despite the aid which Bach could provide, she decided not to proceed in the quest for joint custody because of apprehension that custody litigation would create an atmosphere so antagonistic for child and parents as to jeopardize their already tenuous relationship.

Bach authors a satirical commentary, "The Bach's Score," published in the southern California newspaper for the legal community, The Los Angeles Daily Journal. He was intrigued by AB 1480. With tongue in cheek, and satire so obscure it may have eluded those who were compulsively intent on the joint custody topic, on June 11, 1979 he bemoaned the do-gooders in the legislature, "One of the few areas of litigation still permitted lawyers to make healthy contributions to their Keogh accounts was the good old-fashioned child custody fight. . . . between "no fault" divorce and the kind of clients whose assets usually

range between zilch and zilch and a half, all the fun and most of the profit has evaporated from the domestic relations cases. The only thing left for the parties to fight about (and thereby enrich their counsel) is the custody of the children."

In defense of Bach and to rectify an impression most others failed to read, he concluded, "I ask you: Can we accept such a radical concept as that of 'joint custody?'. You bet we can—and the sooner the better!"

But, unfortunately, few read the satire to its conclusion. Instead most remembered the prominent bold face heading of the article, "Mandatory Joint Child Custody Bill—A Help Or a Hinderance to Lawyers?"

The headline became the popular definition of AB 1480. The bill, however, contained no demandingly rigid requirement for the decree of joint custody.

Subsequently, the adoption from SB 477 into AB 1480 of the requirement for the court to indicate reasons for not granting joint custody has caused jurists to remark that the effect is almost tantamount to "mandatory," however.

**Transition: Public perception of court implementation**

Sole custody defeats the use of divorce as a social remedy by perpetuating the winner/loser antagonisms. On the other hand, joint custody intervenes on behalf of the child's interests to curtail a parent's opportunity for extending pre-divorce antagonisms through captive custody by requiring more equitable access. For the June 6, 1979 Assembly Judiciary Committee hearings, Persia Woolley testified, "I interviewed and listened to literally hundreds of divorced parents with all kinds of child custody arrangements. My research shows this (that joint custody won't succeed unless parents have a "friendly divorce" and initiate joint custody between themselves) to be a completely erroneous assumption on the part of the professionals. It is not necessary to be friends with your ex spouse in order to become an effective co-parent, although most parents who agreed to share their

children reported that their hostilities diminished after sharing was instigated. All sharing parents interviewed reported that the paramount consideration was that each parent must respect the rights and needs of the children to have normal relations with the other parent."

A similar emphasis was conveyed to the legislators in correspondence from Virginia Anne Church, "It makes sense to me to design a therapeutic holding pattern, putting parents on notice that the children will continue to have two parents and that whether or not they love and desire to live with one another they will continue their responsibilities as parents, learning to cooperate, or forfeiting the rights to guide their children." Dr. Church is a psychologist, practicing attorney, former dean of a Chicago law school and past chairman of the American Bar Association Committee on Marriage Counseling and Conciliation.

We are now in a period of transition. Chapter 15 of the Statutes of 1979 is being implemented. Implementation is being conducted by professionals in the several related fields who counseled, litigated and decreed under the former statute. Many are aware of the failures of the previous procedure, yet some retain a vested interest in past decisions and skepticism about the change. Until more experience is gained and new practitioners enter the field the transition may be uneven. The transition is not entirely the court's responsibility. As stated at the outset, the transition will be aided by the expectations of the parents prior to a court hearing conditioned by their awareness of the new statute. But, now we conclude with the caution of another parameter: the expectations of parents will also be conditioned by their impression of the court's implementation of the law's policy intent and precepts.

#### Literature and Sources

Throughout the 1970's articles and books for the professional and lay public about joint custody became available in at least three successive contents. First, during the early 1970's joint custody was acknowledged gradually in literature dealing primarily with the effects of divorce on children. By the mid-1970's literature specifically recognizing joint custody and advocating legitimization of joint custody appeared. Recently, a few literary works deal almost exclusively with the implementation of joint custody. Publications in the later category, that of 'how to' implementation handbooks, will probably become more numerous in the early 1980's. Temporarily, the relatively few 'how to' books reflect the concentration thus far by advocates in obtaining recognition of joint custody by legislatures and legitimization by statute. Having achieved legislative approval, those energies are now available for explanations, improvements, and implementation of joint parenting.

A comprehensive bibliography is available upon request from the author of this article.

Additionally, probably the most extensive, convenient and recent bibliography (September 16, 1979) itemizing 354 publications subdivided in 28 categories is available from its compiler, Richard C. Pasco, a newsletter editor of Equal Rights for Fathers, 235 College Avenue, Mountain View, California 94040.

A newcomer to the joint custody topic will find the following recent and relevant publications to be an efficient use of limited time. All were authored by specialists who gave their personal support and endorsement of AB 1480 to the California legislature and for signature into law by Governor Brown.

Diane Trombetta, Ph.D. and Betsey Warren Lebbos, Attorney at Law, "Co-Parenting: The Best Custody Solution," The Los Angeles Daily Journal Report, No. 79-12, pp. 11-23, June 22, 1979 and Conciliation Court Review, December 1979.

For the lawyer, parent and counselor, an annotated itemization of the effects of divorce and sole custody upon children and parents with references to joint custody solutions. An important and essential reference for individuals preparing to confront custody decisions in court.

Persia Woolley, *The Custody Handbook*. Summit Books, New York. 1979.

Currently the most recent and pre-eminent guide to designing custody arrangements with particular emphasis on joint custody. Highly suitable for independent reading by estranged parents in demonstrating how joint custody plans are achieved even though divorced parents are not otherwise communicating.

Miriam Galper, *Co-Parenting: A Sourcebook for the Separated or Divorced Family*. Running Press, Philadelphia, 1978.

A 'how to do it' handbook with suggestions for schedules, relationship with your ex-spouse, dealing with adjustment, and practical considerations. Lively, handy, fast-reading.

Ciji Ware, "Joint Custody: One Way to End the War," *New West*, pp 42-55, February 16, 1979.

Opens the imagination to various possibilities for joint custody through interviews with several co-parents in differing situations. Conveys an understanding of joint custody through personal experiences. The publication and distribution of this article to California legislators, concurrently with the distribution of the text that became AB 1480 was an important factor in securing attention for and approval of AB 1480. Ciji Ware is currently authoring a 'how to' handbook; *I Win, You Win*, to be published by Putnam in 1980.

Jay Folberg and Marva Graham, "Joint Custody of Children Following Divorce," *University of California—Davis Law Review*, Special Symposium on Children and the Law, May, 1979.

Analyzes the law of joint custody as well as its history, terminology and use. The concerns of attorneys, judges, and others are examined. Suggests criteria for joint custody and advocates its decree more often. An important guide for parents approaching court hearings and for legislative advocates. Jay Folberg, whose endorsement of AB 1480 was helpful in acquiring and reassuring legislator supporters of the measure, is a Professor of Law at Lewis and Clark College, Portland, Oregon, and Executive Director of the Association of Family Conciliation Courts.

Mel Roman and William Haddad, *The Disposable Parent: The Case for Joint Custody*. Holt, Rinehart and Winston, New York 1978.

A widely read book that has been instrumental in stopping the overburdening of a sole custodial parent and of creating ex-parents from non custodial parents. Melvin Roman, Ph.D., Professor of Psychiatry and Director of Group and Family Studies at the Albert Einstein College of Medicine is one of the nation's pioneering proponents of joint custody.

Isolina Ricci. The following four items by Isolina Ricci, the former director of family services in Santa Monica, California, and currently completing her Ph.D. dissertation at Stanford University, are useful in establishing the legitimacy of joint custody.

"Dispelling the Stereotype of the Broken Home," *12 Conciliation Courts Review* 7, Iss. 2, 1976.

"Cooperative Parenting after Divorce: Myth or Reality?," *Conference on the Divorcing Family*, University of Southern California, Jan. 27, 1979, reported in *Los Angeles Times*, Jan. 3, 1979, Part IV at 4, Col. 2.

"Shared Custody," *Conciliation Courts Review*, January 1976. *Mom's House, Dad's House*, published source unknown.

Virginia Anne Church, Ph.D., Director, Institute for Rational Living, 2435 Ocean Avenue, San Francisco, California. Dr. Church, psychologist, counselor and lawyer, was one of the earliest pioneering professionals in vigorous advocacy of joint custody in Florida and California. Publications to be obtained directly from the Institute.

**"A Rational Approach to Making Court-Ordered Counselling Work." Skill Training.  
The Little Loser in the Victor's Circle, (Yet to be published).**

CHAPTER 915

An act to amend Section 4600 of, and to add Section 4600.5 to, the Civil Code, relating to child custody.

[Approved by Governor September 21, 1979. Filed with Secretary of State September 22, 1979.]

Digest

AB 1480. Imbrecht. Child Custody.

Former law specified certain preferences in making an award of child custody. In making such an award the overriding concern, however, was the best interests of the child. There was no specific authorization for an award of joint custody and there was no presumption that joint custody was in the best interests of the child.

AB 1480 specified circumstances in which a presumption favoring an award of joint custody shall operate, as well as specifically authorizing such an award in other cases, as designated. AB 1480 also specified that access to records and information pertaining to a minor child shall not be denied to a parent because such person is not a child's custodial parent.

AB 1480 also incorporated further changes in Sec. 4600, Civ.C. by AB 167, contingent upon enactment and prior chaptering of AB 167.

*The people of the State of California do enact as follows:*

SECTION 1. Section 4600 of the Civil Code is amended to read:

4600 (a) The Legislature finds and declares that it is the public policy of this state to assure minor children of frequent and continuing contact with both parents after the parents have separated or dissolved their marriage, and to encourage parents to share the rights and responsibilities of child rearing in order to effect this policy.

In any proceeding where there is at issue the custody of a minor child, the court may, during the pendency of the proceeding or at any time thereafter, make such order for the custody of the child during minority as may seem necessary or proper. If a child is of sufficient age and capacity to reason so as to form an intelligent preference as to custody, the court shall consider and give due weight to the wishes of the child in making an award of custody or modification thereof. In determining the person or persons to whom custody should be awarded under paragraph (2) or (3) of subdivision (b), the court shall consider and give due weight to the nomination of a guardian of the person of the child by a parent under Article 1 (commencing with Section 1500) of Chapter 1 of Part 2 of Division 4 of the Probate Code.

(b) Custody should be awarded in the following order of preference according to the best interests of the child:

(1) To both parents jointly pursuant to Section 4600.5 or to either parent. In making an order for custody to either parent, the court shall consider, among other factors, which parent is more likely to allow the child or children frequent and continuing contact with the noncustodial parent, and shall not prefer a parent as custodian because of that parent's sex.

The court, in its discretion, may require the parents to submit to the court a plan for the implementation of the custody order.

(2) If to neither parent, to the person or persons in whose home the child has been living in a wholesome and stable environment.

(3) To any other person or persons deemed by the court to be suitable and able to provide adequate and proper care and guidance for the child.

(c) Before the court makes any order awarding custody to a person or persons other than a parent, without the consent of the parents, it shall make a finding that an award of custody to a parent would be detrimental to the child and the award to a nonparent is required to serve the best interests of the child. Allegations that parental custody would be detrimental to the child, other than a statement of that ultimate fact, shall not appear in the pleadings. The court may, in its discretion, exclude the public from the hearing on this issue.

**SEC. 2** Section 4600.5 is added to the Civil Code, to read:

4600.5. (a) There shall be a presumption, affecting the burden of proof, that joint custody is in the best interests of a minor child where the parents have agreed to an award of joint custody or so agree in open court at a hearing for the purpose of determining the custody of the minor child or children of the marriage.

If the court declines to enter an order awarding joint custody pursuant to this subdivision, the court shall state in its decision the reasons for denial of an award of joint custody.

(b) Upon the application of either parent, joint custody may be awarded in the discretion of the court in other cases. For the purpose of assisting the court in making a determination whether an award of joint custody is appropriate under this subdivision, the court may direct that an investigation be conducted pursuant to the provisions of Section 4602. If the court declines to enter an order awarding joint custody pursuant to this subdivision, the court shall state in its decision the reasons for denial of an award of joint custody.

(c) For the purposes of this section, "joint custody" means an order awarding custody of the minor child or children to both parents and providing that physical custody shall be shared by the parents in such a way as to assure the child or children of frequent and continuing contact with both parents; provided, however, that such order may award joint legal custody without awarding joint physical custody.

(d) Any order for joint custody may be modified or terminated upon the petition of one or both parents or on the court's own motion if it is shown that the best interests of the child require modification or termination of the order. The court shall state in its decision the reasons for modification or termination of the joint custody order if either parent opposes the modification or termination order.

(e) Any order for the custody of the minor child or children of a marriage entered by a court in this state or any other state may, subject to the jurisdictional requirements set forth in Sections 5152 and 5163, be modified at any time to an order of joint custody in accordance with the provisions of this section.

(f) In counties having a conciliation court, the court or the parties may, at any time, pursuant to local rules of court, consult with the conciliation court for the purpose of assisting the parties to formulate a plan for implementation of the custody order or to resolve any controversy which has arisen in the implementation of a plan for custody.

(g) Notwithstanding any other provision of law, access to records and information pertaining to a minor child, including but not limited to medical, dental, and school records, shall not be denied to a parent because such parent is not the child's custodial parent.

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March 19, 1981

Representative Don Clocksin  
Alaska State Legislature  
Health, Education & Social  
Services Committee  
Pouch V  
Juneau, Alaska 99911

Re: House Bill No. 210

Dear Don:

I have had an opportunity to read and review House Bill No. 210, introduced by Representatives Rogers and Gardiner on February 23, 1981. I have in the past and am currently representing individuals who are strong, stable, and well respected members of the community who, through personal misfortune, are in the process of divorcing a spouse. A very strong concern of each and every client has been the preservation of their relationship with minor children. In particular, I am presently involved in a situation concerning an Alaska Native and a non-Native, with custody of an adopted Native child at issue. I have advised my client of the unwritten predisposition of courts in this state toward maternal custody, and of the courts' general reluctance to approve shared custody arrangements, but have nonetheless been requested to work out a shared custody arrangement. I am willing to encourage shared custody in this situation. I believe that, in a good number of circumstances, shared custody of minor children is far and away in the best interests of the child. This is particularly true where such an arrangement is mandated by the Legislature and neither party is under the misconception that a court will award an arrangement differently. This type of an arrangement, in my view, would force the parties to realize that they must deal with each other on a continuing basis until their child is of sufficient age to leave the home. As a result of my experience, I strongly urge adoption of House Bill 210, or a bill similar in substance, during this present legislative session.

Sincerely,

*Patrick M. Anderson*  
Patrick M. Anderson

PMA/clb



ALASKA STATE LEGISLATURE  
HOUSE OF REPRESENTATIVES  
RESEARCH AGENCY

Pouch Y, State Capitol  
Juneau, Alaska 99811  
(907) 465-3591

February 15, 1982

MEMORANDUM

TO: Representative Mike Beirne  
Attn: Jody Sutherland

FROM: Christine Johnson, Research Staff *Johnson*

RE: Joint Custody  
Research Request 82-18, Additional Information

Enclosed please find an updated version of the joint custody legislation now under consideration in the State of Washington. We hope this is of use to you.

CJ

Attachment

SUBSTITUTE HOUSE BILL NO. 905

State of Washington by Committee on Ethics, Law & Justice (originally  
47th Legislature sponsored by Representatives Wang, Ellis,  
1982 Regular Session Armstrong, Dunn, Patrick, Tupper, Bacher, King (J),  
Winsley, Brown, Barlow, Granlund, Mitchell,  
Vander Stomp, Salatin, Lewis, Manning, Johnson, Sherman and Teutsch)

Read first time February 2, 1982, and passed to Committee on Rules for  
second reading.

1 AN ACT Relating to child custody; amending section 9A.40.050,  
2 chapter 260, Laws of 1975 1st ex. sess. and RCW  
3 9A.40.050; amending section 19, chapter 157, Laws of 1973  
4 1st ex. sess. and RCW 26.09.190; amending section 20,  
5 chapter 157, Laws of 1973 1st ex. sess. and RCW  
6 26.09.200; amending section 28, chapter 157, Laws of 1973  
7 1st ex. sess. and RCW 26.09.280; amending section 28,  
8 chapter 157, Laws of 1973 1st ex. sess. as amended by  
9 section 4, chapter 32, Laws of 1975 and RCW 26.09.280;  
10 amending section 9, chapter 50, Laws of 1949 and RCW  
11 26.12.090; amending section 10, chapter 50, Laws of 1949  
12 and RCW 26.12.100; amending section 12, chapter 50, Laws  
13 of 1949 and RCW 26.12.120; amending section 18, chapter  
14 50, Laws of 1949 and RCW 26.12.180; amending section 19,  
15 chapter 50, Laws of 1949 and RCW 26.12.190; amending  
16 section 20, chapter 50, Laws of 1949 and RCW 26.12.200;  
17 adding new sections to chapter 26.09 RCW; creating a new  
18 section; prescribing penalties; and providing an  
19 effective date.

20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

21 NEW SECTION. Section 1. The legislature finds that it  
22 is the public policy of this state to enable minor children to  
23 have frequent and continuing contact with both parents when such  
24 contact is appropriate. It is the intent of the legislature to  
25 encourage parents to share the rights and responsibilities of  
26 raising their children when in the best interests of the  
27 children. It is also the intent of the legislature to recognize  
28 the importance of flexibility in custody arrangements.  
29 Therefore the legislature finds and declares that, in the

Sec. 1

1 interests of children, it is the public policy of this state to  
2 recognize joint custody as an alternative to be considered with  
3 sole custody.

4 NEW SECTION. Sec. 2. There is added to chapter 26.09  
5 RCW a new section to read as follows:

6 For the purposes of this chapter, "joint custody" means  
7 an order awarding custody of the minor child or children to the  
8 parties in such a way as to continue the sharing of parental  
9 rights and responsibilities and to assure the child or children  
10 of having frequent and continuing contact with the parties. In  
11 its order, the court may award joint custody with or without  
12 shared or alternating residential arrangements.

13 Sec. 3. Section 18, chapter 137, Laws of 1973 1st ex.  
14 sess. and RCW 26.09.130 are each amended to read as follows:

15 The court shall determine custody in accordance with the  
16 best interests of the child. The court shall consider all  
17 relevant factors including:

18 (1) The wishes of the child's parent or parents as to  
19 ~~((his))~~ joint or sole child custody and as to visitation  
20 privileges;

21 (2) The wishes of the child as to ~~((his--custodian))~~  
22 custody and as to visitation privileges;

23 (3) The interaction and interrelationship of the child  
24 ~~((with-his)),~~ the child's parent or parents, ~~((his))~~ the child's  
25 siblings, and any other person who may significantly affect the  
26 child's best interests;

27 (4) The child's adjustment to ~~((his))~~ the child's home,  
28 school, and community; and

29 (5) The mental and physical health of all individuals  
30 involved.

31 The court shall include written findings of fact as to these  
32 relevant factors in any order in which custody is disputed. At  
33 the request of either party or on its own motion, the court may  
34 transfer the case to the family unit or refer the parties to  
35 another counseling or mediation service of their choice for

1 amicable settlement of the issues in controversy. The court  
2 shall not consider conduct of a parent, proposed guardian, or  
3 custodian that does not affect the welfare of the child. The  
4 court shall not prefer a parent, proposed guardian, or custodian  
5 because of the parent's, proposed guardian's, or custodian's  
6 gender.

7 NEW SECTION. Sec. 4. There is added to chapter 26.09  
8 RCW a new section to read as follows:

9 In any temporary or final custody determination, the  
10 parties shall submit to the court a plan for the implementation  
11 of the final custody order. If the parties cannot agree on a  
12 plan, then each party shall submit a proposed plan. The plan  
13 shall include but not be limited to provisions for:

- 14 (1) Residential arrangements for the child;
- 15 (2) Financial resources in support of the child;
- 16 (3) Frequent and continuing contact with the parties  
17 when such contact is appropriate;
- 18 (4) Subsequent amendments of the plan in the event of  
19 the relocation of a party or other major changes affecting the  
20 minor child; and
- 21 (5) Resolution of disputes which may arise between the  
22 parties.

23 NEW SECTION. Sec. 5. There is added to chapter 26.09  
24 RCW a new section to read as follows:

25 (1) A final order for joint custody shall include but  
26 not be limited to:

27 (a) Written findings of fact by the court as to the  
28 relevant factors in determining the best interests of the child  
29 under RCW 26.09.190;

30 (b) The implementation plan ordered by the court  
31 including but not limited to the following:

- 32 (i) Residential arrangements for the child;
- 33 (ii) Provisions for resources in support of the child;
- 34 (iii) Provisions for amendments to the implementation  
35 plan adopted by the court; and



Sec. 5

1 (iv) Provisions for a mechanism for the resolution of  
2 disputes which may arise between parties. Such mechanism may  
3 include counseling, mediation, or the use of family courts.

4 (2) The court may include the factors in subsection (1)  
5 of this section in a temporary joint custody order under RCW  
6 26.09.200.

7 NEW SECTION. Sec. 6. There is added to chapter 26.09  
8 RCW a new section to read as follows:

9 If the parties have agreed to joint custody and have  
10 agreed to an implementation plan under section 4 of this act,  
11 the court shall order joint custody unless the court determines  
12 it is not in the best interests of the child.

13 Sec. 7. Section 20, chapter 157, Laws of 1973 set ex.  
14 sess. and RCW 26.09.200 are each amended to read as follows:

15 A party to a custody proceeding may move for a temporary  
16 custody order. The motion must be supported by an affidavit as  
17 provided in RCW 26.09.270. The court may award temporary  
18 custody after a hearing, or, if there is no objection, solely on  
19 the basis of the affidavits.

20 The temporary custody order shall be for joint custody if  
21 the parties have agreed to a temporary plan under section 4 of  
22 this act unless the court determines it is not in the best  
23 interests of the child.

24 If a proceeding for dissolution of marriage, legal  
25 separation, or declaration of invalidity is dismissed, any  
26 temporary custody order is vacated unless a parent or the  
27 child's custodian moves that the proceeding continue as a  
28 custody proceeding and the court finds, after a hearing, that  
29 the circumstances of the parents and the best interests of the  
30 child require that a custody decree be issued.

31 If a custody proceeding commenced in the absence of a  
32 petition for dissolution of marriage, legal separation, or  
33 declaration of invalidity, (subsection (1) of RCW 26.09.180) is  
34 dismissed, any temporary order is vacated.

1           Sec. 8. Section 28, chapter 157, Laws of 1973 1st ex.  
2 sess. and RCW 26.09.260 are each amended to read as follows:

3           (1) The court shall not modify a prior custody decree  
4 unless it finds, upon the basis of facts that have arisen since  
5 the prior decree or that were unknown to the court at the time  
6 of the prior decree, that a change has occurred in the  
7 circumstances of the child or ((his)) the child's custodian or  
8 joint custodian and that the modification is necessary to serve  
9 the best interests of the child.

10           ((In)) (2) For actions in which the residential  
11 arrangements for the child would be modified, in addition to  
12 applying ((these)) the standards in subsection (1) of this  
13 section, the court shall retain the custodian established by the  
14 prior decree unless:

15           (a) The custodian agrees to the modification;

16           (b) The child has been integrated into the family of the  
17 petitioner with the consent of the custodian; or

18           (c) The child's present environment is detrimental to  
19 ((his)) the child's physical, mental, or emotional health and  
20 the harm likely to be caused by a change of environment is  
21 outweighed by the advantage of a change to the child.

22           ((2)) (3) Subsection (2) of this section shall not  
23 apply to actions in which the residential arrangements for the  
24 child would not be modified.

25           (4) If the court finds that a motion to modify a prior  
26 custody order has been brought in bad faith, the court shall  
27 assess the attorney's fees and court costs of the ((custodian))  
28 respondent against the petitioner.

29           Sec. 9. Section 28, chapter 157, Laws of 1973 1st ex.  
30 sess. as amended by section 4, chapter 32, Laws of 1975 and RCW  
31 26.09.280 are each amended to read as follows:

32           (1) Hereafter every action or proceeding to change,  
33 modify, or enforce any final order, judgment, or decree  
34 heretofore or hereafter entered in any dissolution or legal  
35 separation or declaration concerning the validity of a marriage,



Sec. 9

1 whether under this chapter or prior law, in relation to the  
2 care, custody, control, or support of the minor children of the  
3 marriage may be brought in the county where said minor children  
4 are then residing, or in the court in which said final order,  
5 judgment, or decree was entered, or in the county where the  
6 parent or other person who has the care, custody, or control of  
7 the said children is then residing.

8 (2) For the purposes of this section, a parent or other  
9 person shall only be considered to have the care, custody, or  
10 control of a child if by the terms of any final order, decree,  
11 or judgment the child is to reside with the person more than six  
12 months of the year.

13 (3) For the purposes of this section, a child shall only  
14 be considered to reside within a county if:

15 (a) The county is the county of residence within the  
16 state of the person with whom the child under the terms of any  
17 final order, decree, or judgment is to reside for more than six  
18 months of the year;

19 (b) The county is the county where the child has by  
20 agreement in fact resided for more than six of the last twelve  
21 months; or

22 (c) In the case of a child under twelve months of age,  
23 the county is the county where the child has resided more than  
24 one-half of the child's life.

25 (4) For the purposes of this section, if by the terms of  
26 any final order, decree, or judgment, or by agreement of the  
27 parties, the child spends an equal amount of time with two  
28 parties, the action may be brought in either county where a  
29 party resides.

30 Sec. 10. Section 9, chapter 50, Laws of 1949 and RCW  
31 26.12.090 are each amended to read as follows:

32 Whenever any controversy exists between spouses which may  
33 result in the dissolution of the marriage, legal separation, or  
34 ((annulment)) declaration concerning the validity of the  
35 marriage or the disruption of the household, and there is any

1 minor child of the spouses or of either of them whose welfare  
2 might be affected thereby, or whenever any controversy exists  
3 between the parties as to child custody, the family court shall  
4 have jurisdiction over the controversy and over the parties  
5 thereto and all persons having any relation to the controversy  
6 as provided in this chapter.

7       Sec. 11. Section 10, chapter 50, Laws of 1949 and RCW  
8 26.12.100 are each amended to read as follows:

9       Prior to the filing of any action for ~~((divorce,~~  
10 ~~annulment--or--separate--maintenance))~~ dissolution of marriage,  
11 legal separation, or declaration concerning the validity of a  
12 marriage, either spouse or both spouses may file in the family  
13 court a petition invoking the jurisdiction of the court for the  
14 purpose of preserving the marriage by mediating or effecting a  
15 reconciliation between the parties or for amicable settlement of  
16 the controversy between the spouses so as to avoid further  
17 litigation over the issue involved. Prior to the filing of any  
18 action for child custody or modification of an order for child  
19 custody, any party may file in the family court a petition  
20 invoking the jurisdiction of the court for the purpose of  
21 mediating or effecting an amicable settlement of the controversy  
22 between the parties so as to avoid further litigation over the  
23 issue involved. In any case where an action for ~~((divorce,~~  
24 ~~annulment--or--separate--maintenance))~~ dissolution of marriage,  
25 legal separation, a declaration concerning the validity of a  
26 marriage, child custody, or modification of an order for child  
27 custody shall have been filed, either party thereto may by  
28 petition filed therein have the cause transferred to the family  
29 court for proceedings in the same manner as though action had  
30 been instituted in the family court in the first instance.

31       Sec. 12. Section 12, chapter 50, Laws of 1949 and RCW  
32 26.12.120 are each amended to read as follows:

33       The petition shall:

34       (1) Briefly allege that a controversy exists between the  
35 ~~((spouses))~~ parties and request the aid of the family court to

Sec. 12

1 mediate or effect a reconciliation or an amicable settlement of  
2 the controversy;

3 (2) State the name and age of each minor child whose  
4 welfare may be affected by the controversy;

5 (3) State the name and address of the petitioner or  
6 petitioners;

7 (4) If the petition is presented by one ((spouse)) party  
8 only, name the other ((spouse)) party as respondent and state  
9 the address of that ((spouse)) party;

10 (5) Name any other person who has any relation to the  
11 controversy and state the address of the person if known to the  
12 petitioner; and

13 (6) State such other information as the court may by rule  
14 require.

15 Sec. 13. Section 18, chapter 50, Laws of 1949 and RCW  
16 26.12.180 are each amended to read as follows:

17 At or after hearing, the court may make such orders in  
18 respect to the conduct of the spouses and the subject matter of  
19 the controversy as the court deems necessary to preserve the  
20 marriage ((or)), to mediate or implement the reconciliation of  
21 the spouses, or to effect an amicable settlement of a  
22 controversy involving child custody between the parties, but in  
23 no event shall such orders be effective for more than thirty  
24 days from the filing of the petition, unless the parties  
25 mutually consent to an extension of such time.

26 Sec. 14. Section 19, chapter 50, Laws of 1949 and RCW  
27 26.12.190 are each amended to read as follows:

28 During the period of thirty days after filing a petition  
29 for conciliation no action for ((divorce; annulment; or; separate  
30 maintenance)) dissolution of marriage, legal separation, a  
31 declaration concerning the validity of a marriage, child  
32 custody, or modification of an order for child custody shall be  
33 filed by either ((spouse)) party and further proceedings in an  
34 action then pending in the superior court shall be stayed and  
35 the case transferred to the family court: PROVIDED, The family  
SHB 905

1 court shall have full power in all pending cases to make, alter,  
2 modify and enforce all temporary orders, orders for custody of  
3 children, possession of property, attorneys' fees, suit money or  
4 costs as may appear just and equitable; if, after the expiration  
5 of such thirty day period or the formal conclusion of the  
6 proceedings for conciliation, the controversy between the  
7 ~~((spouses))~~ parties, in the meantime not having been terminated,  
8 either ~~((spouse))~~ party may apply for ~~((divorce;--annulment--of~~  
9 ~~marriage;--or--separate--maintenance))~~ dissolution of marriage,  
10 legal separation, a declaration concerning the validity of a  
11 marriage, child custody, or modification of an order for child  
12 custody by filing in the clerk's office additional pleadings  
13 complying with the requirements relating to ~~((divorce;--annulment~~  
14 ~~of--marriage;--or--separate--maintenance))~~ dissolution of marriage,  
15 legal separation, a declaration concerning the validity of a  
16 marriage, child custody, or modification of an order for child  
17 custody respectively, or by asking that the pending case be set  
18 for trial; and the family court shall have full jurisdiction to  
19 hear, try, and determine such action for ~~((divorce;--annulment--of~~  
20 ~~marriage;--or--separate--maintenance))~~ dissolution of marriage,  
21 legal separation, a declaration concerning the validity of a  
22 marriage, child custody, or modification of an order for child  
23 custody under the laws relating thereto, and to retain  
24 jurisdiction of the case for further hearings on decrees or  
25 orders to be made therein. The conciliation provisions of this  
26 chapter may be used in regard to ~~((post-divorce))~~ post-  
27 dissolution of marriage problems, concerning support, child  
28 custody, visitation, contempt, or for modification based on  
29 changed conditions, in the discretion of the family court.

30 The family court may retain jurisdiction in any  
31 proceedings for a longer period than thirty days upon good cause  
32 appearing therefor on its own motion for further conciliation or  
33 upon application of either of the ~~((spouses))~~ parties, but in no  
34 event shall retain jurisdiction more than ninety days without  
35 the written consent of both ~~((spouses))~~ parties filed with the  
36 court. Except as specifically so provided nothing in this

Sec. 14

1 chapter shall be construed to repeal, nullify or change the law  
2 and procedure relating to ~~((divorce,--annulment--or--separate  
3 maintenance))~~ dissolution of marriage, legal separation, a  
4 declaration concerning the validity of a marriage, child  
5 custody, or modification of an order for child custody; and the  
6 family court shall, when application for relief is made under  
7 this chapter, apply such laws in the same manner as if the  
8 action had been brought thereunder in the superior court, save  
9 that the conciliation procedures of the family court shall be  
10 applied so far as appropriate to mediate or arrive at an  
11 amicable settlement of all issues in controversy.

12 Sec. 15. Section 20, chapter 50, Laws of 1949 and RCW  
13 26.12.200 are each amended to read as follows:

14 Whenever any action for ~~((divorce,--annulment--of--marriage  
15 or---separate---maintenance))~~ dissolution of marriage, legal  
16 separation, a declaration concerning the validity of a marriage,  
17 child custody, or modification of an order for child custody is  
18 filed in the superior court and it appears to the court at any  
19 time during the pendency of the action that there is any minor  
20 child of the ~~((spouses--or--of--either--of--them))~~ parties whose  
21 welfare may be affected by the dissolution ~~((or--annulment--of--the  
22 marriage))~~ of marriage, legal separation, declaration concerning  
23 the validity of a marriage, the child custody proceedings, or  
24 the disruption of the household, the case may be transferred to  
25 the family court for proceedings for reconciliation of the  
26 ((spouses)) parties, mediation, or amicable settlement of issues  
27 in controversy in accordance with the provisions of this  
28 chapter.

29 Sec. 16. Section 9A.40.050, chapter 260, Laws of 1975  
30 1st ex. sess. and RCW 9A.40.050 are each amended to read as  
31 follows:

32 (1) A person is guilty of custodial interference if,  
33 knowing that she or he has no legal right to do so, she or he  
34 takes ~~((or))~~ from, entices from, or refuses to return to lawful  
35 custody any incompetent person or other person entrusted by

1 authority of law to the custody of another person or  
2 institution.

3 (2) Custody shall include "residential care" where the  
4 incompetent person or other person entrusted by authority of law  
5 to the custody of another person or institution is the subject  
6 of a joint custody order or decree.

7 (3) Custodial interference is a ((gross-misdemeanor))  
8 class C felony.

9 NEW SECTION. Sec. 17. If any provision of this act or  
10 its application to any person or circumstance is held invalid,  
11 the remainder of the act or the application of the provision to  
12 other persons or circumstances is not affected.

13 NEW SECTION. Sec. 18. This act shall take effect on  
14 July 1, 1983.



# MEN International of CALIFORNIA

DR. CARLO E. ABBRUZZESE  
Director of Human Rights Commission  
Treasurer

P.O. Box 6185  
Santa Ana, CA 92706

(714) 547-3712

## Men's Equality Now International, Inc.

SENT TO EVERY EMBASSY IN THE WORLD,  
THAT WAS SIGNATOR TO UNIVERSAL HUMAN  
RIGHTS DECLARATION, SWITZ, 1954

His Excellency  
The Ambassador of Netherland Antiles  
Aruba Information Center  
777 3rd Avenue  
New York, N.Y.

March 31, 1978

Your Excellency:

We have been directed to appeal to you as representatives of a group of desperate fathers who are seeking political asylum for themselves and their children in countries like yours who sincerely cherish the concepts of human rights and human dignity for their citizens.

Although the United States of America has signed both the United Nations Charter and the Universal Declaration of Human Rights, which provide protection for the family unit and for each member of the family, in practice fathers in our country, when involved in a divorce, are being deprived of their homes, of their children, of their incomes and of their dignity by our judiciary on a daily basis in a statistical proportion (91.6%) which by itself makes a prima facie case of sex discrimination.

Their God-given rights, their constitutional guarantees are being denied not only by the courts but even by the President and his close officials when they answer to our pleas: "Our main focus is on human rights in foreign policy not on domestic human rights. Just to quote Ms. Heidi Hanson, Special Assistant to the Coordinator for Human Rights and Humanitarian Affairs.

For these reasons we have denounced both the United States and Canada for violation of the Declaration of Human Rights and of the International Covenants and our petition was accepted by the United Nations in Geneva on November 28, 1977, when personally delivered by our Human Rights Commission Chairman, Dr. Carlo Abbruzzese.

Dr. Abbruzzese is a veteran in the fight for human rights, as he began his struggle against oppression during World War II when he worked in the underground helping hundreds of Jews and political dissidents seeking safety from Hitler's Gestapo.

It is very significant that Dr. Abbruzzese has repeatedly claimed that, when captured by the SS Police, he was treated with more dignity and justice by the Nazi judges and jailors than he was in the American Divorce Courts and jails.

Like thousands of our members he was illegally jailed twice without a jury trial for alleged contempt of court. He was stripped of his estate, robbed of his children, denied an appeal and humiliated beyond belief in solitary confinement, forced to assume debts and to surrender his passport - being a naturalized citizen - in order to purge himself of contempt and get out of jail. Unfortunately his situation is not unique as documented in our files: of the 237.00 cases which we have recently reviewed only 7.4% of the time were children awarded to their fathers.

To emphasize the crisis and the scope of the injustices please consider the following excerpt from a guide book on family law published by the family law committee of the Minnesota State Bar Association:

"Except in very rare cases the father should not have custody of the minor children of the parties. He is usually unqualified psychologically and emotionally; nor does he have the time and care to supervise the children. A lawyer not only does an injustice to himself, but he is unfair to his client, to the State, and to society if he gives any encouragement to the father that he should have custody of his children. A lawyer who encourages his client to file for custody, unless it is one of the classic exceptions, has difficulty collecting his fees, has a most unreasonable client, has taken the time of the court and the welfare agencies involved, and has put a burden on his legal brethren." (Minnesota Family Law Practice Manual Volume 50, page 75, 1970.)

One would hope this doctrine to be outdated but you will find the manual proudly displayed in every law library in Minnesota. Other State directories for attorneys are quite similar, at least by implication. Studies we have compiled in fact prove the very existence of the family unit is being threatened by the demoralizing and castrating of North American fathers by our judicial system. We offer our research skills and dedication to you in exchange for the right to raise our children.

Our organization consists of some 85 groups representing about 76,000 members who are dedicated to bringing justice and equality to the

March 30, 1978

divorce courts of North America. We have research that unequivocally destroys the erroneous premises promoted by officers of the court, Attorneys and State Bar Associations. In fact our research indicated that a father involvement is vital to the mental and emotional health of children from birth onward.

If your country is amicable to aiding our fathers on the run we will promise in exchange:

1. To carefully screen those fathers seeking asylum to guarantee that only the most dedicated and sincere are referred to you.
2. To submit resumes of the potential citizens to you so you can determine if they have skills and abilities that will enhance your own political and domestic needs.
3. To cooperate in any way possible to insure a mutually rewarding exchange of cultures, ideas and preservation of human rights.

Our members seeking political asylum represent common laborers, psychologists, journalists, technicians, medical doctors, and almost all other segments of society that could contribute substantially to your country and your society. Our people come to you in desperation seeking human rights, to work with you, not change you, as we seek political asylum for the North American father and his children.

To exploitation of the North American male and the destruction of the family unit by the United States Judicial System would be of purely American affair were it not for the deadly contagiousness of those attitudes. In fact, unfortunately, the economic hegemony of the United States influences not just the politics, science, research and culture of most other countries but, to a great extent, the social behavior of their populations. We sincerely believe the family units of the world and our western civilization are in danger of extinction if the current trend in North America is allowed to spread abroad. A final point I would like to bring to your consideration. America is made of many ethnic cultures and many of the members in our groups are even citizens of other countries. When the Divorce Courts in the United States are depriving the children of their fathers in 91.6% of times they are practically committing cultural genocide of the ethnic people.

Hoping to receive help from your country and awaiting for an answer to our petition. We remain.

Very truly yours,

*Carlo E. Abbruzzese*  
Carlo E. Abbruzzese M.D.

CEA/rm

THE  
JOINT  
CUSTODY  
ASSOCIATION



10606 Wilkins Avenue  
Los Angeles, California 90024  
(213) 475-5352  
James A. Cook  
President

A National Association concerned with  
the joint custody of children and related issues of divorce  
including research, information dissemination  
and legal and counseling practices

April 13, 1981

Representative Brian Rogers  
Nancy Lord  
Alaska State Legislature  
Pouch V  
Juneau, Alaska 99881

Dear Representative Rogers  
Nancy Lord

I have been remiss in moving more swiftly in response to your introduction of House Bill 10, the providing of joint, or shared, custody for the children of divorce.

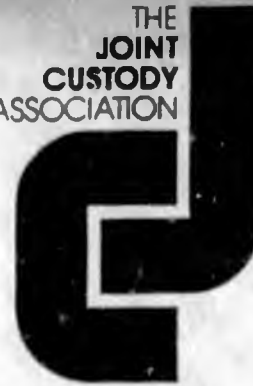
As a direct aid in providing the pros and cons, and as recent information as is available about this issue within the legislative and judiciary process, I am enclosing a packet of applicable materials.

Since Representative Terry Gardiner also appears on the measure as one of the sponsors, I am taking the expediency of also sending a similar kit to his attention.

Among the materials is a brief critical inquiry about the Alaska proposal, on the third page of the paper marked "Alaska." I question the extensive list of prerequisites which a court might interpret as needing to be ideal before joint custody will be decreed and as a "red flag" for an opponent-parent to assure that some of these issues are not satisfactorily rectified. Although I think each prerequisite is an excellent measure for counselors and parents to consider, as a statute and a legal guideline I surmise they might be decreed unconstitutional.

Lastly, let me mention an item we are all having 'second thoughts' about. That's the old benchmark that hasn't been thoroughly questioned of giving so much weight to the preference of the child. Thoughtful and observant psychiatrically-trained professionals are coming to the conclusion this gives too much impression of power to inexperienced and immature children, gives rise to potential future guilt for having decided for or against a particular parent, and contributes to parents 'catering' to a child in hopes of currying that child's particular approval of one of them exclusively. Hence, I urge you soft-peddle, or downgrade that particular proposal.

Regards,



## Effects of Child Custody Decisions by the Courts.

The negative effects of sole parent custody following divorce upon all members of a family, and the probability of long-term, socially-undesirable results of sole parent exclusive child custody have been widely published in numerous studies during the past decade and a half.

There are no known studies which substantiate the wisdom or the likelihood of favorable results in pursuing a policy of presumption for sole parent exclusive custody even though decades of sole parent custody decrees "beg" a justification for having done so.

Hence, the evolving solution of joint custody has been encouraged by the following studies which arose from the detrimental effects of sole parent custody.

### PSYCHOLOGICAL ADJUSTMENT OF JOINT CUSTODY CHILDREN, AS COMPARED WITH OTHER CUSTODY ALTERNATIVES

Pojman, E. Unpublished doctoral dissertation, 1981. California Graduate Institute, 1100 Glendon Ave., Los Angeles, Calif. 90024.

Comparison of four groups of 20 boys each (aged 5-13 years) living in a) joint; b) sole custody; c) happy intact marriages; and d) unhappy intact marriages. Boys were compared on the Louisville Behavior Checklist (parent's rating), the Inferred Self-Concept Scale (teacher's rating), and the California Test of Personality (child's rating). Boys in joint custody arrangements were significantly better emotionally adjusted than boys of exclusive custody and of the unhappily married group, on both the Louisville Behavior Checklist and on the Self-Concept Scale. Boys in joint custody situations had higher personal adjustment scores on the California Test of Personality than did boys in sole custody, just short of statistical significance. Boys in sole custody did not score significantly differently on any of the three tests, when compared to boys living in unhappy intact families.

### RELITIGATION OF JOINT CUSTODY DECREES, AS AN INDICATOR OF SATISFACTION COMPARED WITH OTHER CUSTODY DECREES

Ilfeld, Frederic W., Holly Ilfeld, M.A., and John R. Alexander, J.D., "Does Joint Custody Work? A First Look at Outcome Data of Relitigation," Amer. J. of Psychiatry 139:1, January 1982, pp. 62-66.

Relitigation records on 414 consecutive custody cases were studied in the West District Dept. J of the Los Angeles County Superior Court. Two-thirds of the cases involved sole custody and one-third joint custody. In those cases which were returns

to court, the proportion of relitigation for joint custody families was one-half that of exclusive custody families. A small subsample of contested joint custody cases showed no difference in relitigation rate with sole custody awards. "Considering that the best interests of the children are foremost, all professionals should recognize a strong, positive indication for joint custody. Unless future data persuasively contradict our and Pojman's findings, the burden of proof that joint custody would not be in a child's best interests should be on the parent requesting sole custody." (p. 65.)

#### ANALYSIS OF FAMILIES WITH JOINT CUSTODY

Ahrons, Constance R. "The CoParental Divorce: Preliminary Research Findings and Policy Implications," in Joint Custody: A Handbook for Judges, Lawyers, and Counselors. Association of Family Conciliation Courts, Portland, Oregon, 1979.

41 divorced parents, representing 30 separate families. "Most of the divorced parents in this sample were able to maintain a shared parenting relationship, and to parent their offspring in ways that are satisfactory to them."

Abarbanel, Alice, "Shared Parenting After Separation and Divorce: A Study of Joint Custody," in Joint Custody Handbook, op. cit.

In-depth case study of 4 families. "Joint custody appears to be working effectively in the four families studied. The four major factors contributing to its success are commitment of the parents, support for the co-parent, a flexible sharing of responsibility, and agreement on the implicit rules." Children lived with parents no longer than 2 weeks at a time, and parental division of child care responsibilities ranged from 50/50 to 67/33.

Nehls, Nadine, "Joint Custody of Children: A Descriptive Study," in Joint Custody Handbook, op. cit.

Study of 12 parents, representing 8 families, who shared custody of their child(ren). Twelve children. Eleven of the twelve children perceived by parents as "very" or "fairly" satisfied with the custody arrangement. Nine of the 12 experienced only minor problems. None of the parents said they were dissatisfied. "In general, the results of this study substantiate the feasibility of joint custody arrangements...there are indeed potential benefits of j.c. for divorcing families."

Steinman, Susan, Unpublished paper, Jewish Family and Children's Services, San Francisco, Calif.

25 joint custody families studied 1978-80. 32 children residing in 5 counties in the S.F. Bay Area. 2/3 chose and implemented a j.c. plan of their own. Most children were able to adapt to each household with minimum conflict and confusion. Children felt torn when parental conflict over child-rearing was strong and overt. Overall, children did not suffer from loyalty conflicts, but 1/3 did express "superloyalty" or desire to be absolutely fair to both parents. About 1/4 of the children did experience

## ANALYSIS OF FAMILIES WITH JOINT CUSTODY (Continued)

some confusion, but "overall, children's clarity about their schedule and location of their homes was very impressive."  
"...the findings certainly suggest that children can live in two homes."

Woolley, Persia, "The Custody Handbook," Summit Books, New York, 1979.

Extensive research and interviews with mothers and fathers, brothers and sisters, judges, lawyers, and psychiatrists. Woolley concludes that what she calls "shared custody" is best for the emotional health of children and parents. Shared custody is any form of custody or visitation arrangement which allows both parents to have lots of normal, day-to-day interaction with their offspring and provides that each adult participate in both the responsibilities and rewards of child raising.

Ricci, Isolina, Mom's House-Dad's House, MacMillan, 1981.

Based on eight years of clinical experience and research in divorce, custody, and single parenting. Her clinical cases demonstrate successful shared parenting arrangements under a wide range of circumstances: with former spouses who were friendly, angry, vindictive, possessive; with those living in the same community or across the country.

## DOCUMENTED EFFECTS OF SHARED PARENTING ON ADULTS

Keshet, Harry F. and K. Rosenthal, "Fathering After Marital Separation." *Social Work*, Jan. 1978, pp. 11-18.

Taking on the responsibilities of child-rearing is important for healthy adult development. "Parenting is an important stage in the identity formation of adults." Study of 128 men during first two years after marital dissolution.

Greif, Judith Brown, "Fathers, Children, and Joint Custody," *American J. of Orthopsychiatry*, April 1979.

Study of 40 legally separated or divorced fathers, and 63 children. Joint custody fathers were less likely to remove themselves from the child's growth and development. Such ties are critical for both the father and the child. "Rather than support imposition of legal visitation restrictions, we should do everything in our power to maximize contact between children and both parents." Study did not find evidence that children were used as pawns, or that joint custody was disruptive to children or to children's friends, or that parents needed to be on good terms with each other.

Steinman, Susan, Jewish Family and Children's Service, unpublished paper.

Study of 25 joint custody families showed that coparenting helped to make separation easier for parents.

## NEED OF CHILDREN FOR FREQUENT CONTACT WITH BOTH PARENTS AFTER DIVORCE.

Wallerstein, Judith, and J. Kelly, "The Effects of Parental Divorce: Experiences of the Pre-School Child," J. of the American Academy of Child Psychiatry 14:4, Autumn 1975, pp. 600-616.

-----"The Effects of Parental Divorce: Experiences of the Child in Early Latency," American J. of Orthopsychiatry 46, Jan. 1976, pp. 20-32.

-----"The Effects of Parental Divorce: The Child in Later Latency," American J. of Orthopsychiatry 46, April 1976, pp. 256-269.

60 families in Marin County, California, 131 Children aged 2-18; 5-year longitudinal study (1970-75). Greatest fears of the children were of being abandoned by their parents. Children felt great sense of loss if one parent absent. Effects observed of children being left almost exclusively in the care of only one parent were negative. Best adjustment occurred among children who saw both parents frequently and had parents' support to do so. The conventional visitation arrangement of twice a month found inadequate. Working on the coparenting concept helps both children and parents according to Joan Kelly.

Hetherington, E. Mavis, Martha Cox, Roger Cox, "The Aftermath of Divorce," in J. H. Stevens, Fr. and Marilyn Matthews, eds., Mother-Child, Father-Child Relations, Washington, D.C., NAEYC, 1977.

2-year longitudinal study of 96 families (half divorced and half intact families). Total of 144 children. "When support and agreement occurred between divorced couples, the disruption in family functioning appeared to be less extreme, and the re-stabilizing of family functioning occurred earlier." Mothers' effectiveness in dealing with child(ren) most dependent on mutually supportive relationship of the divorced couple and continued involvement of the father w. child (mothers were the custodial parents).

Both of these studies indicate that the nature of the parental relationship has a direct impact on children's adjustment. The more conflict between parents over their children, the worse the children's adjustment.

## CUSTODY ALTERNATIVES & MEDIATION

Olson, David et. al., "Custody Resolution Counseling: Description and Comparison with Custody Study," in Child Custody: Literature Review and Alternative Approaches, Child Custody Research Project, Hennepin County, Minnesota, Domestic Relations Division, Sept. 1979.

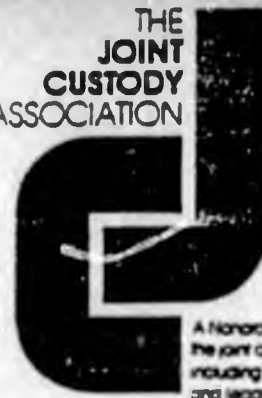
Study of 686 contested custody cases filed between 6/75 and 6/78 in Hennepin Co., Minnesota. Compared cases going to Custody Study (evaluation and recommendation mode) vs. those receiving custody counseling (mediation mode). Both services are offered through the court's Domestic Relations Dept.--parental agreements

# Master, Model Joint Custody Statute

FOR UNIFORMITY NATIONWIDE

THE  
JOINT  
CUSTODY  
ASSOCIATION

10606 Wilshire Avenue  
Los Angeles, California 90024



A Nonprofit Association concerned with  
the joint custody of children and related issues of divorce  
including research, information dissemination  
and legal and counseling practices.

Text for a modern, up-to-date joint custody statute available for introduction in state legislatures with the intent of seeking more nearly uniform joint custody practices nationwide and ease of implementation under the Uniform Child Custody Jurisdiction Act.

The following is predicated primarily on California's joint custody statute, combines observations of Nevada's joint custody statute (which was enacted following the California example and provides a similar statute for two major states with one of the Nation's longest contiguous borders)

An advantage of the following is that the issues have undergone legislative analysis and debate, found public approval, and incorporate minor technical improvements that experience has demonstrated as desirable.

Indexing should be integrated with each state's Civil, family and domestic law provisions.

## POLICY

Section 1. Section 100. (a) The Legislature finds and declares that it is the public policy of this state to assure minor children of frequent and continuing contact with both parents after the parents have separated or dissolved their marriage and that it is in the public interest to encourage parents to share the rights and responsibilities of child rearing in order to effect this policy.

## AT OUTSET & THEREAFTER

In any proceeding where there is at issue the custody of a minor child, the court may, during the pendency of the proceeding or at any time thereafter, make such order for the custody of the child during minority as may seem necessary or proper.

## PRIORITIES

(b) Custody should be awarded in the following order of preference, according to the best interests of the child.

1. To both parents jointly pursuant to Section 100.5

## PLAN

The court, in its discretion, may require the parents to submit a plan for implementation of the custody order upon finding that both parents are suitable parents, or the parents acting individually or in concert may submit a custody implementation plan to the court prior to issuance of a custody decree.

## COOPERATION

2. To either parent. In making an order for custody to either parent, the court shall consider, among other factors, which parent is more likely to allow the child or children frequent and continuing contact with the noncustodial parent, and shall not prefer a parent as custodian because of that parent's sex. The burden of

proof that joint custody would not be in a child's best interest shall be upon the parent requesting sole custody.

- (3) If to neither parent, to the person or persons in whose home the child has been living in a wholesome and stable environment.
- (4) To any other person or persons deemed by the court to be suitable and able to provide adequate and stable environment.

(c) Before the court makes any order awarding custody to a person or persons other than a parent without the consent of the parents, it shall make a finding that an award of custody to a parent would be detrimental to the child and the award to a non parent is required to serve the best interests of the child. Allegations that parental custody would be detrimental to the child, other than a statement of that ultimate fact, shall not appear in the pleadings. The court may, in its discretion, exclude the public from the hearing on this issue.

PRESUMPTION

Section 2. Section 100.5. (a) There shall be a presumption, affecting the burden of proof, that joint custody is in the best interests of a minor child unless

- (1) the parents have agreed to an award of custody to one parent or so agree in open court at a hearing for the purpose of determining the custody of a minor child of the marriage or
- (2) the court finds that joint custody would be detrimental to a particular child of a specific marriage.

For the purpose of assisting the court in making a determination whether an award of joint custody is appropriate, the court may direct that an investigation be conducted.

REASONS

If the court declines to enter an order awarding joint custody pursuant to this subdivision, the court shall state in its decision the reasons for denial of an award of joint custody.

DEFINITIONS

(b) For the purposes of this section, "joint custody" means joint physical and legal custody. "Joint physical" means an order awarding each of the parents significant periods of time in which a child resides with or is under the care and supervision of each of the parents or parties. Joint physical custody shall be shared by the parents in such a way as to assure a child of frequent and continuing contact with both parents. "Joint legal" means that the parents or parties share, or shall have voluntarily allocated or the court shall have decreed between them, the decisionmaking rights, responsibilities, and authority relating to the health, education, and welfare of a child.

An award of joint physical and legal custody obligates the parties to exchange information concerning the health, education, and welfare of the minor child, and unless allocated, apportioned, or decreed, the parents or parties shall confer with one another in the exercise of decision-making rights, responsibilities and authority.

MODIFICATION (c) Any order for joint custody may be modified or terminated from  
JOINT CUSTODY upon the petition of one or both parents or on the court's own motion if it is shown that the best interests of the child require modification or termination of the order. The court shall state in its decision the reasons for modification or termination of the joint custody order if either parent opposes the modification or termination order.

REASONS

MODIFICATION (d) Any order for the custody of a minor child of a marriage to  
JOINT CUSTODY entered by a court in this state or in any other state, subject to jurisdictional requirements, may be modified at any time to an order of joint custody in accordance with the provisions of this section.

CONCILIATION (e) In jurisdictions having a private or publicly-supported conciliation service, the court or the parties may, at any time, pursuant to local rules of court, consult with the conciliation service for the purpose of assisting the parties to formulate a plan for implementation of the custody order or to resolve any controversy which has arisen in the implementation of a plan for custody.

RECORDS (f) Notwithstanding any other provision of law, access to records and information pertaining to a minor child, including but not limited to medical, dental, and school records, shall not be denied to a parent because the parent is not the child's custodial parent.

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Explanatory notes

Issues not to be contained in the statute, but as an outgrowth of implementation and as a guide to furthering the statute's policy.

**Initiating planning** To facilitate easing litigating parents into consideration of joint custody planning, you are encouraged to examine, and duplicate for distribution within the family court system, "Initiating Joint Custody Planning; Encouraging & facilitating joint physical and legal custody plans."\*

**Decree clauses** Joint custody provisions and clauses for decrees or agreements as a convenient reference for judges, attorneys and counselors can be found in "Decree or Agreement, Joint Custody Provisions & Clauses."\*

**Public pamphlet** A basic and explanatory booklet suitable for reproduction and distribution to parents filing for divorce, written in lay language and addressing the divorce process, is available in "Cooperative Parenting Following Dissolution: Your child needs both of you. Prepared by the Los Angeles Committee to Implement California's Joint Custody Statute (Los Angeles Superior Court)."

**Best interests** "Best interests of a child" need not be specified within the statute in view of the on-going analysis and redetermination of what amounts to "best interests" and lest a listing of presumed "best interests" constitute an unconstitutional denial

of access by child and parent to each other and thereby jeopardize the entire custody statute.

However, informal court guidelines, apart from the formal statute, may include the following:

In determining the best interests of the child the court may consider:

1. The physical, emotional, mental, religious, and social needs of the child;
2. The capability and desire of each parent to meet these needs
3. The love and affection existing between the child and each parent;
4. The length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity;
5. The desirability of offering the child a variety of life experiences;
6. The desire and ability of each parent to allow an open and loving relationship between the child and his other parent.

#### Child's preference

It is not considered advisable that a child's preference, desire or wish be elicited from the child, under the pretext of 'best interests of a child,' as a prerequisite for court determination of custody because:

- a. Such an action or supposition could vest with a child, at an impressionable age, and prior to a comprehension of the long-term consequences by the child, a sense of power or control or leverage over either or both parents and over the court system.
- b. A decision predicated on a child's decision between two parents raises the spectre of an eventual guilt-feeling by the child regarding the excluded parent and the necessity of a custodial parent to reassure the child of the wisdom of excluding a parent.
- c. By implying the power of decision by a child, the parents are unnecessarily and unwisely thrown into a competitive situation to cater to and curry favor with the child in hopes of influencing a child's decision of one parent over another.

#### Criteria for joint custody

So-called criteria for determining the qualifications or suitability of one or both parents to be decreed joint custody, such as geographic convenience, association with friends, and adequacy of living quarters are not advisable to be specified in a statute. Such criteria have been widely debated and eventually dropped because:

- a. definitive criteria that are largely the product of opinion or cultural viewpoint have the likelihood of being unconstitutional, and
- b. a listing of criteria provokes litigating parents into envisioning methods for defeating joint custody and of scrutinizing comparisons and issues that could be used to belittle the opposite parent.

\* Items available from The Joint Custody Association, James A. Cook, 10606 Wilkins Avenue, Los Angeles, California 90024

# Supportive Background Materials

10505 Wilkins Avenue  
Los Angeles, California 90024

James A. Cook  
President

THE  
JOINT  
CUSTODY  
ASSOCIATION



A nonprofit Association concerned with  
the joint custody of children and related issues of divorce  
including research, information dissemination  
and legal and counseling practices

From the Joint Custody Association:

## Joint Custody, Sole Custody: A New Statute Reflects a New Perspective

The legislative evolution of the new California custody law; origins and intent as a guide to understanding and administering joint or sole custody. (Published in the Conciliation Courts Review, Volume 18, Number 1, June 1980.)

## Initiating Joint Custody Planning. Encouraging and Facilitating Joint Physical and Legal Custody Plans

A step-by-step questionnaire to elicit from divorcing parents their preferences in child rearing, to indicate areas of agreement, and to relieve the court of dictating decisions that could be unacceptable to one or both parents. Encompasses areas of medical care, education, religion, residence, travel, support, communications, discipline, dispute resolution, and time allocation.

## Decree or Agreement, Joint Custody Provisions & Clauses

A selection of options for jurists, attorneys and parents in creating decrees or agreements in the form of provisions and clauses dealing with intent, residence, time allocation formulas, holidays, travel, moving residence, education, medical, child support, implementation, review, remarriage, decisions, and conflict resolution.

## Cooperative Parenting Following Dissolution: Your Child Needs Both of You

A pamphlet for parents prepared by the Los Angeles Committee to implement California's joint custody statute.

## Research

Recent and pertinent research regarding the effects of child custody decisions by the courts.



Official Business

# Alaska State Legislature

## House of Representatives

Committee on

### Health, Education & Social Services

Pouch V  
State Capitol  
Juneau, Alaska 99811

Feb. 23, 1982

Honorable Joe Hayes  
Speaker, House of Representatives  
Alaska State Legislature

Dear Mr. Speaker:

It is the desire of the Committee on Health, Education, and Social Services that this letter accompany CS for HB 210 (HESS) to reflect Committee intent.

Persuant to Section 25.20.110, Award of Custody to Nonparent, the court shall have the discretion to award custody of the child to a non-parent if either conditions (1) or (2) are met.

Sincerely,

Representative Mike Deirne  
Chairman



Official Business

# Alaska State Legislature

## House of Representatives

Pouch V  
State Capitol  
Juneau, Alaska 99811

January 27, 1982

Katie Green  
6320 Lost Circle  
Anchorage, Alaska 99502

Ms. Green:

HB 210 was introduced last February and was referred to the Health, Education and Social Services Committee and then to the Judiciary Committee.

I have sent a copy of your letter to Rep. Beirne and Rep. Barnes.

I appreciate your comments on this legislation and will give carefull consideration to the bill.

Sincerely,

  
Joe D. Montgomery

cc: Rep. Beirne ✓  
Rep. Barnes

JDM:mjc

1/25/92

11/15/82

6320 LOST CIRCLE  
ANCH. AK  
99502

REPRESENTATIVE JOE MONTGOMERY  
POUCH V  
JUNEAU, AK  
99811

DEAR MR. MONTGOMERY,

I AM A REGISTERED VOTER IN THE  
12<sup>th</sup> DISTRICT IN ANCHORAGE, AND HAVE  
VOTED REGULARLY.

I HAVE BECOME AWARE THAT  
HOUSE BILL 210 WILL BE INTRODUCED  
INTO THE LEGISLATURE THIS SESSION.

JOINT CUSTODY IS A DEVELOPING CONCEPT  
WHOSE TIME IS AT HAND. THIS IS THE  
BEST POSSIBLE ALTERNATIVE FOR A  
CHILD TO HAVE. IT IS A FUNDAMENTAL  
BUT NECESSARY CHANGE FOR THE LEGAL  
SYSTEM. IT WILL EDUCATE PARENTS TO  
THE CONCEPT THAT CHILDREN ARE NOT  
TOOLS TO MANIPULATE FORMER SPOUSES.

I HOPE YOU WILL CHOOSE TO  
GIVE THIS BILL YOUR FULLEST SUPPORT AND  
AID IN ITS EXPEDITIOUS PASSAGE.

I FEEL VERY STRONGLY IN FAVOR  
OF THIS H.B. 210 FOR SOME OF THE  
FOLLOWING REASONS. IN THE PAST, MANY  
WOMEN HAVE USED A CHILD AS A MEANS TO  
AVENGE A WRONG THAT A HUSBAND MAY OR  
MAY NOT HAVE COMMITTED. TOO OFTEN CHILDREN  
HAVE BEEN USED AS CHATTELS. HOUSE BILL  
210 SHOULD DETER THIS TYPE OF CHILD ABUSE.

TIMES ARE QUICKLY CHANGING. MORE WOMEN THAN EVER BEFORE HAVE ACQUIRED SUCCESSFUL CAREERS. IN ESSENCE, WOMEN HAVE BECOME SOCIO-ECONOMICALLY EQUAL TO MEN. ESPECIALLY IN ALASKA WHERE OUR COST OF LIVING IS SUCH THAT BOTH HUSBAND AND WIFE MUST WORK. SO WITH THE ACCEPTANCE OF "WOMENS LIBERATION" INTO OUR SOCIETY, SO SHOULD WE ACCEPT MENS LIB. H.B. 210 WILL INSURE MENS EQUALITY IN THE NUTURING OF CHILDREN. IT WILL ALSO ALLOW BOTH PARENTS TO CONTRIBUTE EQUALLY TO THE FINANCIAL RESPONSIBILITIES OF CHILD REARING.

THIS BILL ENCOURAGES PARENTS TO IMPLEMENT THEIR OWN CHILD CARE PROGRAMS OUTSIDE OF THE COURT SYSTEMS. THE ISSUE OF CHILD CUSTODY IS BEST LEFT OUT OF OUR COURTS AND THE REASONS ARE PRIMARILY TWO FOLD. LITIGATION PLACES PARENTS IN SUCH ADVERSIAL POSITIONS THAT THEY MAY NEVER BE ABLE TO DEAL WITH EACH OTHER EFFECTIVELY AS PARENTS AGAIN. IT SHOULD ALSO LIGHTEN THE COURT SYSTEMS CASE LOAD WHICH IS ALREADY OVER-BURDENED.

H.B. 210 ALSO CONTAINS A STIPULATION WHICH ALLOWS FOR MEDIATION BETWEEN PARENTS. AGAIN, THIS WILL AID NOT ONLY PARENTS AND THEIR CHILDREN, BUT ALSO THE EXTREMELY BUSY DOMESTIC COURTS.

AND LASTLY, HOUSE-BILL 210 WILL ELIMINATE THE PRACTICE OF MAKING A CHILD CHOSE ONE PARENT OVER ANOTHER. THUS WE WILL BE RELIEVING OUR CHILDREN FROM HAVING TO SUFFER FROM THE EXTREME GUILT OF MAKING SUCH A CHOICE.

I BELIEVE THE IMPLEMENTATION OF  
HOUSE BILL 210 WILL BE <sup>IN</sup> THE BEST  
INTERESTS OF EVERY FAMILY RESIDING IN  
ALASKA. ONCE AGAIN I URGE YOU TO  
SUPPORT THIS BILL TO YOUR FULLEST  
ABILITIES. I WILL REMAIN ALERT FOR  
ANY PROGRESS I MIGHT DISCOVER  
THROUGH THE NEWS MEDIA. I WOULD  
APPRECIATE HEARING FROM YOU AS TO  
WHETHER OR NOT YOU WILL BE  
SUPPORTING THE PASSAGE OF H.B. 210.

THANK-YOU AND I HOPE THIS  
LEGISLATIVE SESSION IS A SUCCESSFUL ONE.

SINCERELY

Kate Green

PLEASE NOTE: THE FOLLOWING PAGES WERE TREATED  
AS A UNIT IN THE ORIGINAL DOCUMENT.

Sidney Darion  
Manager, Public Affairs

Dear Viewer:

Thank you very much for your interest in our DIRECTIONS program. Communications such as yours are very important guides to us in programming plans for the future.

We hope you will keep watching DIRECTIONS, and that you will continue to send us your reactions.

Sincerely yours,

A handwritten signature in cursive script that reads "Sid Darion".

Sid Darion

Manager of Cultural Affairs

SD:al

**DIRECTIONS**

**Presents**

**THE WISDOM OF SOLOMON: THE CHILDREN OF DIVORCE**

**as broadcast over the  
ABC TELEVISION NETWORK**

**Sunday, October 4, 1981**

**1:00-1:30 E.D.T.**

**Executive Producer: Sid Darion**

**Correspondent: Herbert Kaplow**

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## ABC DIRECTIONS

### THE WISDOM OF SOLOMON: THE CHILDREN OF DIVORCE

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#### HERBERT KAPLOW:

Last year, the number of divorces in this country rose to more than a million. There were about 1,300,000 young children involved. Coincidentally, with this increasing phenomenon has been a growing interest in alternative ways of divorced parents dealing with their children. Perhaps, the major change under consideration is called joint custody, where the parents share custody of the children. It is an approach of considerable controversy, touching fundamental, legal and psychological issues, and it reaches finally, the basic question of what's best for those children caught between divorced parents. It is a matter, again, of the wisdom of Solomon, these children of divorce.

Good day, I'm Herbert Kaplow in San Francisco. Almost two years ago, California, with one of the highest rates in the country, passed a law providing for joint custody. We mean to see today how that's worked out here. Our guests are the Honorable Donald King, the domestic relations judge of the San Francisco superior court, and Ciji Ware, a writer and broadcast journalist, who has done extensive research on children and divorce, and she herself is a joint custody mother. The term, joint custody, is paralleled by the term, sole custody, and what's the difference, Mrs. Ware?

#### CIJI WARE:

Well, that is a good question, I think because joint custody means so many things to to various people. Its really one of those code words. You say joint custody and the people in favor of it, say, yeah right. And you say joint custody, and the people who oppose are totally opposed. And definitions I think are important. Judge King, we have to really see if he agrees, what joint custody means to me is an arrangement that says parents are forever, parents continue to be parents even though they're no longer spouses, and the time-sharing formula about who, how they're going to take care of these children, is framed around the needs of the children. Now, I suppose legally you can split it finer than that, but to me, that's the concept of joint custody, and maybe we should get a legal definition from Judge King.

#### JUDGE DONALD KING:

Well, I think one of the deficiencies in California law is that there is no specific definition. I believe that creates more problems really than if we had one.

(MORE)

JUDGE DONALD KING: (CONT)

A lot of parents think it means cutting the child right down the middle, and the child right down to the second, spends half the time with one parent, and half the time with other.

HERBERT KAPLOW:

And that's where you need Solomon?

CIJI WARE:

And that's not joint custody.

JUDGE DONALD KING:

That's not joint custody. What you're really, talking about is the fact that once the divorce is over, that there is still a family, and it's a family living in two locations instead of one. The joint or shared nature of it is that the child, or children, are really living with both parents ..spending time with both parents in both parents homes and that the parents are joining together making the decisions affecting the child.

HERBERT KAPLOW:

Judge King, am I right in saying we are coming from an environment where most often the children were awarded to the mother?

JUDGE DONALD KING:

Absolutely, and that still is the case today.

CIJI WARE:

And about 92%, I think, of all awards nationwide go to the mother. It's almost automatic.

HERBERT KAPLOW:

Well, let me ask you, why in California are you moving toward a different alternative?

JUDGE DONALD KING:

Well, we have to understand that in most divorces the parties reach their own agreements, and the reason why the percentage is so high is that for many people, the societal view still is that custody of the children goes to the mother, and that the father has something called rights of visitation. I think in California, there are more and more parents who are really sharing child-rearing responsibilities before the marriage breaks up, and want to continue that experience even though they're no longer married to each other.

CIJI WARE:

But I'll tell you, I'll tell you why I think it happened in California. And because I've been a joint custody parent for 8 years, I've sort of been through the wars on this issue. You know, people who aren't in California, think you know, we're falling off the edge of the earth. But in California, you have, as it is nationwide, more and more women in the work force. More and more, as Judge King says, people who are sharing responsibilities, sort of radical attempts at being parents together. But I think the main reason why it started to happen in California is that the old system wasn't working for the children. Because what was happening, was as the divorce statistics went up, and it especially went up in California after no-fault divorce, you were having children who were not only losing one parent, usually the father, they were losing two parents because of the economic situation their parents faced after the divorce, the mother, in 79% of the cases according to the 1980 statistics, 79% of mothers, divorced mothers had to work. So who was there for the children? Nobody, basically there's not childcare as a code in this county, so therefore the parents themselves and parents like me, two-working parents, we had to come up with some situation that made sense to our son, otherwise, who was gonna take care of him.

HERBERT KAPLOW:

Well, why should this work?

JUDGE DONALD KING:

I think the reason it should work is that the fact that people are no longer husband and wife does not mean they aren't still parents to this child or these children. And those responsibilities really have to be separated out.

(MORE)

JUDGE DONALD KING: (CONT)

The mistake I think that's been made historically is that somehow once the family is no longer a family, in terms of being husband and wife, they're really no longer a family as far as both being parents to the children. So I think it will work better, because it means that both parents still remain parents to their children and what we find is more and more parents want this. They don't want the system where one becomes a visitor.

HERBERT KAPLOW:

I think we ought to try to clear out a little bit of the legal underbrush here. The Statute in California, I understand actually you sort of have three companion statutes and you check me if I'm wrong no default divorce, which I guess you passed here in 1970.

JUDGE DONALD KING:

That's correct.

HERBERT KAPLOW:

And then in 1979, you had this joint custody statute and then after that, something called mediation. I don't wanna get bogged down in this, Judge King, but they're related and they're important...and in 30 seconds...

JUDGE DONALD KING:

Okay

HERBERT KAPLOW:

Tell me what they are?

JUDGE DONALD KING:

Well, the reason why the no-default divorce is related to the other two is because if you have fault, it's based on their being an innocent party and a guilty party.

HERBERT KAPLOW:

Uh, huh.

JUDGE DONALD KING:

And that gets all tied up into who should have custody of the child if one person is supposedly guilty and one is innocent. The joint custody statute was important; it was really a modification of our previous statute which provided for sole custody.

(MORE)

JUDGE DONALD KING: (CONT)

And it was important not only because of its aspect of saying that it was legally appropriate to have parents be joint custody parents, but also because they had a very strong declaration that the public policy in the state of California is that when a relationship breaks up, there still is a right of the child to frequent and continuing access to both parents. The mandatory mediation statute which just became effective at the beginning of this year, is revolutionary. It's the first in the country. I think other states will be adopting it very rapidly, and it is an assist to those who want joint custody as well as to those who have sole custody, in helping with a trained and experienced family counselor. Helping parents work out their disputes over custody and visitation in a constructive way, where they agree, where they are the ones who make the decision by agreement as opposed to using the old adversary system, where they get into court, and attack each other, and solve the problem, and try and solve the problem that way.

HERBERT KAPLOW:

Now let's look at the practicalities of this. I understand you have a couple of different kinds of joint custody. You have what's called legal custody, and then you have physical custody.

CIJI WARE:

And then you have joint legal and physical. So basically there's three kinds of custody.

HERBERT KAPLOW:

I think I'm gonna be sorry I asked..

CIJI WARE:

That go through the court.

HERBERT KAPLOW:

But certainly legal custody is whereas the law gives you your certain rights, and, and the physical custody is where the child lives from time to time with each parent?

CIJI WARE

Well, that's a critical thing, though. I mean we can't just gloss over it, because in America, possession is 9/10's of the law, and you can have joint legal custody, but if you don't have parents that are learning to cooperate as parents, which is tricky. I mean here you're severing all your other relationships, financial, legal and everything, and yet, you're being asked to cement this one relationship as parent; that's tricky. But joint custody to me means that you are going to share the decision-making on things that have to be done about the children's schools, religious training and all of that. And also, if possible, if the geography makes it possible, you are also, going to have that child spend meaningful time. It doesn't mean to the minute, as Judge King said, but meaningful time with both parents. Now accomplishing that is not so easy when people are angry at each other, in the real world, and so what was critical in California, which probably will be a model hopefully, is that it's saying that the adversary situation is maybe not the best arena in which to help parents come to the fact that they continue to be parents. So what is needed is a neutral third party that, in a sense, represents the child in the family, helping these parents, you know, get through that, and getting down to the nitty gritty of how do we share these children.

JUDGE DONALD KING:

Legal versus physical custody of what that means it's not spelled out clearly in the law.

CIJI WARE:

No.

JUDGE DONALD KING:

There's no definition at the present time, and I think, for practical purposes, legal custody refers to the decision-making factors affecting the child both in terms of health care, education, religious training, perhaps, that sort of thing...whereas, physical custody really means more of the..

CIJI WARE:

The time-sharing.

JUDGE DONALD KING:

The time allotment of the child with each parent.

HERBERT KAPLOW:

But the question arises then, are you bumping the child back and forth?

CIJI WARE:

The ping pong syndrome, you know..

HERBERT KAPLOW:

I didn't know I was that close.

CIJI WARE:

You were. The ping pong syndrome. It's interesting now. You have to understand, eight years ago, when my former husband and I decided that we felt that...

JUDGE DONALD KING:

They were real pioneers.

CIJI WARE:

Well, we didn't know what we were doing. We didn't know, number one, we were doing joint custody. People thought we were crazy, and they raised this issue over and over. Your child won't know who, to whom he belongs. But the answer to that really is that the child doesn't belong, the child has really, what I think is a civil right of access to both parents. So that the ping pong syndrome is a problem if the time-sharing arrangement isn't appropriate to a child's age and stage. I've been asked this for eight years, and my child started in this when he was around two. Well, at that point, whatever sharing arrangement we had, wouldn't have been appropriate for when he's ten now.

(MORE)

CIJI WARE: (CONT)

When he was two for instance, at that time, he was sort of home-based with me, but he saw his father two or three times a week, and he slept at my house every night. That was a fairly appropriate plan for a two year old. Now that he's a 10 years old, he spends Monday and Tuesday with me, Wednesday and Thursday with his dad and we alternate weekends so that we have chunks of five days. Now that sounds like ping pong, but if you ask my child, you know, where do you live, he says I live with my mom and my dad. And if you say, is it complicated, he'll say, you know, it's not confusing, it is complicated, but it's not confusing.

HERBERT KAPLOW:

Well, is it better?

CIJI WARE:

In the real world....is it better that a child is amputated from one of his parents. I don't think that's better. In the best of all possible worlds, for him, it would have been better if we'd stayed together. We didn't do that. So what are the alternatives? The alternatives you know, I really feel that joint custody parents have come to grips with the reality and for the children, they would rather put up with some of the inconvenience of losing both bags and soccer balls in order to have contact with both parents. And it is a trade off. It's a trade off we were willing to make.

JUDGE DONALD KING:

Well, I think also, that you have to look in these cases, not only at the parents, but at the children. We don't have much information about this. There's been very little research done on it. What little research has been done indicates that you can have joint custody parents and not have joint custody children. That there are some children, probably a minority in numbers...who can't make the adjustment of living in two homes. They need one home, one bedroom, one set of toys and so on...not that they don't love their other parent, they just can't take that kind of movement. We know that this is more of a problem with really young children, and we also know when you get to teenagers, especially upper teenagers...

CIJI WARE:

It goes the other way.

JUDGE DONALD KING:

They probably don't wanna spend any time with either parent. They just wanna be with their friends. So you have to look at the total situation. My feeling is that even if it only works for a short period of time, a two or three year period, it's beneficial for the child because that time frame, following the break-up of the marriage, is the most dramatic to the children, and the time during which they'll either recover from the trauma of their parents or they won't.

HERBERT KAPLOW:

Judge, did you not, as a judge have the power before this was enacted a couple of years ago, here in California to in effect, award joint custody?

JUDGE KING:

It depended on whether or not you were a strict constructionist or not. I believe that I did not because the statute only spoke in terms of sole custody in California. There had been a number of efforts to add to joint custody before and the legislature had constantly turned them down. There were some judges in the state who felt that since the statute did not preclude joint custody, that they could award joint custody. But the enactment of the statute was important as I said, for two reasons, not just because it specifically says, you can have joint custody, but also because it stated this public policy of the child's right, and I think in our society today probably the children are the most underrepresented of any segment of society. And now we have a statute which gives them a right of access to both parents.

HERBERT KAPLOW.

Well, this seems to pivot on the question of the parent getting over their initial bitterness to each other and becoming "reasonable", which is the same standard you could set up for the sole custody phenomenon, which prevailed up to now. I mean if you can be reasonable now, why couldn't you be reasonable then and make it work? Why do you need this?

CIJI WARE:

Well, I think you need it because I think there has been an assumption that children belong to one parent or the other. And that the adversary system has pitted parents, one parent against the other, winners and losers.

HERBERT KAPLOW:

Well, I mean, in order to make this thing work, you have two people acting reasonable.

CIJI WARE:

Well, I don't agree with that completely. I think, first of all it's much, much better. I mean obviously it is much better if parents are going to cooperate but in...

JUDGE DONALD KING:

Also, there are a lot of parents at the time of the divorce who are acting reasonably. I mean, it's a myth to think they're all battling. There are a lot of people who just come to a conclusion their marriage is not working out, and they should go their own way.

CIJI WARE:

But I was just going to say for those who are not getting along, and in fact they don't like each other at all, which, you know, I think it's often also certainly prevalent. If they were intervened at a point, instead of having and getting into the legal adversary system, and having everything escalate, and you realize I might lose my child, and the whole ball game goes up about 29 degrees, if it was the law and the promised, that alright, you're both going to survive this. The child does have a right to both of you, if that were the premises that we were starting out with, I think it would cool down a lot of the unreasonableness. But even if parents are having a hard time, and many do with the separation and loss and a feeling of grief and failure because the marriage failed, that they can still perceive as parents-in-common, and separate out that role as parents, and still perhaps not even like each other.

HERBERT KAPLOW:

I didn't know you couldn't do that before you had this legislation.

JUDGE DONALD KING:

Herb, the other thing the other thing, though, that you have to understand is that at the moment of divorce people are in a terrible emotional state. Some people say they're the criminal term of diminished capacity really applies to people who are at the time of of the breakup and their whole life, perhaps, they feel, is going.

JUDGE DONALD KING:

And they aren't thinking rationally, and they aren't dealing with things rationally, and there's a lot of upset. The legal process with its adversary system, tends to accentuate this upset, and what we're trying to do with the new law, especially the mandatory mediation law where we require that we will not allow them to come into a court, with a hearing on custody of visitation until they have gone through a mediation process and with the help of a family counselor attempted to come up with their own answer...

HERBERT KAPLOW:

In fact, a cooling-off period...

JUDGE DONALD KING:

With respect to the child. Well...

HERBERT KAPLOW:

With a mediator.

JUDGE DONALD KING:

It gets people to understand they don't have to fight. A lot of people believe that they have to fight with the other parent. That that's what's natural. And they can fight over other things, but what we try to do through this process is to get them to understand that they're still gonna be parents when the fight is over.

HERBERT KAPLOW:

As I understand it, the basic questions that have been raised about this-and as you pointed out, really the verdict is not in on the success or failure of joint custody one, is that the laws are unnecessary, that you judges already have the power, in effect, to order joint custody.

JUDGE DONALD KING:

I don't agree with that at all.

HERBERT KAPLOW:

Okay.

CIJI WARE:

No. And I've been around the country on this.

HERBERT KAPLOW:

Also, that it encourages judges to take this as an easy way out.

JUDGE DONALD KING:

I don't think that's accurate either, because you see what we should be doing, Herb, the judges have nothing to do with this, or should have nothing to do with it. We have in my court in San Francisco, in the first eight months of 1981, we've had one contested hearing on custody of visitation. All the rest have been resolved by helping the parents reach agreements as to what's best for their children.

HERBERT KAPLOW:

What about as a way out.

JUDGE DONALD KING:

And that's what we should be doing.

HERBERT KAPLOW:

Parent. Maybe it's a cop-out for somebody who would like to get rid of their child half the time.

CIJI WARE:

Well, that may be true, but I really think that's the minority. I think most parents are caring parents. Most parents want to do the right thing. Most parents are terribly guilty and feel they perhaps have failed on their religious beliefs, their moral beliefs. I think most parents are in a state of real pain when they go through this. I certainly remember how I felt about it.

(MORE)

CIJI WARE: (CONT)

But the law was necessary, I think, to state the principles that you continue to be parents even though you're not going to be spouses. But what happens is that if you have a neutral third person who shows you what the options are a lot of people don't even realize that they could cooperate on this level, that it wasn't a kind of incest that, you know, there is a sort of sense of incest if former spouses talk to each other. And if there is an option, you don't even know that.

JUDGE DONALD KING:

I think also this is an important point. Because at the time of the divorce process, they're in an adversary system except for this aspect of it, and they have to understand that they can separate that out because as there are future battles, they still have to separate those aspects related to children to avoid entangling them in their conflict over other matters.

HERBERT KAPLOW:

It is alleged by some critics of joint custody that in effect it confuses the child, forces the child to endure split loyalties. That it causes an atmosphere of instability and inconstancy.

JUDGE DONALD KING:

We have insufficient information to know whether that's true in what number of children. In my mind, there's no question there are some children where that will be true. But with the large majority it simply will not. If anything, it helps them with their loyalty conflicts, because they don't have to feel that they're being traitors to one parent if they enjoy their time with the other parent.

CIJI WARE:

Well, there is a key to this, I think. I don't think that joint custody alone is going to do it. I think, you know, just the fact that they're going to say, well, and congratulations Mr. and Mrs. King, you are now joint custodians. There has to be another element. And that is the element that both parents see it is in their child's interest, that they can soften the impact of the divorce by giving those children permission to love the other parent. Now that may be difficult at a time when you're angry. But if you can be shown that when you look down the long road, which we had to look at with a 2 year old, that the more you invest in a good relationship with the other parent as a partner in this business, the better the payoffs will be, not only for the child, heavens knows, down the road, but for even the former parents.

(MORE)

CIJI WARE: (C.C.F.)

I mean, who needs to have misery and anger for 20 years?

JUDGE DONALD KING:

There are a lot of parents, under the old adversary system, who 5 years later, 10 years later, after the divorce, are still fighting the divorce. Whereas, in this system, what you're trying to do is get people to understand you can fight now over the things you have to fight about as part of the termination of your marriage.

CIJI WARE:

You can fight over money, you can fight over...

HERBERT KAPLOW:

You're...you're asking people to..to compartmentalize their minds in an extraordinary way.

JUDGE DONALD KING:

And there's no reason why it can't be done...

CIJI WARE:

And they can do it.

JUDGE DONALD KING:

We know it works, it's working in a highly successful way.

HERBERT KAPLOW:

Let me ask you this now... there are other institutions involved in this. I'd be curious to know, Judge King and Ms. Ware, other institutions in our neighborhood, in our society, that are concerned about the family.

(MORE)

HERBERT KAPLOW: (CONT)

What do the churches, for instance you touched on the religious and moral values of the parents who might feel that somehow they've violated them by divorce. How do they get into this? Or do they?

JUDGE DONALD KING:

Well, we find the church groups have been very supportive of this concept, even with churches that do not believe in divorce.

HERBERT KAPLOW:

The Catholic Church, you're talking about primarily.

JUDGE DONALD KING:

That's right. Once they recognize that the parties are going to go through a legal process that legally ends their marriage, they are very supportive of this process because it does keep the family together. Again, we're not divorcing the family. The legal relationship of the husband and wife has ended, but there's still a family there living in two locations, a mother and a father and a child who in some fashion is allocating his or her time with both parents. This maintains a family tie that is very beneficial for the children. And I think very beneficial to each parent. And our experience has been that the church groups are very supportive of this.

HERBERT KAPLOW:

Are they actually in the process somehow?

JUDGE DONALD KING:

In some of this mediation counseling, certainly some of it that is longer term than the court staff has abilities to handle. We do have agencies, community resources, many of them church-related, Catholic Social Service being one, who do assist us and provide some of this counseling.

HERBERT KAPLOW:

What do they do?

JUDGE DONALD KING:

They actually meet with the parents, they do much of what we do, except we...

CIJI WARE:

Divorce counseling, really, in some...

JUDGE DONALD KING:

Well, it's parenting, it's parent counseling more. How you as the parents of this child should relate to each other with regard to the matters affecting that child. Our court process in San Francisco, for example, we normally cannot see a family more than 5 or 6 times, simply because of the workload we have. If the problems of this family are such that perhaps they need to be working with a counselor for 8 or 10 or 15 visits, we need to use a community resource and some of the church-related resources to fulfill that need.

CIJI WARE:

I've served on commissions and committees with a lot of Catholic and Protestant and Jewish family service counselors and that kind of thing. But you were asking before about, you know, how does this relate to the success of what happens after they either get joint custody or they don't. And there was an interesting study that was done in the west district of Los Angeles, there was a judge who was fairly supportive of the concept of joint custody. And he tracked about 250 cases plus over 18 months, about 9 months before the joint custody statute went into effect and 9 months after. What they found was in 16 joint custody families, only 16% came back. In the awards for sole custody, 31%. It was almost twice. So that these decisions where the parents had come out with some sort of plan themselves, they could stick with it, they could live by it, it wasn't imposed on them, they had something to say as to how their family would be reorganized as a family.

JUDGE DONALD KING:

We found too, that if people make their own agreement, they work much harder to keep at it. It's rather absurd for somebody sitting in a black robe to tell 2 parents what's best for their children, when they know so...

CIJI WARE:

And who's going to drive the car pool.

JUDGE DONALD KING:

.. when they know so much more what's true. Now, to go back to your other question about the religious, I wanted to mention that the only meaningful study about joint custody and the effects of joint custody that's going on in the country today is in San Francisco and is sponsored by Jewish Family and Children Services. So the church groups are very interested in this.

HERBERT KAPLOW:

Any findings yet, tentative or otherwise?

JUDGE DONALD KING:

Yes, but it is too preliminary.

CIJI WARE:

Well, there were only 25 families in the first study, which is valid but not big.

JUDGE DONALD KING:

And at the moment, their study, which is just starting its third year, has only dealt with people like Ciji who were swimming upstream, in a sense. They have had shared custody for 6 to 8 to 9 years long before it was even thought of. We are now starting to refer some people to them who are interested in starting joint custody. And so they're now going to have an opportunity to compare people who didn't start with the same motivation and commitment toward it.

HERBERT KAPLOW:

Is there any evidence as to whether it's good for the children?

JUDGE DONALD KING:

The study that's being done by Dr. Susan Steinman with Jewish Family and Children Services would seem to indicate that it is beneficial. But it is too early to tell. From the feedback we get from most parents, they feel it is. We have to be sure the children feel the same way. But generally speaking, it appears to be. We really do need more data.

CIJI WARE:

You know, it is amazing how so much of the work has been done about parents, and very little about the children. And I realize, I was halfway through my book on joint custody, and I realized I had never talked to my son about how he felt in this very unusual way he was living. And it was great, because I said, you know, I sat him down and I said, would you mind, may I interview you? And he said okay. And I said what does it mean to be a joint custody kid? And he said, well, at my mom's house I sleep in the bottom bunk, at my dad's house I sleep in the top bunk. In my mom's house I brush with Aim toothpaste, at my Dad's I brush with Crest. Mom makes my sandwiches with whole wheat bread, Dad makes them with...

HERBERT KAPLOW:

Do you have any reservations about this?

CIJI WARE:

Well, I was scared when he said this. And I said, Jamie, isn't that confusing, ping pong, you know? He said, Mom, it's not confusing, it's complicated, but it's not confusing. So that in his mind, this was worth it, it was complicated, it required asking him, probably more than most kids, but he was willing to do it. And he's a happy kid. And I think...

HERBERT KAPLOW:

Can poor families go through this?...

JUDGE DONALD KING:

Yes.

HERBERT KAPLOW:

Is there any requirement for any sort of...

JUDGE DONALD KING:

No, it has nothing to do with that.

CIJI WARE:

No.

HERBERT KAPLOW:

Just let me ask you this, where else is this alternative seriously being considered or already may have been adopted?

JUDGE DONALD KING:

Well, a number of states have adopted it. Nevada just this year adopted it, in effect copied the California Statute.

HERBERT KAPLOW:

So the concept is being studied elsewhere, and there seems to be...

CIJI WARE:

About 13 states at the moment...

HERBERT KAPLOW:

...more and more interest being expressed in it.

JUDGE DONALD KING:

I firmly believe within 10 years almost every state in the country will have it as an option specified by statute.

HERBERT KAPLOW:

Thank you very much, both of you, for being with us today on Directions.

PLEASE NOTE: THE PRECEDING PAGES WERE TREATED  
AS A UNIT IN THE ORIGINAL DOCUMENT.

STATE OF ALASKA  
THE LEGISLATURE

POUCH Y - STATE CAPITOL  
JUNEAU, ALASKA 99811  
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

January 20, 1982

SUBJECT: Domestic violence  
(Work Order Number 12-2282)

TO: Representative Michael F. Beirne  
Chairman, House Health, Education  
and Social Services Committee

FROM: Tamara Brandt Cook  
Legislative Counsel

TBC

Here is a draft of the bill you requested dealing with domestic violence. You have also requested an analysis of the draft.

Sec. 1. AS 09.55.600 allows a person who is subjected to domestic violence to petition a court for injunctive relief restraining the commission of further violence. After a hearing, the court may issue any order necessary for the protection of the petitioner or of a minor child in the care of the petitioner. Specifically, the order can include various itemized provisions, and this section adds a new provision to the list: allowing the court to award visitation of the child. An order is effective for no longer than 45 days. A copy of the order is sent to local law enforcement agencies, and peace officers are required to use every reasonable means to enforce the order (AS 09.55.630).

Sec. 2. The definition of "domestic violence" is amended to include the crimes of endangering the welfare of a minor, criminal nonsupport, failure to permit visitation with a minor, and contributing to the delinquency of a minor. If one of these crimes is being committed in a family situation, the injunctive relief provided for in AS 09.55.600 is available.

Sec. 3. The crime of failure to permit visitation of a minor is violation under existing law with a maximum penalty of a \$300 fine. This section increases the maximum penalty

January 20, 1982

a \$1,000 fine and a term of imprisonment of not more than 30 days by changing the classification of the offense to a class B misdemeanor.

I wish to alert the committee to the fact that I do have some concerns about this bill. Redefining "domestic violence" to include crimes, such as nonsupport and failure to permit visitation, that are not violent in nature seems to me a questionable practice. "Domestic violence" is now defined to include violent crimes, such as murder, assault, rape, kidnapping, that require immediate action in extending protection to the victims involved. In this type of situation an injunction serves an important function, but I question whether an injunction is appropriate to use in nonemergency situations. Since the order is only effective for 45 days, it will not do much for an ongoing problem involving failure to permit visitation.

In addition, including the crime of failure to permit visitation in the definition of "domestic violence" and then increasing the penalty for failure to permit visitation in a bill dealing primarily with domestic violence may not successfully avoid constitutional problems under Article II, sec. 13 providing in part, "Every bill shall be confined to one subject. . ." I would recommend that Sec. 3 of this draft be introduced as separate legislation, since it deals with a criminal penalty rather than with domestic violence as such.

TBC: csh

Enclosure

1850 Roberts Road  
Fairbanks, Alaska 99701  
March 2, 1982

Representative Mike Bierne  
Alaska State Legislature  
Pouch V  
Juneau, Alaska 99811

Re: B 210, Joint Custody for Children  
Work Order #12-2282, Failure to Permit Visitation

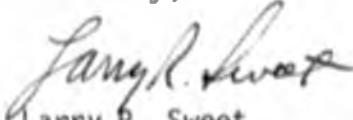
Dear Representative Bierne,

I have been informed that House Bill 210 has been passed out of your committee with a "do pass" recommendation. I appreciate the work you and your staff did on this important issue. It is unfortunate that the presumption of joint custody has been removed from the bill because I think it is important to start with a positive approach rather than automatically assume that one person is bad or wrong. Properly used, the presumption of joint custody can prevent a lot of manipulation and maneuvering that uses children as tools, is demeaning to them and not in their best interest. However, any joint custody legislation is good legislation--it is a start.

Thank you also for initiating a change in the penalties for failure to allow visitation. I have already heard reports that the knowledge that this legislation has been proposed has had an effect in individual cases in Fairbanks.

Children need contact with both parents. Your work will be remembered.

Sincerely,

  
Larry R. Sweet

HB210

Macho Lewis

Box 136

Hyder, Ak. 999-3

Dear Rep. Martin,

I am worried that the "rebuttable presumption" of shared custody clause will be dropped. This is a very important part of

PRESUMPTION OF SHARED CUSTODY- A CHILD'S RIGHT

the bill for the following reasons.

Sincerely, Macho

More than anything, shared custody legislation should be considered a children's rights issue. I have had contact with literally hundreds of children from divorced families over the course of five years of children's work and I have had many cry to me how they miss their daddy. The present law is emotionally disastrous for children and non-custodial parents. It forces one parent out and I wonder how this can possibly be justified in the case of two fit parents. How does the state justify, in the face of overwhelming evidence that children and a non custodial parent continue to go through various degrees of hell years after a divorce, the presumption that sole custody as a result of embittered litigation is in the best interests of children? Children have a very well developed sense of justice and I NEVER met a child who wanted to lose a parent.

Certainly a man or woman who is physically or emotionally abusive to a child should, in the strongest terms be forced to mend his or her ways. Child abuse is unfortunately perpetuated by as many females as males. I have worked at a children's hospital and seen the most sickening, disgusting treatment of children by both men and women. BUT, this isn't even the issue when we are considering custody legislation. The issue is: WHAT IS BEST FOR THE CHILDREN of two normal parents.

Sole custody does not allow a meaningful relationship. Visitation is demeaning. Alaskan schools treat a non custodial parent as if he or she were a child abuser. Parents treated as non-persons become non persons and cop out, not so much because they want to, as that court decrees make the relationship meaningless

anyway. The decrees are seen by almost all losers as unfair, they are seen by children as unfair and they only serve to reinforce hostile, bitter attitudes. One of the results of imposing unjust decrees on one parent is eventual desertion of financial as well as emotional support. So we have the problem of "verticalization of women" and their children. Sure, we can make harsher and stricter child support enforcement laws, child stealing laws and fill the jails up with fathers (as they have done in parts of Michigan). But what good does that do children or society? We should at least try and go to the root of the problem— a legal system that is unfair to children and one parent. When the state presumes sharing and equality and enforces it in the best interests of children, then we will see relationships, both emotional and financial, continuing as they should. We will eventually see this as the expectation of <sup>future</sup> divorcing parents who are now children growing up. If we continue to presume that sole custody is best, we will have made no change in our social attitude...we will continue to see the same awful results.

I don't think it is a debatable point that the best thing for children after their parents divorce is for the two fit parents to reach an agreement which assures their children of a close, meaningful relationship with both, and stick to it. How can losing a loving parent to an imposed custody decree EVER be considered best for a child? Should the presumption be that there will be sole custody and a child will lose one parent, or should the presumption be that the child will be shared and retain a continuing relationship with both parents? Both presumptions are rebuttable, which one should we start with? If sole custody is kept as the presumption it supports a hostile attitude, it hampers any sort of agreement, especially after the decree is passed. Agreement

is of primary importance to the well being of children, Yet how can we expect anyone to agree to complete powerlessness, which is what we do when we presume sole custody is best. Can you agree to complete powerlessness? If we are to encourage agreement we MUST make the presumption that compromise and sharing will be the norm. When we make this presumption, society will eventually follow suit and justice, compromise, agreement and sharing will become the norm.

I see present custody litigation to be analagous to child abuse. Aside from the <sup>ill</sup> effects on children, it is important to remember that they are powerless. Two parents, with the complete support of the law, are allowed to tear ~~aa~~ child's emotional life to shreds. HB 210 is designed to bring an end to this and substitute a statute supporting sharing and agreement. If you take away the presumption, which is supported by a great deal of data, that shared custody is the starting point, you will have torn the guts out of the new law. The state will thence continue to encourage selfishness and battling and children will continue to be emotionally torn to shreds.

Sincerely yours,

  
Marko Lewis

Sally A. Lauster  
1908 W. Hillcrest #25  
Anchorage, Alaska 99503

March 20, 1981

Committee on Health, Education  
and Social Services  
Pouch V  
Juneau, Alaska 99811

Attn: Chairman Don Clocksin

Dear Mr. Clocksin and Committee Members:

I have been an Alaskan resident since 1962. While setting up a support group for joint custody parents through the Alaska Women's Resource Center, I learned of House Bill 210 and obtained a copy.

Three years ago while dissolving our marriage, my husband and I sought joint custody of our two children, then aged 2½ and 6. We were discouraged both by attorneys and the court system, but we persevered and have been operating as joint custody parents for three years. We feel the system is preferable to any alternative and is workable. Our two children are secure and loved, with no more than the usual childhood growing pains.

My feelings about joint custody are strong. If the parents are able to maintain some kind of co-parenting situation with healthy, albeit separate, relationships with the child(ren), I feel this is the best solution to an unfortunate situation.

Personally I know perhaps five or six pairs of parents making some form of co-parenting work. The children are all happy, healthy, and "normal". This is not to say that all divorced couples will be able to cooperate to the extent that legal joint custody would require, but I give my full support to the notion that the courts will no longer discourage couples who strive for joint custody in a knowledgeable, thoughtful manner.

It is exciting to think that Alaskans are creative and sensitive enough to legislate support to a relatively new form of custody. It seems to me a matter of ultimate good sense and sensitivity to children's needs to make both parents available to them in spite of

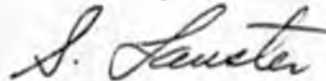
March 20, 1981

Page 2

the end of a satisfactory marital relationship. There are several good books supporting and explaining joint custody which I would like to recommend, especially Joint Custody and Co-Parenting by Miriam Galper, and Mom's House, Dad's House.

Thank you for the time you have spent on this legislation.

Sincerely,

A handwritten signature in cursive script that reads "S. Lauster".

Sally A. Lauster

1850 Roberts Road  
Fairbanks, Alaska 99701  
March 31, 1981

Members of HESS and Judiciary Committees  
Alaska State Legislature  
Juneau, Alaska 99811

Ref: House Bill 210 Joint Custody of Children

Dear Mr. Chairman and Members:

I am writing to ask that you support and pass House Bill 210 which provides for and formalizes joint custody for children.

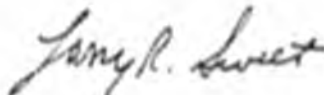
I am the father of two sons and received joint custody two years ago in Fairbanks. I have read all the literature gathered by the House Research Agency and compared it to my own first hand experiences.

If the best interests of children are the main concern then they should not be "owned" by anyone except themselves. Each parent has a joint responsibility for rearing the children and neither parent should prevent the other from sharing 50 percent of the time with the children.

Contrary to some popular notions the parents do not have to be in agreement to have joint custody or to make it work. If they agree on everything they probably should still be married. I know of many joint custody arrangements and I believe all are beneficial. I also know of many acrimonious sole custody examples. Unfortunately my own situation with my ex-spouse is extremely acrimonious--more so than anything that ever existed in the marriage, yet my sons have never been happier. I firmly believe that if HB 210 existed as law when my marriage was dissolved that both parents and children would be in a better place today.

I hope I can discuss any questions you may have regarding my own experiences via teleconference.

Sincerely,



Larry R. Sweet

Phone Numbers: Work 479-2241  
Home 479-6762

MEMORANDUM

March 26, 1981

To: Health, Education and Social Services Committee  
House of Representatives

From: Grant Callow  
General Counsel, Alaska Court System

Subject: HB 210 -- Joint Custody

Bill: Below is a summary of the major problems with the

1. Joint custody only works in 1 out of 50 cases.  
To work, it requires parents who are:

- a) no longer hostile;
- b) Reasonable, rationale and intelligent;
- c) Willing to undergo individual counselling.

2. Where it is presumptive, then court must go along with parental "agreements" or prove itself that the joint custody is not feasible. Will result in extremely high rate of requests for modification.

3. Where parents at odds, teaches child to become a manipulator.

4. Only experimental in about six states. Approximately one year old in California and experiment appears to show unsatisfactory results. California provided large number of support services to deal with problems.

*h*

Marko Lewis .

Box 136

Hyder, Alaska 99923

Dear Representative Martin:

During the hearings held on HB 210 - the Rogers and Gardiner Shared Custody Bill - many parents wanted to know more about shared custody. I have enclosed what is designed as a pamphlet which could be distributed after the new law (hopefully) goes into effect. It represents my own personal view of how the law will encourage parents to share more equally the care and responsibility for their children after a divorce. I welcome questions, criticisms and suggestions for the improvement of the pamphlet idea.

I am also xeroxing a dozen articles I wrote based on extensive research of custody related matters and my own experiences as a parent and a child care worker. Hopefully I will get this to you in time for some winter reading.

HB 210 is a very important bill and I believe it will be a great help to children and parents who are divorcing.

Sincerely yours,

-Marko L

You probably know all this stuff by heart by now. My N.S.F. project in Chicago is, thank goodness, over and I will be haunting the Coast Range again this week. I don't know if I'll make it to Juneau though. Duane Rogers' office says HESS will be making a model bill. Great!

April 30, 1981

Rep. Don Clocksin, Chairman  
And Committee Members  
Pouch V - State Capitol  
Juneau, AK. 99811

Please consider the following changes and comments I have on  
House Bill No. 210; An Act Relating To Child Custody.

Re:

Sec.. 2., (c), (1) Substitute " educational" for "mental".

(2) "the capability and desire of each parent to meet these  
needs;" How is the "capability and desire" to be determined? It is  
my feeling that this needs to be more definitive.

(3) re: "sufficient age and capacity"; Could this be more specific?  
I would like to see the child making a preference only if both parents  
agree for the child to make this decision. I would hate to see my  
child have to live with the burden and possible guilt of having to  
make such a choice.


(4) same comment as #2

Sec. 25. 20.100. Add: "Modification/termination or maintenance of  
status quo shall be determined on the basis of parents participation  
in evaluative mediation before the court, annually."

Sec. 25.20.110. "sufficient age and capacity" How is this deter-  
mined? Could you be more specific?

Thank you for your time and consideration of the above. I hope  
I have been of some assistance.

Sincerely,

  
Dana W. Balliett  
Box 381  
Kenai, Ak. 99611

# Evaluating the 'success' of joint custody decrees

## Repeat court appearances as an indicator of custody stability

One measure of relative success is the frequency of return to court for relitigation of joint custody as compared with sole parent custody.

From:  
James A. Cook  
10606 Wilkins Ave.  
Los Angeles, Calif.  
90024

November 14, 1980

## Two years of custody decrees evaluated in California analysis

On November 7, 1980, Commissioner John R. Alexander of the West District (Santa Monica) of the Los Angeles County Superior Court summarized the rates of controversy in joint and sole parent custody cases from the Fall of 1978 through September 30, 1980. In the next few months Commissioner Alexander will have completed a more extensive commentary on his statistical review. Meanwhile, this advance 'look' at his preliminary findings will be of special interest to the critics and supporters of joint custody.

Statistics were gleaned from case files and index cards compiled by Commissioner Alexander and fellow jurists in the Santa Monica family law court.

## Joint custody awards compared with sole custody decrees

From Fall 1978 to September 30, 1980, 414 custody cases occurred in this court, of which 67% (277 cases) were sole custody awards and 33% (137 cases) were joint custody awards.

## Joint custody relitigation one-half as frequent as sole custody

Of those cases, only 16% of the joint custody awards resulted in repeat courtroom appearances (22 of the 137 cases.) However, 31% of the sole custody awards resulted in courtroom reappearances (86 of the 277 cases.)

## Results when one parent doesn't agree to joint custody

The gratifyingly high rate of 'stability' within cases where joint custody was decreed regardless of opposition to joint custody by one of the parents is illuminating

17 decrees of joint custody were awarded although parents objected (in 14 of which there was opposition to joint custody by one parent and in 3 of which there were 'defaults' by one parent.)

71% of those cases (12) resulted in no later flareups or courtroom controversy despite the initial objection by one parent to joint custody. 5 (of the 17) resulted in later controversy, 2 of which were settled by agreement, 2 were settled after contested hearing, and 1 is still pending, a notice of appeal having been filed August 26, 1980.

**Joint custody decrees, even when there is no initial agreement, are more stable than arbitrary sole parent custody decrees**

Obviously, a preference is for both parents to agree to joint custody,

But, even when both parents don't agree to joint custody there are fewer flareups in unconsented joint custody than in exclusive sole custody decrees. (29% are compared with 31%).

In short, a decree of joint custody even when one parent disagrees appears to be more stabilizing than the arbitrary and decisive decree of sole parent exclusive custody.

-----  
 Statistics as offered by Commissioner Alexander:

**RATES OF CONTROVERSY IN JOINT AND EXCLUSIVE CUSTODY CASES.**

Results of study conducted by John R. Alexander, Commissioner, Los Angeles County Superior Court, West (Santa Monica) District, Fall '78-Sept 30, '80.

Table 1 : Summary of Results

1. Total nr of cases studied	414
2. Exclusive custody awards, Total nr:	277
3. Controversies over custody or visitation arising from the 277 exclusive custody awards:	86
4. Coefficient of controversy (86/277)	0.3105
5. Joint custody awards, Total Nr:	137
6. Controversies arising from 137 joint custody awards:	22
7. Coefficient of controversy (22/137)	0.1606

-----  
 Table 2 : Unconsented joint custody awards follow-up

1. Joint custody awards made after,	
a) Default by one parent	3
b) Opposition by one parent	14
c) Total:	17
2. Cases with no later flareup of controversy	12
3. Ratio of stability (12/17)	0.7059
4. Flareups of later controversy	
a) Settled by agreement	2
b) Settled only after contested hearing	2
c) Still pending (notice of appeal filed, Aug. 26, 1980)	1
d) Total	5
5. Coefficient of controversy (5/17)	0.2941

(Compare with Table 1, line 4: Coefficient in all exclusive custody cases: 0.3105)

Considering number of cases studied, results are believed accurate within 1% plus or minus.

## Initiating

# JOINT CUSTODY PLANNING

### Encouraging & facilitating joint physical & legal custody plans.

California's new Civil Code Sections 4600 and 4600.5 (Chapter 915 of the Statutes of 1979) propose joint legal and physical custody as an initial preference in a logical progression of choices for custody decisions concurrent with divorce of parents.

For good reason the law dictates no plan requirements.  
Parents create their own joint custody plan.

The statute does not specify detailed plan preconditions on the assumption that the diversity of American culture as well as family-initiated solutions should not be limited to the perception of the legislation's authors at the time of the measure's passage. Instead, the statute is designed to encourage voluntary and cooperative plan preparation as divorcing parents assume that the initial consideration of the court will be joint custody prior to consideration of sole parent custody.

Also, a plan can be required before decreeing sole custody.

A parent who prefers not to participate in joint custody is cautioned that, unlike practice prior to Chapter 915 of the Statutes of 1979, the court is empowered to require a sole parent custody implementation plan in advance of the court's custody order as a means of discerning how cooperative a sole custodian parent is likely to be in facilitating frequent and continuing contact by the child with a non-custodial parent. Demonstration of a lack of cooperation, or submission of a sole parent custody implementation plan that foretells curtailment of "frequent and continuing contact" could jeopardize and potentially preclude a court order of sole custody to that parent.

Initiating the planning process.

How do Civil Code Sections 4600 and 4600.5 initiate the joint custody planning process?

At the time of, or prior to divorce hearing, each parent has the opportunity to submit, independently, a tentative outline of his/her personal preferences for the administration of joint custody issues. A submission of the tentative outline is similar to the present procedure of submitting a Form 1285.50, Financial Declaration, in advance of hearing. The tentative joint custody plan outline is for use by private or public-agency counselors, intermediaries, or the court. Parents need not compare their separate proposals in advance of hearing unless they desire to do so on the expectation that mutual consultation in advance will facilitate the court's process.

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To encourage consideration of joint custody, this is a non-copyrighted procedure and basic plan available for reproduction and adaptation, in part or in whole.

Source: James A. Cook, 10606 Wilkins Avenue, Los Angeles, California 90024

### Advantages of submitting joint custody preferences.

Independently submitted joint custody preference outlines, from each parent, have the following advantages:

- Giving evidence to the court of how cooperative each of the parents is likely to be in administering a joint custody plan.
- Providing information, in advance and possibly not previously available, on how each parent envisions conducting co-parenting.
- Relieving the court of dictating decisions that could be unacceptable to one or both parents.
- Providing a clue to preferences of each parent and a means of discerning which preferences coincide. Consequently, preferences upon which there is agreement need not become issues of contention.
- Winnowing-out for further discussion the remaining joint custody implementation plan preferences on which there is disagreement.
- Providing a priority ranking system to assist in the negotiation of those joint custody implementation preferences upon which there is disagreement.

### Accommodating changes.

Child custody encompasses years during which children are maturing, needs and interests are changing, and the economic circumstances and other responsibilities of parents may also be changing. Therefore, custody plans created by this statute are not intended to be rigid, categorical or without evolution. By avoiding itemization of specific prerequisites within the statute, California's child custody statute of 1979 avoids making adherence to, or interpretation of, a custody plan an additional or substitute focus for the parents' animosities.

The purpose of custody planning within the statute, on behalf of the child's best interests, is to encourage negotiation in a spirit of cooperation and accommodation and to minimize accusation or the imposition of unnecessary restraints upon the options parents may envision for conducting joint custody.

The statute facilitates the resolving of joint custody issues by parents without state-directed impositions in matters of personal preference.

Customarily, child custody encompasses decisions regarding, but not limited to:

Medical care

Education

Religion

Residence

Travel

Support

## MEDICAL CARE

Propose names of doctors or clinics available or intended to use.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Will you permit and encourage communication by the other parent with doctors and clinics?

Yes \_\_\_ No \_\_\_ Comment:

Would you be willing to grant either parent the ability to make medical decisions in emergencies when both parents are not available?

Yes \_\_\_ No \_\_\_ Comment:

Would you provide advance notification to the other parent about proposed and forthcoming medical care?

Yes \_\_\_ No \_\_\_ Comment:

Would you offer to participate in medical care costs?

Yes \_\_\_ No \_\_\_ Comment:

## EDUCATION

In considering response to the educational questions, it is not necessarily essential that a child remain exclusively in a particular school especially if grade curricula is uniform in an educational system.)

If education is now in progress, do you offer to assure continuity of schooling?

Yes \_\_\_ No \_\_\_ Comment:

Would you exchange information of educational deficiencies or strengths?

Yes \_\_\_ No \_\_\_ Comment:

Would you make available the opportunity for the other parent to visit teachers?

Yes \_\_\_ No \_\_\_ Comment:

Indicate schools (and locations) available for present and next grade.

Name:  
Address:

Name:  
Address:

**RELIGION**

(The following does not purport to imply that the court either favors or discredits the response to questions on religion. Instead, the questions are posed to aid parents in recognizing and accommodating each others preferences.)

Are you interested in and willing to assume a religious education responsibility?

Yes \_\_\_ No \_\_\_ Comment:

Do you have a religious preference for each child?

Yes \_\_\_ No \_\_\_ Comment:

Do you have alternate preferences? Itemize:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**TRAVEL COSTS**

Offer a solution to the child's travel costs if one or the other parent moves from, or is no longer resident in, the original home locality.

For instance, should the parent moving from the county of original residence be required to pay travel costs to and from the alternate parent's residence?

Yes \_\_\_ No \_\_\_ Comment:

Should travel costs be apportioned based on income and ability to pay?

Yes \_\_\_ No \_\_\_ Comment:

Will you assume travel costs of the child to fulfill residence with the alternate parent?

Yes \_\_\_ No \_\_\_ Comment:

**SUPPORT**

Initial inquiry to determine the assumption of child support costs.

**Alternatives:**

Will you assume all child support costs?

Yes  No  Comment:

Will you assume all child support costs while the child is resident with you?

Yes  No  Comment:

Will you participate in sharing of child support costs based on need and ability of each parent to pay?

Yes  No  Comment:

If costs are shared or allocated, will you provide a monthly itemization of actual support costs?

Yes  No  Comment:

Itemize anticipated child support costs by item on monthly or yearly basis:

## RESIDENCE SCHEDULE

(Indication of where the child is resident, either on an alternating basis or consistently, and the sharing of significant calendar dates.)

Under the present statute it is no longer necessary to use the term 'visitation' with its connotations of superficiality, brevity, condescension or permission. A few parents may, or may not, wish to designate a primary and a secondary residence for the child but this ranking is not necessary for those parents establishing equality in joint custody.

Indicate preference and proposals for sharing residence.

Not all schedules need to indicate an exactly equal sharing of time, and you are encouraged to propose time schedules that are practical, realistic, and suitable for your personal schedule as well as accommodating to the probable schedule of the alternate parent.

In exchanging and allocating time available, consider not only alternate days, but alternate weeks, months, seasons or years as well as the sharing or trading of holidays.

In general, how would you prefer to apportion:

The school year?

The vacation season?

Are the following days important in your scheduling?

(Note: Many of these dates have not heretofore been alternated in conventional custody/visitation decrees with omissions occurring by intent or oversight. This list is intended to rectify an observation of non-custodial parents that many of these dates were omitted entirely from former visitation schedules.)

<u>Yes</u>	<u>No</u>	<u>Date</u>	<u>Preferred resolution</u>
		Child's birthday	
		Your birthday	
		Christmas	
		Hannukah	
		Special religious dates	
		Winter vacation	
		New Year's Eve & Day	
		Washington's birthday	
		Lincoln's birthday	
		Valentine's Day	
		Spring (school) vacation	
		Memorial Day	
		Independence Day	
		Labor Day	
		Halloween	

continued on page 7

Yes

No

Date

Preferred resolution

continued from page 6

Thanksgiving Day  
Thanksgiving Holiday  
Mother's Day  
Father's Day  
Other relatives' birthdays  
School or teacher-convenient days off

Are there events, club meetings, obligations or opportunities you would like to accommodate on behalf of the child? Itemize.

#### REMAINING ISSUES

Are there issues or considerations of particular importance to you, which have not been previously itemized, that would be helpful to you and to the child if indicated in a joint custody plan?

Itemize, comment:

While not as critical to the underlying functioning of an implementation plan as the items previously indicated, the following are secondary issues that will help both parents toward implementing joint custody.

## Relationships

Do you agree or permit that yours is not the only acceptable and satisfactory way to raise children?

Comment:

Do you recognize that the part-time absence of your child, and joint custody, is not a denunciation or derogatory reflection of your ability to parent?

Comment:

Will you substantiate with your child and with your other contacts that joint custody has established two equally valid homes?

Comment:

Do you agree not to estrange your child from the other parent?

Comment:

Will you respect the other parent's right to opinions and a reasonable freedom of action when with the child?

Comment:

Do you recognize that other people have differing philosophies and that it is permissible for a child to experience and evaluate those philosophies for themselves?

Comment:

If brothers and sisters are also involved, how would you prefer the relationship, residence and other activities be coordinated?

Comment:

How would you approach situations that conventional families usually attend together, such as graduation, recitals, athletic performances, etc.

Comment:

Will you facilitate the child's contact with grandparents?

Comment:

## Communications

Describe the level of involvement you can tolerate with the other parent in joint custody implementation.

Comment:

Do you anticipate that your level of tolerance with the other parent will change, and under what possible circumstances?

Comment:

Is oral communication between parents satisfactory for you?

Comment:

Will you require written confirmation of verbal agreements?

Comment:

Will you facilitate telephone calls or chats by the child with the other parent during those times when the child is resident with you?

Comment:

## Parenting and Services

Each parent has a different quotient of parenting skills, and varying degrees of interest and effectiveness in parenting skills. For realistic and efficient co-parenting both parents are well advised to recognize and admit these variations without rancor, ridicule or judgement. Insofar as parenting:

Which parenting task do you believe you do best?

Which tasks do you perform least well?

Which services and responsibilities would you most like to assume?

Which would you like least to do?

In making joint custody work, which service or consideration or task would you most like the other parent to do?

If baby sitting or equivalent service is needed, will you give the other parent the first opportunity to do so before selecting or engaging an individual other than the parent?

(Prior to enactment of Chapter 915 (AB 1480), Statutes of 1979, and for no discernible or equitable reason, one parent most often had to assume the expense and inconvenience of picking up and delivering the child so that the child had access to the other parent during "visitation." Since the new statute redresses the imbalance in such relationships, the following question is asked:)

Will you, or can you, pick up and deliver the child to the other parent as frequently as the same is done for you?

## Financial (other than child support)

Do you believe your joint custody situation calls for a budget and a mutual understanding about that budget?

Comment:

Do you have preferences or intentions about financial savings for the child?

Comment:

## **Discipline**

**Do you have opinions about the child's safety that you would like to guarantee or convey to the other parents?**

**Comment:**

**Do you have preferences and opinions about manners, deportment, and how the child behaves that you wish to convey?**

**Comment:**

**Do you have proposals or preferences regarding punishment?**

**Comment:**

**Will you honor the joint custody implementation plan even though a child's remarks may be counter to the other parent's preferences?**

**Comment:**

**Will you concur that if the child is upset at circumstances in one home that they can't merely pick up and move to the other house without communication between the parents?**

**Comment:**

## **Decisions**

**Will you agree that the parent having day to day jurisdiction can make decisions of the moment?**

**Comment:**

**Do you believe that substantial decisions of longer term consequence should be resolved by consensus?**

**Comment:**

**Dispute**

**Do you have fears or apprehensions about joint custody not working?**

**What are they:**

**Do you believe that a plan should be subject to periodic review?**

**Comment:**

**Will you permit input about the plan from the child, even if the child's observations are critical of your preferences?**

**Comment:**

**Will you participate in property and custody settlements out-of-court?**

**Comment:**

**Would you be amenable to mediation or arbitration in case of serious custody dispute?**

**Comment:**

## Information and Records

Civil Code Section 4600.5 (g), Chapter 915, Statutes of 1979, prohibits a custodial parent from prohibiting access to records and information by a non-custodial parent.

So that each parent may anticipate which records and information regarding the child are likely to be desired by the other parent, indicate which of the following are of interest to you.

Medical  
Dental  
School  
Religious

Camps  
Clubs  
Cultural or extra-curricular activities  
Friends & associates

Diet  
Rest  
Living & sleeping accommodations  
Clothing  
Pets  
Other

Hobbies & interests

Work  
Income

Not every question can or need be fully answered.

The intent of this exercise is not to imply that every consideration needs to be resolved before joint custody can be implemented.

Instead, the intent of these questions has been to focus your attention on the practical considerations of implementing joint custody and to do so without the antagonisms or apprehensions that frequently accompany divorce.

Finally, our intention has been to demonstrate that since there is such a wide range of considerations (no single item need be crucial) parents are encouraged to be flexible and accommodating in recognizing each other's preferences and needs.



10606 Wilkins Avenue  
Los Angeles, California 90024  
(213) 475-5352  
James A. Cook  
President

A Nonprofit Association concerned with  
the joint custody of children and related issues of divorce,  
including research, information dissemination  
and legal and counseling practices.

April 23, 1981

Representative Terry Martin  
Alaska State Legislature  
Pouch V  
Juneau, Alaska 99881

RE: Alaska House Bill 210

Dear Representative Martin:

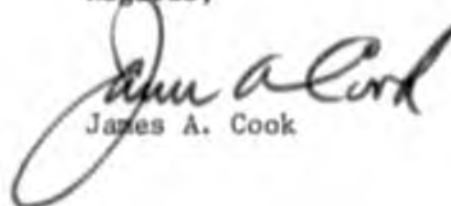
I urge your approval of House Bill 210 which deals with joint custody access to both parents by the children of divorce. Minor amendments are proposed in my concluding two paragraphs, but the overwhelming tenor of H 210 is one of the finest, most sensitive and most humane of all similar joint custody legislative proposals now being studied in the various state legislatures.

Enclosed is a selection of applicable items which I believe will not only aid your legislative evaluation of the topic but may also be increasingly valuable in your conversations with constituents about joint custody. If your constituents raise questions, feel free to duplicate and convey the enclosures to them.

Among the materials, on the third page of the paper marked "Alaska", I question the extensive list of prerequisites which a court might interpret as needing to be ideal before joint custody will be decreed and as a "red flag" for an opponent-parent to assure that some of these issues are not satisfactorily rectified. Although I think each prerequisite is an excellent measure for counselors and parents to consider, as a statute and a legal guideline I surmise they might be decreed unconstitutional.

Lastly, let me mention an item we are all having 'second thoughts' about. That's the old benchmark that hasn't been thoroughly questioned of giving so much weight to the preference of the child. Thoughtful and observant psychiatrically-trained professionals are coming to the conclusion this gives too much impression of power to inexperienced and immature children, gives rise to potential future guilt for having decided for or against a particular parent, and contributes to parents 'catering' to a child in hopes of currying that child's particular approval of one of them exclusively. Hence, I urge you soft-pedal, or downgrade that particular proposal.

Regards,

  
James A. Cook

# STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K—STATE CAPITOL  
JUNEAU, ALASKA 99811

(907) 465-3603

March 26, 1981

Donald E. Clocksin, Chairman  
House HESS Committee  
Alaska State Legislature  
Pouch V  
Juneau, Alaska 99811

Re: House Bill 210

Dear Mr. Clocksin:

You have asked us to comment on HB 210, "an Act relating to child custody." Although this bill has no direct impact on our department, we do have some concerns over the policy expressed in the bill.

The intent of the bill is laudable. It addresses concerns that have been surfacing with increasing regularity around the country. The bill, in promoting shared custody, embodies the notion that it is in the child's interest to perpetuate his or her relationship with both parents. Shared custody also appears to be, in some cases, more equitable with regard to the parents, giving legal recognition to the rights of both parents to participate in decisions which significantly affect the child's life. Although judges probably have inherent power to make shared custody awards in appropriate cases, statutory recognition and authority for such awards may ensure that shared custody is given serious consideration as an alternative in custody disputes. Additionally, statutory authority for a shared custody award may help in surmounting the sexual stereotypes that often operate in custody disputes.

However, conferring upon the notion that shared custody is in the best interests of the child the status of a rebuttable presumption, and requiring that first preference in making an award be given to shared custody, regardless of whether, in either case, the parents actually agree on shared custody, may be going overboard.

By its nature, shared custody requires extensive cooperation between the parents. Without question, there are many instances in which such an arrangement is simply not feasible due to the existence of extreme antagonism between the parents, or perhaps due to other factors (this is implicitly recognized by the listing of the factors to be considered in making an award, § 25.20.120). Many states have recently authorized shared or joint custody awards, and several have accorded it the presumption that it is in the best interests of the child where the parents can agree on an arrangement, but we are aware of none which give shared custody the blanket presumption provided by this bill.

We would suggest the requirement that parents agree on a shared custody award, at least before the presumption and first preference come into operation. Additionally, it may be advisable to require the parents to submit to the court a proposal setting out guidelines for resolution of disputes, and a workable plan if shared physical custody is contemplated, rather than to leave it in the court's discretion.

Section 2, amending AS 09.55.205, is also problematic. Subsection (d) of that statute would prohibit consideration of several factors in making an award of custody -- the conduct, marital status, income, social and cultural environment, and life style of either parent, unless those factors are shown to have caused or to potentially cause emotional or physical injury to the child. While the intent here may be to dispose of many of the conventional but perhaps unfounded presumptions regarding what is and is not a proper and suitable environment for children, this section seems to leave little that can be considered. We wonder, for example, how an assessment of each parent's capability to meet the physical, emotional, mental, religious, and social needs of the child, as required by subsection (c)(2), can be made if there is an exclusion of all reference to the parent's social and cultural environment and life style unless it is shown to be detrimental. We believe that this section is overly broad.

Sincerely,

WILSON L. CONDON  
ATTORNEY GENERAL

By: *Linda Scoccia*  
Linda Scoccia  
Assistant Attorney General

cc: Art Peterson

LS:ml

# California Retires a Formula for Injustice in Child Custody Fights

By JAMES A. COOK

Curbside clutter last week marked the end of the holiday season. Forlornly awaiting garbage trucks, trees with dragging tinsel and heaps of crinkled gift wrap signaled the passing of anticipation and the beginning of memories.

But inside many homes, warm recollections had been purchased at a price of bitter conflict. While others were rushing about from store to store, planning close family gatherings around the tree or menorah, divorced parents in these homes too often were making frantic calls to their lawyers, petitioning courts and waging fierce battles over which one of them would spend the holidays with the children.

No other single time span incites such heated controversy between divorced parents as do the holidays. Wrapped as they are in the mood and myth of family unity, the holidays are meant to be shared with children. Children give purpose to tradition. Thus, this time of the year highlights more poignantly than any other example how badly our courts have failed to protect a child's right to know the love of both parents.

Up until now, the courts have meticulously divided between divorcing parents all the material wealth of the marriage: The car, the couch, the house, were split 50-50. But the most precious part of that marriage, the children, went to one parent, the one designated as custodian, almost exclusively. The other parent was regularly left with only a very small portion of the child's time and frequently had to fight repeatedly, assuming devastating legal expenses, to even maintain that shred of contact with the child.

This formula for injustice is about to become a thing of the past. On Jan. 1, California's new joint custody law AB1480 went into effect. Hereafter, at the request of either parent, judges must consider joint custody awards. Such requests can be made not only for pending divorces, but also in the case of divorces already granted.

From now on divorcing parents will be encouraged either to sit down together and work out joint-custody arrangements or to work them out through their attorneys or counselors. In order to allow the utmost flexibility and, thereby, to insure that various ways of life can be accommodated under the new law, no rigid guidelines have been imposed on litigating couples. Thus, each joint-custody agreement can be tailor-made. Each set of parents can draw up a plan most practical and suitable to their situation. Legislators believe that this "self-ordering" (designating the court order under which they will be bound) will lead to more compliance with court orders on the part of parents, since most people are inclined to honor an agreement they negotiate themselves.

Further, since the court still has the authority to order sole custody to the parent most tolerant of the child's continuing relationship with the other parent, it is believed that this notion will prove to be an incentive to greater cooperation between negotiating parents.

The new custody law was inspired in part by the growing number of custody-change suits brought by fathers who had no recourse under the prevailing law to overcome custodial mothers who obstructed the father's attempts to maintain close contact with the child. Non-custodial mothers were also interested in the joint custody concept, though they are fewer in number and thus have not received as much publicity as have the fathers.

Divorced fathers have become more willing in recent years to express their anguish over the loss of their homes, their wives and their children. More people realize the important role a father plays in the child's life. And more fathers develop and value their parenting skills. In fact, the new movie "Kramer vs. Kramer" gains its power from the nurturant father role played by Dustin Hoffman. Still, the courts were caught in a cultural lag. Laws did not change fast enough or sensitively enough to respond to social changes.

The initial push for new legislation came from professionals in psychiatric, sociological and counseling fields. A gratifyingly large number of lawyers also endorsed the necessity of joint custody.

Actually, the outrage over custody awards began to build soon after the "no-fault" divorce Family Act of 1970 was enacted. Subsequent studies regarded the lack of a joint-custody option as the single greatest inequity left unrectified when the no-fault divorce was imposed. Since the statute still provided that custody could only be awarded to either parent (or an outsider under certain circumstances), the parent who demanded it of the court would receive a divorce without showing of cause. The other parent—who may not have been consulted, may not have been desirous of divorce and may not have wittingly given cause for divorce—could be promptly excluded from the child's life except for visitation based on a schedule decreed by the court without consulting the excluded parent.

In fact, the non-custodial parents often are treated as nonpersons. They have been barred from access to their children's medical records, although they often are financially responsible for the medical bills. School administrators and teachers have often colluded with the obstructive parent by refusing to provide the non-custodial parent with any information whatsoever about the child—even though such refusals violate federal law.

The net effect was that law-abiding fathers whose conduct as fathers and husbands was theoretically not in question, were, nevertheless, severed from a normal relationship with their children in decrees as severe as if these men had committed a crime.

## Los Angeles Times Opinion

Interpretation Background  
Editorials

PART V

SUNDAY, JANUARY 6, 1980

# ERASING CALIFORNIA'S UNJUST FORMULA

And, despite the myth of the irresponsible, footloose and fancy-free former husband, many divorced fathers are determined to remain committed parents to their children. Many yearn to rejoice with their child over a school award or to commiserate over a failure. They seek to share influencing and guiding their child through the formative years.

The new law should help avoid two problems that frequently endanger the well-being of children. In the past, excluded parents have sometimes resorted to "child stealing" or to abandoning child support for lack of frequent and extensive contact with their children. Certainly, a pattern of mounting frustration over not being able to see and share the child often precedes abandonment or child stealing by the non-custodial parent.

Studies show that about two-thirds of divorced fathers fall behind in child support after the first year of divorce, and if, as seems to be the case, a significant number of these fathers have had visitation obstructed before finally withdrawing support, joint custody should end this vicious cycle.

Moreover, the new law will shift the focus to a decision based on protecting the child's equal access to both parents regardless of custodial arrangements and on encouraging

parental sharing of responsibility for the child. Thus, the new law stipulates that custody should be awarded in the following order of preference according to the best interests of the child: To both parents jointly or to either parent. When awarding sole custody, the court is encouraged to choose the parent who will most tolerate the child's frequent and continuing contact with the other parent. Preference of custodian will not be made on the basis of the parent's sex.

No longer can the reluctant or vindictive parent easily use custody, visitation obstruction or denial as a weapon against the other parent or use the court as party to such action.

Certainly, all children are entitled to the love and influence of both parents, but when they are pulled between two sparring parents they suffer acutely. Psychologists and psychiatrists have often warned of the long-lasting ill effects of such trauma.

After years of study, in fact, professionals have compiled a list of adverse reactions a child suffers as a result of sole-custody awards. Children immediately feel lost and abandoned regardless of the presence or excellence of the custodial parent. Feelings of anxiety and loyalty conflicts lead to strained relations with the custodial parent, disturbances in the child's social relations and learning problems. There is often confusion in sex-role identification.

But children are not the only ones to undergo trauma. Non-custodial parents feel anxious over the separation and

at the loss of their close family members, and familiar roles and habits. Practical problems such as economic instability create added stress. The ability to parent declines as does self-concept. (Mothers feel less physically attractive and fathers suffer greater initial changes.) Feelings of rootlessness and extreme loneliness also pain these parents.

Joint custody, which preserves as much as possible of the existing relationship between parents and child, will soften many of these symptoms.

Every year about this time, much is written of the large number of Americans who suffer severe depression throughout the holiday season. Suicides increase. Some of these incidents are directly related to the shattered home. Many of my colleagues bewail the high stacks of litigation papers filed by clients who, in the face of the custodial parent's resistance, cling to the hope, however slight, of sharing the holidays with their child.

For these people and for the many, many children torn and confused by embattled parents, the new joint-custody law is a marvelous present for the new year. □

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*James A. Cook, an administrator of a nonprofit association that researches legislative, regulatory and judicial matters, initiated and co-authored the original version of AB 1430 which, in modified form, took effect Jan. 1.*

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Los Angeles Times

# Metro

LOCAL NEWS  
EDITORIAL PAGES

CC PART II †

WEDNESDAY, JANUARY 30, 1980

## Joint Custody

Thank you for printing the article by Jim Cook on California's new joint custody law (Opinion, Jan. 6).

Cook has done more for the children of divorce—and their parents—than any other single individual in the last decade.

As a father whose daughter was taken away from him by a judge who believed that girls should be reared by their mothers (even incompetent ones), and as a mental health professional who has treated dozens of children and countless divorced adults, I am keenly aware of the destructive effects of our former system.

Cook's incredible devotion and determination was absolutely essential for the creation and passage of the new law. He is now working to facilitate joint custody legislation in many other states. I expect we will be able to look back in 10 years and see this law as one of the most important pieces of social legislation ever enacted.

The "rules" of human relationships are changing. Whether we like it or not, marriage is not what it used to be—nor will it ever again conform to the old model. The joint custody law is an essential step in the social acknowledgement of contemporary family structure.

DONALD D. LATHROP MD  
Los Angeles



FAMILY LAW REFORM AND JUSTICE COUNCIL OF ALASKA, INC.

P.O. BOX 4-1646  
ANCHORAGE, ALASKA 99509

RUDY JOHNSON, PRESIDENT  
(907) 333-6693  
"ALASKANS FOR CHILDRENS RIGHTS"

February 17, 1981

FAIRBANKS - BOX 73256  
KETCHIKAN - BOX 7176  
SITKA - BOX

Representative Brian Rogers  
Pouch "V"  
Juneau, Alaska 99811

Dear Representative Rogers:

Two weeks ago I received a letter from Mark Lewis of Hyder, Alaska. His letter was centered around a desire for a bill, this year, dealing with joint custody and mediation in refer-  
ence to divorce proceedings in Alaska.

We have been actively involved in Alaska since 1974, in these areas. I worked extensively with Representative Mike Bradner, then of Fairbanks, and if you read the statutes you will see them in an evolutionary process that represents years of our efforts and the efforts of many legislators that shared our concerns. My involvement is more detailed in the enclosed copy of the July, 1979, article printed in the Anchorage Daily News.

In 1975, we participated in Representative Bradner's mediation bill that passed and gives divorcing people an opportunity to seek mediation. The bill was a fine piece of legislation and is a stepping stone to solving some of the real problems.

Some of those real problems are:

1. 40% of all homicides are directly related to domestic relations disputes;
2. 90% of the American prison population is from a broken home;
3. 4 out of 5 women on welfare are a direct result of divorce.

Representative Rogers  
Page Two  
February 17, 1981

I could write a book on the related problems but these few well known statistics help appreciate the depth and also that legislation which will help alleviate these results are an investment many times returned.

We firmly believe the introduction and passing of the enclosed California joint custody bill will help tremendously in this problem area. The bill is fine just as written except it needs to be changed a little to fit Alaska Statutes. Mr. Lewis felt you would be willing to introduce this and babysit it through. It appears to me to be an excellent time to do this as with everyone concerned about money items, I would think, it would sail through with very little adverse attention. I am enclosing some articles for your information showing some strong arguments in support of the bill. Boiled down all the research says;

joint custody (joint parenting) feels better for the family involved.

Joint custody does not necessarily mean equal time but is a simple statement in a divorce decree that recognizes the importance of both paren's roles in raising their children after divorce. By that simple recognition it in effect encourages parents to work together after a divorce in raising their children. It feels much, much better for the non-custodial parent. Without a joint custody clause the parent without physical custody is by law not, authorized to grant medical treatment or even attend a parent-teacher conference without permission. How degrading! These kinds of seemingly little things begin a chain of events that trigger emotional trauma upon emotional trauma and makes a creative divorce very unlikely, if not impossible. When the parents feel alright, the children feel alright, and visa versa.

I am a member of the Association of Family Conciliation Courts, an organization consisting of social scientists, lawyers, and judges who are concerned with family law problems. As a result of my affiliation with the Association I have an abundance of research and position papers from professionals in the field in support of the joint custody concept. The Association itself has taken a strong stand in support of mediation and joint custody. I also have the most current collection of case law in support of this.

Representative Rogers  
February 17, 1981  
Page Three

If you would be willing to introduce this bill for us we shall surely make our research available and will testify in committee. James Cook, who originally lobbied the California legislation through, has also agreed to come here and testify if we need him. However, I believe this will easily fly with little opposition. You will notice the bill gives a judge the discretion he needs to not award joint custody but requires him to simply state his reasons.

We will surely appreciate your help if you are interested in this bill. I have worked extensively with Representative Gardiner throughout the years and I believe he would be very supportive of this legislation. I also feel Representative Meekins and Representative Bucholt will help.

Please do let us know if you care to handle this legislation and what we may do to assist you.

I wanted to let you know the reason we are contacting you is because I am assuming you have some kind of a personal interest and understanding in family law issues. We feel this legislation is vitally important and I know from past experiences it will take a bit of personal dedication to walk this bill through to the Governor's desk.

I will be looking forward to hearing from you.

The enclosed research is but a small sample of what I have available.

Sincerely,

RUDY JOHNSON  
President

RLJ:ej

Enclosure(s)



**FAMILY LAW REFORM AND JUSTICE COUNCIL OF ALASKA, INC.**

**P.O. BOX 4-1646  
ANCHORAGE, ALASKA 99509**

UD. JOHNSON, PRESIDENT  
X07) 333-0693  
ALASKANS FOR CHILDRENS RIGHTS\*

June 3, 1981

FAIRBANKS - BOX 73256  
KETCHIKAN - BOX 7176  
SITKA - BOX

Representative Donald Clocksin  
Alaska State Legislator  
Chairman, HESS Committee  
Pouch "V"  
Juneau, Alaska 99811

Dear Representative Clocksin:

Having just received the file on HB 210, joint custody, I wanted to comment on Mr. Francis Stevens' letter of April 28, 1981.

Mr. Stevens letter needs a little clarification. On page 4 of his letter he mentioned I had stated 60 - 80% of all cases being mediated in California were being settled out of court with joint custody being the result. I know that is not what I meant and felt Mr. Stevens must have misunderstood me so I went back and listened to the tape to varify what I had said. As it turned out, he was correct, I apologize.

What I meant to say was, 60 - 80% of all cases going to mediation are, in fact, being settled through the process and joint custody is a first option which is explored by many of the mediators with many people agreeing mutually to joint custody. Tho a figures come from the heads of the different programs themselves and I personally acquired that data from these people in the form of studies, conversations and their written correspondence to myself.

I, too, am a member of the Association of Family Conciliations Courts and it is true no one in Alaska is authorized to speak in behalf of the Association and I certainly never meant to imply I was. However, the Association has provided some very innovative information to its members and has indeed done a lot of research on an individual basis that is shared at the meetings, depending on your particular interest.

June 3, 1981

The Association is made up of people with a wide range of interest. You will find custody investigators there that state, the only father that wants the children are those who want to hurt the mothers, to others that are appauled at the present system. You will also find the same diversity in judges and attorneys that are attending the meetings. The difference is those people that really care take the time to compile statistical information to support their positions rather than simply state an opinionated opinion. Depending of where your intersts are, you would find support from the members on any issue. Knowing this, I work very hard to justify my positions and to support them with facts.

Beyond the mistake I made in my oral testimony the facts and figures I have shared with you are extremely accurate and well researched.

Mr. Stevens is indeed correct in stating some judges are opposed to joint custody but it is equally true that a number of judges recognize its value and are very supportive.

Sincerely,

RUDY JOHNSON

cc: Francis Stevens



## FAMILY LAW REFORM AND JUSTICE COUNCIL OF ALASKA, INC.

P.O. BOX 4-1646  
ANCHORAGE, ALASKA 99509

RUDY JOHNSON, PRESIDENT  
(907) 333-6693  
"ALASKANS FOR CHILDRENS RIGHTS"

FAIRBANKS - BOX 73256  
KETCHIKAN - BOX 7176  
SITKA - BOX

Representative Don Clocksin

Re: Judge Justin Ripleys' letter of April 7, 1981

Re: H. B. 210 - Joint Custody

Dear Mr. Clocksin,

I want to begin this letter by stating that Judge Robbin Taylor wrote his letter of May 3, 1979, at my request and certainly not for the purpose of being exploited by myself in Alaska. The issues involved at the time he wrote the letter are well qualified in his letter. He did not intend it to be distributed to the Alaska Bar, and he never, ever gave me his permission to do so. I have been very careful not to misuse it or to embarrass him by unauthorized use of his very candid letter. When I served on the Governors Task force of the Revised Childs Law Task force in 1977, the director, Ms. Betsy McQuire, wondered why she could not get an Alaskan Judge to any of the meetings although they had all been invited. When Judge Shultz showed up, she was elated. Do any of you wonder why it is difficult to get a judge to speak out and testify before your committees now?

When I sent Judge Taylors' letter to your committee, I did so with the thought that it was not going to be circulated to the legal community or even available to the public. I am sure that when he wrote it, he did so with the same understanding. His letter is a valuable, candid and ACCURATE review of the American divorce courts. I believe he would be the first to tell you, as I do, that not all courts are as he described in his letter. The letter was not intended to apply to all courts, but he does accurately describe the majority of courts.

The studies we have compiled since 1977, show that out of 350,000 child custody disputes, only 4.5% were decided in favor of the fathers. We also noticed the only thing that brought the figures up to those appaling levels, was because of a few judges who had records of awarding children to the fathers (35% and sometimes 40% of the time). There are many, many more judges who

have never awarded custody to a father or those others whose records show that they have done so 3 or 4 % of the time. As I say that, it is important to remember; we do not advocate Mens Rights, we are concerned about children of divorce and the record I spoke of, in my written testimony of April 26, 1981, shows that these childrens' interests have not and are not being protected as the rule.

Judge Ripley's statements, on page 2, paragraph 2, talk about how the doctrine of a custodial parents' willingness and ability to foster an open and loving relationship between the child and the noncustodial parent are interesting. I wonder if he knows that the statute originated in my living room, back in 1976. I also wonder if he has any idea what it took to overcome the opposition of this simple statements inclusion into the statutes. I know, and it costs us thousands of dollars in printing costs, travel expenses and time to successfully provide the research and information necessary to convince the legislature this was a good idea. The opposition back then, was as fierce as it is today from people who saw their power being threatened. The bill has worked remarkably well as we showed it would with our research from other states. It began a change in attitudes just as House Bill 210 will.

As for Judge Ripleys' remarks on page 2, as to how House Bill 210 will increase the future litigation of the parties, I refer you to the study we submitted from Judge Alexander of Santa Monica, California. Those are facts that measure the results, not opinions or innuendos. On page 2, he speaks of the justification of meaningless phrases like, "Reasonable Visitation". Each day in the court room amounts to over \$1000 in costs to each of the parties involved with the preparation time etc. Most people simply cannot afford to go back to court to establish their, already, court ordered visitation rights. We see the results of these decrees on the long term basis, where Judge Ripley and people like him assume that all worked out because he never heard from the people again. I hear from them on the average of 20 times a week. Denial of visitation rights is so prevalent that one national divorce reform organization has actually sought political asylum for themselves and their children in all countries outside of the United States that are cosigners to the Universal Declaration of Human Rights, signed in Geneva in 1954. Their letter is enclosed and cannot be given too much weight in analyzing just what a tremendous problem we are dealing with. Then in the late 70s' a plot was discussed to have a mass execution of judges, meeting in Los Angeles, to demonstrate the need for reform. And how about the book, "Rape of the Male", by Richard Dole, that advocates mass and extensive physical violence against judges, social workers and custody investigators, complete with addresses for information on how to build your own bombs etc. Although I certainly do not agree with these peoples means to accomplish their goals, they have my empathy in recognizing there is indeed a problem that needs to be dealt with....they live with the orders of the court that the "Judge Ripleys'" issue!

Are these people crazy? Dr. Carl Abbruzzese, who is the author of the letter to the embassies, is a world famed medical surgeon who is recognized in Who's Who in the West and Who's Who in Europe. I have personally dealt with attorneys, social workers and psychologists who have been so traumatized by their experiences in american divorce courts, that they were crying like children as they explained their ordeal to me and their frustrations with the famous, unenforceable visitation clause that says, "Reasonable rights of visitation!"

Oh, and as for guardians ( or attorneys) for the children, the Alaska Supreme Court made it very clear in Veasey vs. Veasey, what their role should be. But I personally know of over a dozen cases, where the attorney for the children did not even go to court and in some of those cases, with the approval of the judge. Sometimes the guardians recommendation is coupled with a third party such as the state custody investigator. Many of these people end up in our files and it appears that the custody investigator in Anchorage spends an average of about one hour with each parent to determine the fate of the children involved. He has a staff of two and they have some three hundred cases a year to work on. Although I know he is grossly overworked and could not possibly investigate each case, adequately, I am astonished to hear him tell me that he is always sure when he submits his reports.

As Judge Ripley states, a party or their attorney can always appeal an illegal order. Although this is theoretically correct, the practicalness of this is questionable. An average appeal in Alaska takes about one and a half years. The only real value of an appeal beyond a stay is making some good law that will benefit others until we find a way to get the judges to obey the Supreme Courts decisions. You see the Alaska Supreme Court issued stays 8 times to 1 in favor of mothers when custody of a child is involved. That is significant because in following up the cases I have learned that in virtually all cases where a stay had not been issued and the lower court was reversed, the Supreme Court always remanded the case back to the original trial judge, where he would simply clean up his wording and reaffirm his own decision. In many of the cases where a stay had been issued, the Supreme Court simply reversed and it was out of the trial courts hands. Those appeals costs each party an average of \$10,000 and for the most part, were meaningless in terms of relief, except for making law that is apparently unenforceable. Again, we must change attitudes and House Bill 210 will do that!

Judge Ripley is correct in stating we believe in the best interest of the child doctrine but what does that mean? It means something different to every judge. I remember when that particular issue came up on the task force, Judge Shultz said, "I could go over there to the Court House and round up a few judges and get a hell of an argument going over this definition." He then went on to explain how the deciding factor with fit parents must be their attitudes toward each other, because those attitudes will greatly effect the children.

Any judge can justify their decision, legally, with such an ambiguous phrase. In 1977, a judge from Alaska, decided the best interest of the children involved would be served by their being in the custody of their father, who had already been found unfit by another judge because he had been sexually abusing his sons and daughters regularly. (See Horton vs. Horton 519 P 21131, Ak., 1974). Then take a look at Nichles vs. Nichles, 516 P 2732, Ak. where the judge awarded custody of a child to a mother who had physically abused her child, to the point, the child needed hospital care (the child had been in the care of the father for some time). Both of these cases were overturned by the Alaska Supreme Court and stays had been issued in both. The children never actually were returned to the abusing parent in either case. Do you know where that judge is today? He is the Family Court judge here in Anchorage and he daily decides what "In the best interest of the child" means. Judge Ripleys' record is not impressive either, but I will wait until the total results are in on the study we are presently doing of the Anchorage Court System, before I elaborate on that!

As for Judge Ripley's remarks about me (page 4 - 2nd paragraph of his letter), I agree whole heartily that the record speaks for itself in my case. In the one and a half year interim, between the original decision of the trial court to take my children away from me because of the "Tender Years" doctrine, (See Johnson vs. Johnson 564 P 271 Ak., 1977), after the first judge had given me custody, he was reversed or remanded by the Supreme Court of Alaska 5 times! This cost over one hundred thousand dollars between my ex-wife and myself. The end results were the same after going through the system and having the trial judge simply clean up his wording and reaffirm his own decision. He went a step further.....he took all my visitation rights away from me except for one day a month, which my ex-wife refused me. Obviously Judge Ripley has not read the record he refers to. I invite him to do so!

In closing, I think it is important to boil down the issues surrounding House Bill 210. They boil down to two points:

1. If we agree with Judge Ripley and people like him, that a decree of divorce is an instrument, giving one parent exclusive right to raise the children of a divorced home and that it is a healthy procedure to exclude one parent, then House Bill 210 is not a good idea.
2. If we agree with Judge Shultz and people like him that it is the responsibility of both parents to minimize the grief of divorce for children and to encourage a frequent and loving relationship with both parents after divorce, then we need House Bill 210 immediately!

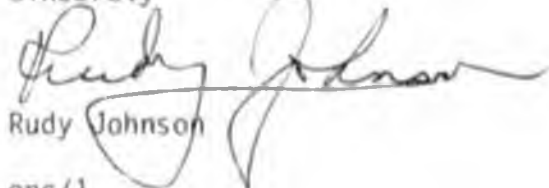
The available research unequivocally supports the second proposition and House Bill 210.

The opposition is based totally upon personal opinions, unsupported by facts or even logic in many cases. The attitudes expressed in the opposition are exactly those attitudes that have created the horrendous problems surrounding parents and children after divorce.

I wonder if Judge Ripley opposes House Bill 210 or the fact that Rudy Johnson is associated with it.

This letter is not intended for anyone other than those it is addressed to.

Sincerely

  
Rudy Johnson

enc/1

ccs/ Judge Ripley  
Judge Robbin Taylor  
Rep. Terry Gardner  
Rep. Brian Rogers  
Rep. Cato

Rep. Duncan  
Rep. Beirne  
Rep. Martin  
Equal Rights For Fathers-Alaskans For  
Childrens Rights

# Alaska State Legislature

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ANCHORAGE, ALASKA 99501  
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WHILE IN SESSION:  
POUCH V  
JUNEAU, ALASKA 99811  
(907) 488-3777



CHAIRMAN  
HEALTH, EDUCATION AND  
SOCIAL SERVICES COMMITTEE  
VICE CHAIRMAN  
JUDICIARY COMMITTEE

Representative Don Clocksin  
DISTRICT 7

June 4, 1981

Rudy Johnson, President  
Family Law Reform and Justice  
Council of Alaska, Inc.  
P.O. Box 4-1646  
Anchorage, Alaska 99509

Dear Rudy:

I received your recent letter regarding Judge Ripley's letter and the letter of Judge Taylor from 1979. I am returning it to you because of your request that it be kept confidential from everyone, other than to whom it is addressed.

There is nothing in my Committee files that is confidential. This legislation is public business and should not be kept secret. A point you may wish to consider which relates to your plea for confidentiality is that you were not a direct recipient of Judge Ripley's letter. If our files were selectively closed off from the public you would never have obtained a copy of that letter.

I appreciate your input into this matter and I can certainly understand your concern, but I will not have the HESS Committee operating "under wraps" with "privileged" information.

Sincerely,

Handwritten signature of Don Clocksin in cursive script.  
Rep. Don Clocksin

DC:1en

Dear Mr. Clockain,

- I thank you for your letter of June 4, 1981. I certainly was not suggesting in my letter that your committee should operate under wraps with privileged information.
- My comments concerning confidentiality were simply a courtesy for Judge Lyle. ~~and I was not suggesting that I was very responsible to circulate Judge Lyle's letter to the Anchorage judicial community without Judge Lyle's letter & obviously accurate and circulating it as someone did.~~
- The Anchorage judicial community appears to me to be pretty irresponsible.
- As much as I believe Judge Lyle has a right to express any opinion to your committee I also believe it is imperative the opposing opinion be made available to anyone reading the file on #B-218. I imagine the same construction of my letter to give with the my statements of confidentiality removed.
- (last page, last sentence.)
- I also wanted to mention I have just discovered a typographical error in my written testimony to your committee on #B-218, dated 4-26-81. On page 2 last para. it is stated 10 of all homicides are the direct result of - over -

EQUAL RIGHTS FOR FATHERS OF ALASKA  
"Alaskans for Childrens Rights"

Children of Divorce  
Coalition

Second Partners  
Coalition

A NON-PROFIT ORGANIZATION

February 11, 1982

Michael F. Beirne, Rep.  
Chairman, HESS Committee  
Pouch V  
Juneau, Alaska 99811

Dear Representative Bierne:

Many hours of testimony have been taken concerning House Bill 210. I believe both sides are well presented. I and others I represent, are very distressed over the committee's intention to remove the "rebuttable presumptive" clause from the bill. I cannot urge you too strongly to reconsider that action, as the bill is "guttred" without these two very important words. It is still better than nothing, but without any force or teeth.

The past has shown us that to legislate family law statutes without teeth is futile. I refer to our study which we performed, utilizing the court's own records. The study pertained to the Anchorage Superior Court custody awards for the years 1979 and 1980. During the years studied, only 2.6% of disputed child custody cases were settled in favor of the father. This is raw bias and presents only the tip of the iceberg in view of the overall problem. These shocking results are in spite of the fact that our state statutes prohibit discrimination in areas of child custody and our Supreme Court has further strengthened those statutes.

The testimony you have heard came from all walks of life, and can be condensed into several categories:

1. Lay-people testifying without any specific knowledge of what is really happening, but nevertheless with strong opinions one way or another.
2. Lay-people who have been affected and have tried in vain to enforce the orders of the court granting them unenforceable visitation.
3. Knowledgeable professionals concerning the area of family law, both pro and con.

3605 Arctic Blvd., #588, Anchorage, Alaska, 99503 (907) 272-2345 or  
333-9284. MEMBERS IN: Anchorage, Sitka, Sutton, Ward Cove, Hyder,  
Palmer, Kenai, Fairbanks, Ninilchik, Wasilla, Ketchikan and Soldotna  
CHAPTERS IN: Fairbanks

I believe that it is fair to say that all the testimony is reflected in the letters of Judge Ripley, dated April 7, 1981; Judge Taylor, dated May 3, 1979 and June 24; Judge Schultz, dated May 4, 1981 and Rudy Johnson, dated March 31, 1981 and April 7, 1981.

If those documents are reexamined, the truth about how the system works can be gleaned as well as solutions to prevent further abuses.

In closing, I wish to iterate my strong convictions that House Bill 210 will help change attitudes and that is the key to truly changing our outmoded and obsolete system for adjudication of child custody cases.

It is unbelievable that the bar association (the very element creating the atrocities in domestic relations) represents such a minority and could wield the power to gut House Bill 210!

It is equally unbelievable that those legal scholars opposing a rebuttable presumption clause do so under the guise of a need for clarification! Rebuttable is just that, irrefutable is something quite different and if that was the magic word, the bar would have a valid concern.

I can tell you from past experience that even with the "rebuttable presumptive" clause, the courts will continue to do what they have for the past fifty (50) years. The difference is the appellate courts will clarify the wisdom of a presumption and will further the concept of changing attitudes. In a number of years, attitudes will change to the point when a person goes to his/her attorney and says "I want a divorce and the kids," they will be pointed in the right direction with counsel that tells them the relationship between the other parent and the children must continue and be protected, short of showing the unfitness. They will be given legal advice, salted with this goal in mind and the long term negative impact on all children of divorce will be greatly reduced. Even with the presumptive, the court only need state it's reason(s) for denying joint custody! Without the presumptive we will lose years in the battle of merely desiring to change attitudes!

If what I have stated above was simply the opinion of one man, Rudy Johnson, it may be looked upon as suspect. But instead, this and my other testimonies are supported with studies, facts and the concurring testimonies of Judges and other members of the bar, not to mention the citizens of the State of Alaska!

To allow a few individuals within the bar association to gut House Bill 210 would be a travesty of justice to the thousands of Alaskan children who will suffer the consequences of their parent's divorce over the next few years. Please do not force these children to inherit the problems we are working so very hard to rid ourselves of...problems our parents passed onto us. Put the "rebuttable presumptive" back in!

Sincerely,



RUDY JOHNSON  
President

RJ:peh

HB 210

# JUDGE SUGGESTS ELIMINATION OF CUSTODY CONCEPT

Phoenix, AZ — Addressing the November meeting of AFACT (Association for Fathers and Children Together) Maricopa County Superior Family Court Judge Robert W. Pickrell strongly endorsed Joint Custody for Arizona, but offered a new viewpoint, which he felt might be more palatable to passage by legislators. "We should eliminate the word "Custody" from our family laws, and substitute "child care arrangements." The Court, according to Pickrell, would no longer have to decide whether or how to "divide" the children, a task he reluctantly performs each day. Rather, the Court would set "Child Care Arrangements", including schedules of where the child would reside at various times and how support responsibility would be shared. The parents would execute the Court's order as "Officers of the Court," having responsibilities comparable to court-appointed custodians. Judge Pickrell stated that enforcement of a duty thus assigned would be easier for the Court, and potential penalties for disobedience at least as great as with present contempt remedies. He felt that by defusing the emotional trauma and stigma of "custody" awards, increased post-divorce cooperation regarding children would become possible.

THIS  
CONCEPT  
SOUNDS  
GOOD  
ENOUGH  
TO  
STUDY  
FURTHER

Marko  
Lewis

February 16, 1982

John M. Holmes,  
Attorney at Law  
P.O. Box 309  
Barrow, Alaska 99723

Tel: 852-2311

The Honorable Hugh Malone,  
Representative  
Alaska State Legislature  
Pouch V, Mail Stop 3100  
Juneau, Alaska 99811

Re: House Bill No. 210  
Relating To Child Custody

Dear Representative Malone:

During the recent teleconference on House Bill 210, on January 29, you asked that I submit written comments regarding the bill. A copy of my written testimony of November 29, 1981 is enclosed. I would just make the following additional written comments.

I have not been involved in the issue which has generated the momentum behind this bill. I do not personally know the people who are behind the bill.

I would make one general comment, which is based on a general feeling of concern. I hope that the child custody law is not being rewritten only from the perspective of an interest in joint custody; I hope that the child custody law is not being used only as a vehicle to enact joint custody legislation. To do so would throw this whole sensitive, emotionally-charged area of the law out of balance. The concerns of those interested in joint custody can be legislatively recognized, for instance, without limiting the necessary discretion of the court. In fact, in practical terms, unless the parties themselves are capable of minimal communication and cooperation (which usually results in stipulations anyway), there is probably little that the court can do to fashion a workable joint custody arrangement.

Here are some specific comments:

1. My main concern has been with what is now designated to be

*-Copy -  
Rep. TERRY MARTIN*

Representative Hugh Malone  
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§25.20.120 Award Of Custody To NonParent. This section would permit non-parents to compete for custody on an equal basis with parents. It violates the constitutional rights of parents to the care, custody and control of their children. It violates the Alaska Supreme Court test in Turner v. Pannick, Alaska, 540 P.2d 1051 (1975), which specifically rejected the 'best interests test' as a standard for determining custody between a parent and a non-parent.

I would recommend that the language be changed to read "...unless the court finds that the parent is unfit, or that the parent has abandoned the child, or that an award of custody to the parent would be detrimental to the welfare of the child."

Please see my enclosed written testimony of November 29 regarding this issue.

2. §09.55.205(a) Judgments For Custody

I would just note that, except for maybe one other passing reference to legal separation, there is no direct reference in the statutes to legal separation as a separate cause of action. Of course it is accomplished in court anyway.

3. §09.55.205(c) Judgments For Custody, continued

(3): It is enough to say "the child's preference". The additional language is ambiguous and will raise problems of definition. The former proposed section, §25.20.100, Preference Of The Child, seems to have set out a good standard which does relate to how the courts approach the issue of children's preference, but I do not see it in the last draft.

(7): I think that this factor (variety of life experiences) could work to the detriment of rural people. A judge may be convinced that an urban life would offer a greater variety of life experiences, per se. It seems to me that it will be a common argument, and unfortunately convincing to some people, that an urban alternative will offer greater variety and advantages for a child; and this could be the deciding factor in some cases, to the disadvantage of rural families. This section will cause confusion and litigation.

4. §09.55.205(d) Judgments For Custody, continued

This whole paragraph should be deleted. In the first place,

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How does a court define "well-being of the child"? It is ambiguous and will lead to litigation. In the second place, the factors listed (conduct, marital status, income, social or cultural environment, or life style) are terms which are mostly so general in scope that they cannot help but be relevant to a determination of custody. Whoever drafted the paragraph had an objective in mind, but the paragraph does nothing but create questions.

5. §25.20.060(a)      Custody Of The Child

The paragraph should be clarified in one detail, and I think that its an important detail since it relates to absolute legal preference for the placement of children with their own preference. The sentence should add the words "between the parents of the child": it would then read, "If there is a dispute between the parents of the child over child custody...".

As I look at the paragraph, I see another problem in it. The following language should be deleted: "all relevant factors including". The sentence should read, "In determining the best interests of the child, the court shall consider those factors enumerated in AS 09.55.205(c)." To say that the court should consider "all relevant factors" is to draft so broadly that the phrase has no meaning. It would just raise questions as to what is relevant: the weather on the day of the hearing? Astrological conditions - by whose horoscope?

6. §25.20.070      Denial Of Shared Custody

This paragraph should be deleted. The judge is not required to state his reasons for the record for all of the other placement alternatives not chosen, and there is no particular reason why he should do so with regard to shared custody. It may not even be always in the best interests of the parties to see those reasons on the record. This seems to be an attempt by proponents of one placement preference to restrict the discretion of the judge.

7. §25.20.100      Factors For Consideration In Awarding Shared Custody

This whole section should be deleted. The factors relevant to shared custody are the same factors relevant to other placement alternatives. Shared custody should be controlled by §09.55.205(c). This seems to be another example of where persons with a particular objective are trying to change the whole body of child custody law in order to attain that objective. But, in so doing, child custody law then gets out of balance. It makes no sense to have one set of

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determining factors in §09.55.205(c) and another set of factors in this section. Maybe the drafter was trying to do it in two stages: to determine from §09.55.205(c) whether there should be shared custody and, if so, to work out the shared custody arrangement according to factors listed in §25.20.100. But it is written that way at all. Having two sets of factors will only create confusion and litigation.

The factors listed in §25.20.100 create even more problems than several of the factors criticized in §09.55.205(c).

(1): "the needs of the child" is so general and ambiguous as to be useless. It would create litigation. It should be deleted.

(3): "the quality and the continuity of the education" is too general and would be prejudicial to parents in rural areas. Urban people could point to the variety of formal educational experiences available, and this could be interpreted as being the thrust of this factor - formal education. Rural areas offer both formal and informal education, and that should be specifically recognized in a statute.

(4): The "advantages of maintaining the child in the same community" is so general as to be useless. How are the elements of this clause ascertained? This clause would only lead to confusion and litigation. It could also hurt rural people.

(5): "the advantages of providing a varied life experience to the child" is another clause which is so general as to be meaningless. It should be deleted. There are no objective criteria for a court to apply when considering this factor. A 'varied life experience' is open to anybody's interpretation. As a practical matter, however, the clause would probably tend to hurt rural people.

(6): Maybe this subsection is what the drafter was after when he drafted this section. It is a breakdown of factors to be considered in working out a shared custody arrangement. It seems harmless; it may be useful. But it seems to me that the pertinent point is this: if a court has to go so far as to refer to these factors, the parties problem are in disagreement over custody and shared custody is not a practical option anyway.

In my opinion this whole section, §25.20.100, should be deleted.

#### 8. §25.20.120      Award Of Custody To NonParent

As discussed above, this section is dangerous. It places the nonparent on an equal standing with the parent in competition for

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placement. It fails to recognize the constitutional right of parents to the care, custody, and control of their children. It violates the Alaska Supreme Court decision on the subject of the 'best interests test' vis a vis the 'detrimental to the welfare of the child test' in Turner v. Pannick. The drafter of the section got the language of both of these independent standards tangled in speaking of "detrimental to the best interests".

The section should be changed to read, "...unless the court finds that the parent is unfit, or that the parent has abandoned the child, or that an award of custody to the parent would be detrimental to the welfare of the child".

#### 9. §25.20.130 Confidentiality

It seems to me that this section is too broad, too general, and that it could diminish the longstanding public policy which favors open court proceedings in this country. Most court proceedings involve disputes, and most disputes involve facts which the parties would probably prefer to keep private, whether in civil or criminal proceedings. The general reaction to the recent U.S. Supreme Court decision which permitted certain aspects of pretrial procedure to be held in camera was that a freedom was being eroded (criminal defendants apparently did not necessarily mind; they did not like to have embarrassing information revealed publicly either).

This kind of a provision should be carefully considered and carefully drafted. Perhaps it would be possible to draft a provision which would permit a judge to invoke the custody-determination part of the divorce as a child custody proceeding, with the confidentiality provisions attendant in such a proceeding.

#### 10. §25.20.140 Access To Records Of The Child

This section seems to me to be very shortsighted. In saying that the noncustodial parent may have "medical, dental, school, and other records of the child notwithstanding any other provision of the law", the paragraph says that the noncustodial parent can have these records under any circumstances. There are serious, even dangerous, child custody cases in which it would be preposterous to give such information to the noncustodial parent. Even the Legislative Intent section of this bill recognizes that it is "generally desirable" (not always desirable) for the child to have continuing contact with both parents.

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This section, like some others above, tries unreasonably to restrict the discretion of the court. It would make more sense to draft the paragraph so as to give the non-custodial parent a right to the information, absent a successful motion by the custodial parent - or the court acting on its own motion - to restrict access to the information.

11. §25.20.150      Definition

The first clause speaks of an "award of custody". Since it is a definition, it should be more specific; are we talking about legal custody, physical custody, temporary custody?

The second clause of the sentence should be deleted (delete: "and includes an award of physical custody that assures the child of frequent and continuing contact with each parent"). That clause describes not only joint custody but also other kinds of placements, such as custody in one parent with reasonable visitation in the other, or custody in one parent with specific schedules of visitation for the other. The proposed definition would cause the definition of shared custody to lose its intended specific meaning.

Summary

It appears to me that this bill needs a lot more consideration. It is such an important area of the law. I would recommend that the Committee take as much time as necessary to thoroughly analyze the proposed revision.

Sincerely Yours,

  
John M. Holmes,  
Attorney at Law

Encl: Testimony of November 29, 1981

cc: Members of the House Committee

TESTIMONY BEFORE THE HOUSE OF REPRESENTATIVES'

COMMITTEE ON HEALTH, EDUCATION & SOCIAL SERVICES

HOUSE BILL NO. 210

November 29, 1981

My name is John M. Holmes. I am employed as a staff attorney with the Alaska Legal Services Corporation at Barrow, Alaska. I worked in the Fairbanks ALSC office from December, 1977 until August, 1978, and have worked in the Barrow ALSC office since August, 1978. A significant number of my cases involve issues of divorce and child custody.

I am concerned about two aspects of the bill which may not be receiving the focus which they deserve. This testimony will be limited to the following two issues: 1) The erosion of the parent's right to custody, as against a non-parent [AS 25.20.130,150] and 2) The factors enumerated in the proposed best interests test [AS 9.55.205(c); 25.20.120]

I. THE EROSION OF THE PARENT'S RIGHT TO CUSTODY, AS AGAINST A NON-PARENT [25.20.130,150]

This bill would give non-parents nearly equal priority with parents in competing for custody of the child. It thereby erodes the constitutional right of the parent to the care, custody, and control of the child. It also directly contradicts the Alaska Supreme Court's statement in Turner v. Pannick, Alaska, 540 P.2d 1051 (1975), that a non-parent cannot be awarded custody absent a finding of unfitness or abandonment on the part of the parent, or that the welfare of the child requires it. The Court clearly rejected the best interests test, which it distinguished as follows:

"In order to satisfy the "welfare of the child" requirement, the non-parent must show that it clearly would be detrimental to the child to permit the parent to have custody.

On the other hand, under the "best interests" test, the court is free to consider a number of factors including the moral fitness of the two parties; the home environments offered by the parties; the emotional ties to the child by the parties; the age, sex or health of the child; the desirability of continuing an existing child-third party relationship; and the preference of the child."  
(P. 1054, supra)

The "welfare of the child" test is therefore a totally independent test, and one which serves to protect the right of the parent to custody of the child. There may be instances where a parent is not unfit and yet is also in no position to exercise custody; this could happen if the parent were a single parent who had severe medical problems. Under such circumstances a court would not be inclined to adjudge a loving parent 'unfit'; however it might grant custody to a non-parent on the ground that the welfare of the child required it. The parent would still be able to retain priority to exercise custody should his or her condition improve.

The parent's right to custody can be defeated only by showing unfitness, abandonment, or that the welfare of the child requires other placement. Otherwise it is unpersuasive that the child might enjoy superior advantages elsewhere, might be happier elsewhere, or might prefer to live elsewhere.

The proposed Preferences On Award set out in AS 25.20.130(4) and the proposed Award Of Custody To NonParent set out in AS 25.20.150 are dangerous to the constitutionally protected rights of parents to raise their own children. The bill would put the parent on the defensive

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against any third party who could demonstrate superior advantages to those the parent could offer. It would greatly prejudice the rights of rural parents, whose own valuable lifestyle could be ignored as a third party painted compelling images of the advantages of urban life. The bill presently violates its own Intent section, § 1, which promotes the historic and continuing public interest in the preservation of the nuclear family.

II. THE FACTORS ENUMERATED IN THE PROPOSED BEST INTERESTS TEST  
[AS 9.55.205(c); 25.20.120]

Several of the factors listed in 9.55.205(c) and 25.20.120 could be prejudicial to the rights of rural parents. Both list "the desirability of offering the child a variety of life experiences". AS 25.20.120 also lists "the advantages of maintaining the child in the same community as compared with the potential advantages of a new community".

These factors could be easily misapplied, on the assumption that an urban lifestyle would be more 'varied' and offer more 'advantages'. In the midst of a custody case, an urban parent would point to the variety of formal educational possibilities and to other activities available in urban areas. A court could then overlook the comparable advantages of rural life.

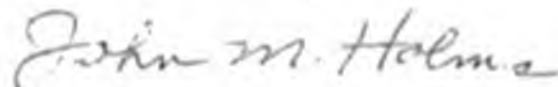
AS 9.55.205(c)(6) and AS 25.20.120(4)(5) should be deleted from the bill. Subparagraph (6) diminishes the protection given to rural parents in AS 9.55.205(d).

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In summary, it is my request that the bill be redrafted so as to protect the constitutional right of parents to the care, custody, and control of their children. The Alaska Supreme Court provides guidance in Turner v. Pannick, Alaska, 540 P2d 1051 (1975). Factors relating to custody determinations between parents should not be drafted so as to favor urban placements over rural placements.

Thank you for your consideration of these comments. Please contact me at any time if you have any questions regarding this testimony.

Sincerely Yours,



John M. Holmes,  
Attorney at Law

P.O. Box 309  
Barrow, Alaska 99723  
Tel: 852-2311

# Decree or Agreement

## Joint Custody Provisions & Clauses

For convenient reference by judges, attorneys, counselors and parents a selection of options among joint custody provisions and clauses are itemized on the following pages.

The intent is to offer a selection of options and not to imply that every topic needs to be decided by decree or agreement.

The terminology has been constructed to facilitate use as a decree by a judge or, alternatively, for agreement by parents. California's Civil Code section 4600 permits decree of joint custody before submission of a plan, or after submission of a plan. To preserve a child's equitable access to both parents, and in those situations where one parent has petitioned for joint custody or where both parents may be "fit parents" but have not yet acquiesced to joint custody midst the acrimony of divorce, judges will find these decree options useful in channelling the parents toward joint custody on behalf of the child's best interests.

In keeping with the intent of "frequent and continuing contact with both parents" as stated in California's Civil Code section 4600, the emphasis of the following provisions and clauses is upon the physical sharing of care and companionship. On the other hand, for the individual parent who is distant and removed by reason of military or overseas service or who, by circumstances of remarriage is not available for joint physical custody, that parent may petition the court for joint legal custody.

A child's equitable and assured access to both parents is, in effect, denied by merely joint legal custody, and all practitioners are cautioned not to thwart a cooperative parent's tolerance of the opposite parent and quest for joint physical custody by frustration with imposition of merely joint legal custody.

The following provisions and clauses deal with topics of:

Intent	Medical
Residence	Child support
Time allocation formulas	Implementation
Holidays	Review
Travel	Remarriage
Moving residence	Decisions
Education	Conflict resolution

-----  
From: James A. Cook, 10606 Wilkins Avenue, Los Angeles, California 90024



**TIME  
ALLOCATION  
FORMULAS**

Residence will be allocated according to the following specifics:

3½ days / 3½ days. Each parent will have the exclusive responsibility for assuring the minor child's schedule of school, activity, play and rest according to the following schedule based on a time split of 3½ days / 3½ days.

The minor child will be resident with the (mother/father) from 12 noon, Wednesday until the following 9:30 PM Saturday or 8:00 AM Sunday. The minor child will be resident with the (opposite parent) during the alternate 3½ day period.

(Note: Three and a half day schedules may also be staggered in at least two other alternatives:

- (1) To provide a parent with a unified Saturday and Sunday weekend, or
- (2) Provide each parent with a full, but alternate, weekend, and split residency of the five remaining week days.)

One week / One week. The minor child will be resident with the (mother/father) from 5:30 PM Friday until the 5:30 PM Friday one week later commencing the first full week in January 1980. The minor child will be resident with the (opposite parent) during the alternate week.

Two weeks / Two weeks. The minor child will be resident with the (mother/father) from 5:30 PM Friday until 5:30 PM Friday two weeks later commencing the first full week in January 1980. The minor child will be resident with the (opposite parent) during the alternate two weeks.

One month / One month. The minor child will be resident with the (mother/father) from 9:30 PM on the last day of the month until 9:30 PM on the last day of the ensuing month commencing with the last day of December, 1979. The minor child will be resident with the (opposite parent) during the alternate month.

Two (three) months / Two (three) months. The minor child will be resident with the (mother/father) from 9:30 PM on the last day of the month until 9:30 PM on the last day of the month two (or three) months hence commencing with the last day of December, 1979. The minor child will be resident with the (opposite parent) during the alternate two (three) month period.

School year / Entire summer vacation. The minor child will be resident with the (mother/father) from the first day of school in the Fall until the last day of school at the conclusion of the Spring. The minor child is resident with the (father/mother) alternately, during the summer period. To balance the available residence time, however, during the school year the minor child

will be resident with the (father/mother) every other weekend commencing the second week after school has opened in the Fall and the minor child shall be entitled to an additional one night a week 'overnight' with the (same parent) during the school year.

During the holidays occurring throughout the school year, residence by the minor child will be alternated, every other year, with the opposite parent from the one having residence during the school year.

In exchange for residence with t. (father/mother) during the summer vacation, the minor child will be resident with the (opposite parent) one weekend a month during the summer from 5:30 PM Friday until 8:30 AM Monday. Unless mutually agreed by both parents, the summer exchange weekend-a-month will commence on the third weekend after school has adjourned at the conclusion of the Spring school semester.

During individual one-day holidays occurring throughout the summer vacation period, residence by the minor child will be alternated, every other year, with the (opposite parent from the one having residence during the summer vacation.)

Workday week / Weekends. The minor child will be resident with the (father/mother) during the workday week to extend from (hour) M (day) until (hour) M (day). Alternately, the minor child will be resident with the (opposite parent) each weekend from 5:30 PM Friday until (8:30 AM Monday.)

The minor child will remain resident in the family home. The parents will alternate residence in the family home and will enjoy the prerogatives of scheduling the care and responsibility for the minor child during their residence in the family home according to the following schedule. (Each parent's schedule of time available for residence in the home.)

**HOLIDAY  
options**

(Note: Customarily, when plans which decree the child's residence with each parent on alternating weekends, and when a national holiday occurs on a Friday or a Monday, the child remains in residence for the additional one-day holiday with the parent customarily responsible for the child's residence during the adjoining weekend.

Therefore, if an alternate weekend plan prevails, you may wish to incorporate the following provision:)

During national holidays on a Friday or a Monday, with the exception of Christmas, the minor child will remain in residence for the additional one-day holiday with the parent customarily responsible for the child's residence during the adjoining weekend.

The following days, holidays and events will be apportioned accordingly:

Minor child's birthday. From 8:00 AM on non-school days and from 5:00 PM on school days, until 9:30 PM the minor child will be with the (mother/father) on even-numbered years and with the (opposite parent) on odd-numbered years.

Father's birthday. Mother's birthday. From 8:00 AM on non-school days and from 5:00 PM on school days, until 9:30 PM the minor child will be with the respective parent during that parent's birthday.

Christmas Eve & Christmas Day.

(Unless alternate arrangements are proposed and preferred by the parents, the following is suggested for the resolution of Christmas residence.)

On odd-numbered years (ascertain that this is the opposite year of that pertaining to allocation of the child's birthday) from 5:00 PM on Christmas Eve until 11:00 AM Christmas Day, the minor child will be resident with the father, and for the remainder of Christmas Day until 9:30 PM the minor child will be resident with the mother. The residence schedule will be reversed between the parents during even-numbered years.

Hannukah. The court, and parents, may also find the time allocation proposed for resolution of Christmas residence to be suitable for allocation of residence during Hannukah.

Winter vacation. (Consider allocation of the period between the closing of school in December prior to Christmas Day and the reopening of school in January after New Years' Day. Unless special arrangements are made for Christmas Day and for New Years' Day a proposed allocation could be apportioned.)

On even-numbered years, from 5:00 PM on the day school closes for the Winter/Christmas holiday, until 11:00 AM Christmas Day the minor child will be in residence with the father, and thereafter during the Winter Holiday until 8:30 AM on the opening day of school in January the minor child will be in residence with the mother.

On odd-numbered years the Winter/Christmas holiday schedule will commence, instead, with the minor child in residence with the mother and conclude with residence with the father.

New Year's Eve & Day. An allocation similar to that accorded to Christmas Eve and Day can also be scheduled for New Year's Eve and Day.

Washington's Birthday. (Unless allocated as a three-day national holiday weekend with time apportioned to the parent wherein the child is already scheduled for residence during the adjoining weekend, the following may pertain:)

During odd-numbered years, at 5:00 PM on the eve prior to Washington's Birthday until 9:30 PM on the day of Washington's Birthday, the minor child will be in residence with the father. On even-numbered years the same residence time schedule will prevail for the mother and the minor child.

Lincoln's Birthday. (Unless allocated as a three-day national holiday weekend with time apportioned to the parent wherein the child is already scheduled for residence during the adjoining weekend, the following may pertain:)

During even-numbered years, at 5:00 PM on the eve prior to Lincoln's Birthday until 9:30 PM on the day of Lincoln's Birthday, the minor child will be in residence with the father. On off-numbered years the same residence time schedule will prevail for the mother and the minor child.

Valentine's Day. During odd-numbered years, from 8:00 AM until 9:30 PM on Valentine's Day the minor child will be in residence with the father. On even-numbered years the same residence time schedule will prevail for the mother and the minor child.

Spring, or Easter, School vacation. During Spring or Easter, School vacation, on odd-numbered years, from 5:00 PM on the day school closes until 8:00 AM on the day school reopens, the minor child will be in residence with the mother. On even-numbered years the same residence schedule will prevail for the father and the minor child.

Memorial Day. (Unless allocated as a three-day national holiday weekend with time apportioned to the parent wherein the child is already scheduled for residence during the adjoining weekend, the following may pertain:)

During odd-numbered years, at 5:00 PM on the eve prior to Memorial Day until 9:30 PM on the day of Memorial Day, the minor child will be in residence with the father. On even-numbered years the same residence time schedule will prevail for the mother and the minor child.

Independence Day. (Unless specially allocated as a consequence of an alternating summer vacation period, the following may be suitable:)

During odd-numbered years, from 8:00 AM until midnight on Independence Day the minor child will be in residence with the father. On even-numbered years the same residence time schedule will prevail for the mother and the minor child.

Labor Day. (Unless specially allocated as a consequence of an alternating summer vacation period, the following may be suitable:)

During odd-numbered years, from 8:00 AM until 9:30 PM on Labor Day the minor child will be in residence with the father. On even-numbered years the same residence time schedule will prevail for the mother and the minor child.

Halloween. During even-numbered years, from 5:00 PM until 10:00 PM the minor child will be in residence with the father. On even-numbered years the same residence time schedule will prevail for the mother and the minor child.

Thanksgiving Day and Holiday. During odd-numbered years, from 5:30 PM on the day preceding Thanksgiving Day, until 9:30 AM on the Monday following Thanksgiving Holiday the minor child will be in residence with the father. On even-numbered years the same residence time schedule will prevail for the mother and the minor child.

Mother's Day, Father's Day. During Mother's Day and Father's Day the minor child will be resident with the respective parent from 8:00 AM until 9:30 PM.

The minor child will be resident with the (father/mother) for an exclusive six weeks during the summer vacation period; the period of time being selected at the convenience of the (parent who is working fulltime with little or no vacation flexibility is usually accorded the opportunity to set this time period) upon two weeks notice to the (other parent).

#### TRAVEL options

Travel costs will be apportioned based on income and ability to pay according to a formula of ( $\frac{1}{3}$  / \$) by the (father/mother) and ( $\frac{2}{3}$  / \$) by the (opposite parent).

The (father/mother) will assume travel costs of the child to fulfill residence with the opposite parent.

Neither parent shall take the child(ren) out of the State of California without a prior 30 days' notice and subsequent consent of the other parent.

#### MOVING RESIDENCE

The parent moving from the county of original residence will be required to pay the travel costs by the minor child and from the alternate parent's residence.

Neither parent will effectuate a superior custody position by moving their residence.

**EDUCATION**

All school records of the minor child will be available and accessible to both parents.

**MEDICAL  
options**

All medical, surgical and dental records of the minor child will be available and accessible to both parents.

Each parent will permit and facilitate communication by the other parent with doctors and clinics regarding the minor child's welfare.

Each parent has the ability to make medical decisions in emergencies when both parents are not available for mutual and prior consultation.

Each parent is directed to provide advance notification to the other parent about proposed and forthcoming medical care.

Each parent will have the right to sign any and all medical, dental and/or surgical authorizations and/or consents.

In the event that employer-related medical insurance is available for the minor child, the (father/mother) will be responsible for assuming such coverage.

All medical expenses for the minor child will be assumed equally by both parents until the minor child is (eighteen or twenty-one) years of age.

**CHILD  
SUPPORT  
options**

Each parent will assume all child support costs while the child is resident with the respective parent.

In view of the separate incomes of each parent, no child support is directed to be paid by either parent to the other parent.

The parents will share child support costs based on need and ability of each parent to pay according to a formula of (1 / \$) by the (father/mother) and (1 / \$) by the (opposite parent.)

Child support of \$ \_\_\_\_\_ will be paid monthly by the (father/mother) to the (opposite parent.)

Child support dollar levels will be determined in accordance with the U.S. Department of Agriculture, Agricultural Research Service, Consumer and Food Economics Research Division "Cost of Raising a Child" with consideration for the appropriate geographic region, age of child, residence area, income-cost bracket, and numbers of children within a family.

All school expenses for the minor child will be assumed equally by both parents until the minor child is (eighteen or twenty-one) years of age or graduates from college at the Bachelor degree level.

In the event that a college education is academically feasible for the minor child, and to provide finances for such education, each parent will contribute \$ \_\_\_\_\_ per month into an annuity plan (or similar financial arrangement) until the minor child's (eighteenth or twenty-first) birthday.

In view of the assumption of the minor child's expenses equally by both parents, the (mother/father) shall claim the dependency exemption for the minor child on federal and state income tax returns for even-numbered years and the (opposite parent) shall claim the exemption for the odd-numbered years.

In view of the assumption and obligation of the larger dollar share of child support expenses by the (father/mother), the (same parent) shall claim the child's dependency exemption on federal and state income tax returns.

#### IMPLEMENTATION

Both parents will sign and implement all documents necessary to carry-out the intent of this decree (or agreement).

#### REVIEW

Annually, at a mutually convenient time between January 1st and commencement of summer vacation, the parents will confer and review the joint custody plan for adequacy, feasibility and appropriateness in consideration of the minor child's developmental age.

#### REMARRIAGE

The terms of this decree (or agreement) shall not be affected or abrogated by the remarriage of either parent.

#### DECISIONS

The parent having day to day jurisdiction can make decisions of the moment affecting the minor child.

Substantial decisions of longer term consequence will be resolved by consensus of the parents.

During the time period when the minor child is in residence with a particular parent, it shall be the responsibility of the respective parent to assure the obligation of appropriate activities, food, clothing and accommodations.

Residence is an exclusive privilege and right of the child and of the respective parent with whom the child is residing. The alternate parent is enjoined from planning or scheduling activities for the minor child during the time period when the child is resident with the other parent without the consent, in advance, of the opposite resident parent.

**CONFLICT  
RESOLUTION**

If the parents are unable to resolve directly and personally any interpretation or controversy arising from the schedule and provisions as itemized in this decree (or agreement) the parents will:

- First, seek a solution mutually by mediation, or
- Second, seek a rectification and agreement by conciliation, or
- Third, seek a decision by arbitration before proceeding to:
- Fourth, formal litigation and resolution by the court.

The parents agree that the terms of this agreement shall become the order of the Court, and shall be merged into and become a part of the interlocutory decree in the above-entitled matter.

2221 Muldoon  
Space 521  
Anchorage, Alaska  
99504  
May 28, 1981

Representative Donald E. Clocksin  
Alaska State Legislature  
Pouch "V"  
Juneau, Alaska 99811

Dear Representative Clocksin:

I would like to start my letter by saying I am a second wife and co-parent/tri-parent.

My husband has been involved in a custody dispute for five (5) of the five (5) years we have been married. It seems as if I have lived my marriage in a courtroom with the judges making all the decisions for his life, my life the childrens and our marriage. All of this agony was because a man loved his children.

We had to fight for visitation every step of the way. His ex-wife refused to talk to him or allow him any kind of courtesies, such as going to the school to speak to the childrens teachers. He was court ordered to stay away, even though his step children, my daughters, were attending the same school and they wanted him there.

Then, after more courtroom confrontations his ex decides to move out of town to a city 1,500 miles away. Again, court because there was no compromise, by the ex she just left town. Supreme Court here we come! No idea where the children are, how they are doing or if we were going to have the court ordered visitation for the summer. We managed to get an order from the Supreme Court, and off went my husband to try to locate the children to enforce the order. He found them and we were able to have a very nice summer with them.

Then, court again to change the visitation schedule, why because of the distance. Again, no speaking between the parents because she would not. This attitude was re-enforced by the residing judge (Carlson) when he stated, "why should a divorced spouse be expected to speak to an ex-spouse". In court we were stripped of every other weekend, every Wednesday night, ten (10) days at Christmas and told one twenty-four (24) hour period a month. By this time we were completely thrown for a loop. When my husband went to the new city to see the children he was told not on Monday, church, not on Tuesday, meeting, not Wednesday something planned, etc., etc. But he could have them for two (2) hours after school.

At that time a decision was made to take the children. We did, right, wrong or indifferent we were put in an unrealistic position because the custodial parent had all the cards and the non-custodial parent had nothing.

We, at this time, were sick of hearing take me to court if you do not like it. I have custody, I will make the decisions. My husband was not only treated by the courts and his ex as if he did not exist but as if he were in the way.

During this period of time my ex-husband had gone to court because of the pressures put on him by others. We went to court and I won, at least, as far as the courts were concerned. But my husband always felt that both parents needed to be able to have a say in the childrens lives. So we went about offering my ex-husband a co-parenting arrangement and he agreed.

The co-parenting agreement has been a wonderfully creative thing for our children. You see, their step-father allowed and in fact invited the childrens father to participate in their lives, such as their father staying in our home when he was in town, in fact when we go home to visit we stay in my ex-husbands home.

Today, I am separated from my husband (no relationship could survive what we have been through in our five (5) years of marriage) and we have also been able to work out a co-parenting arrangement.

I want this committee to know that parents need to work out what is needed and is best for their children. They after all, know their children better than any person the judicial system could find to make that determination. The judicial system as it is now feeds the fire and make a controllable fire uncontrollable.

I know from experience a co-parenting arrangement means the children are not left sitting on the sidelines but put in front and considered first, despite the parents feelings about each other.

Today, as I read a letter from Judge Ripley, regarding HB 210 and Rudy Johnson, I decided to also include a response to that. Rudy Johnson is my husband, but as I stated before we are separated. He has tried to live his life the way he believes and has been very supportive of my children during this period of our lives.

Rudy is a wonderful father who cares deeply for his children, natural and step. He, is at this time tri-parenting, with the approval of the childrens natural father. The children are very secure and happy knowing that they have three (3) parents that love them enough to put aside their problems and concentrate on them. He, also contributes to the children financially and emotionally. He has a scheduled visitation of every other weekend. But I would like to state here that he continues to come to the house every evening after work to see the children and hear about their day and they go to his home often in addition to the structured arrangement we have.

For us as parents, it is not easy, but at least the children are comfortable and we as parents are making the decisions. We do this by communicating with one another. The children are able to be children because we are not fighting among each other for the children and they are not put in a position where they have to choose sides.

May 28, 1981

Please accept this as support of HB 210 and also as a written letter of recommendation toward Rudy Johnson's character and sincerity.

I can not sit back and watch as a judicial officer tries to destroy a truly sincere man in succeeding in something he believes in. I know, I have been through the tears in the evenings and the sharing of his ideals and dreams to make it a better situation for the children of divorce.

If you need me to appear before you or any other committee or person I would gladly do so.

Thank you for taking the time to consider this letter.

Sincerely

*Eva Johnson*  
Eva Johnson

cc: Bette M. Cato  
Jim Duncan  
Michael Beirne  
Terry Martin ✓  
Judge Taylor  
Mr. Callow  
Governor Hammond  
Terry Gardiner

Representative of  
Family Law Reform and Justice Council of Alaska, Inc.  
Alonda Johnson  
P.O. Box 7871  
Ketchikan, AK 99901  
225-6364

April 29, 1981

Representative Don Clocksin  
Chairman HESS Committee  
Pouch U  
Juneau, AK

Dear Mr. Chairman and members of the committee:

The purpose of this letter is to condense my testimony presented at the telconference on HB 210 into writing.

I strongly support this piece of legislation and feel it has far reaching positive effects for families, society, and most importantly children.

As a social worker I see the detrimental effects divorce has. Those children harmed the most are those whose access to a parent is very minimal or cut off completely.

Children have the RIGHT to a relationship with both parents. We need joint custody because our present system is failing to ensure this. There are innumerable cases where visitation is blocked or denied. Even one instance is intolerable as it destroys lives. This is a major problem with sole custody arrangements.

Joint custody will better meet children's needs and provide for healthy development. We have many, many studies available indicating the psychological damage children experience when a relationship with a parent is restricted.

The data available on joint custody indicates better adjustments for both children and parents. See:

The California study entitled, "California's Children of Divorce" by Judith Wallerstein and Joan Kelly.

"Fathers, Children and Joint Custody" by Dr. Judith Brown Grief.

Judge Thomas Shultz would like to recommend reading:  
"Child Custody: Why Not Let the Parents Decide?"  
by Jessica Pearson

I've worked with joint custody families and witnessed the benefits for both children and parents. As parents are assured access to their children we will see a decline in litigation around custody issues, events such as child stealing and domestic tragedies like homicide. It is a fact that some of the domestic violence is a result of parents frustration over access to their children being denied.

As for joint custody not providing continuity and stability, I don't believe this is true. To my knowledge there is no data that supports this at this time. There is data that show positive effects. As one joint custody father states from "Fathers, Children and Joint Custody" the scheduling he and his wife have provides consistency and stability. These joint custody fathers set up living space for the children in their homes, with special toys, clothing, etc. The children do not arrive with suitcase in hand. Although all of the fathers acknowledged an initial period of adjustment on the part of their children, none felt this persisted unduly, nor that their children currently felt disoriented about when they spend time with each parent.

Ron Leighton is a police officer here in Ketchikan and also a joint custody father. He has given me permission to state his support of HB 210. He believes we may see some decline in Juvenile Delinquency and alcohol and drug abuse as a result.

Judge Thomas Shultz also asked me to state his support of this piece of legislation. He would like to recommend that the mediation be mandatory. I also believe this is very important and would like to see financial provision for those unable to seek it due to this factor.

Bob Crutcher, Director of Ketchikan Children's Homes sees HB 210 as a very positive and would like to recommend passage.

Mediation will give parents an avenue to vent their feelings helping to separate this from the children. As this is accomplished most parents will be mature enough to focus on parenting issues. In California 60-80% of the disputed custody cases are being resolved by the parents themselves with the help of mediation. That is SUCCESS.

A belief about joint custody is that children end up being pawns in the midst of parental battles, and that this produces a situation of divided loyalties. Quite to the contrary, children seen "used" in sole custody arrangements because of the inherent unequal power distribution.

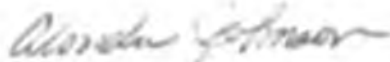
It is my understanding that some opposition to joint custody is coming from parents who have been abused by their ex-spouse. The argument being they have experienced enough trauma with that person and have the right to completely sever the relationship. I agree, they have that right. However, they do not have the right to sever the childrens relationship with that parent if the children have not been abused. I would like to point out that the law presently says custody shall be determined in accordance with the best interests of the child. One factor in determining this is the ability of each parent to allow and encourage an open and loving relationship between the child and the other parent. The law states clearly a parent desiring to sever the childs relationship with one parent SHOULD NOT HAVE CUSTODY.

This bill will be a beginning in changing attitudes in our society. As parents realize they are expected to share parenting after they divorce they will gradually accept this and become more committed to that responsibility. Presently in our society if a woman does not have custody everyone feels she has to be an unfit mother. This stigma will be lifted by HB 210 and will let women realize it's ok to share parenting.

I agree we will have some problems as we implement joint custody. But as society internalises the value that "PARENTS ARE FOREVER" cooperation in shared parenting will increase.

In closing I would like to ask the legislators to remain focused on children's rights and needs as you listen to opposition on joint custody and evaluate accordingly. Children need HB 210.

Respectfully yours,



Alonda Johnson

# Memorandum

Alaska Court System

TO:

WILLIAM HITCHCOCK  
Standing Master

*Francis M. Stevens* (Circled)

DATE : MARCH 10, 1981

FROM:

FRANCIS M. STEVENS  
Custody Investigator

SUBJECT: JOINT CUSTODY

I have reviewed House Bill 210, entitled "An Act Relating to Child Custody", and have a number of comments I would like to share with you. The initial observation would be taken from the recent publication, "Divorce, Child Custody, and Family," formulated by the committee on the family group to the advancement of psychiatry, where they have referred to joint custody and how it has been labeled "shared custody-divided custody-and alternating custody". They indicated the common element in all these terms is the child lives with each parent a substantial amount of time allowing for a more realistic, normal relationship with each parent. In this arrangement, each parent assumes equal responsibility for physical and psychological development of the child, and they share with each other equal responsibility for major decisions that affect the child.

The advantage of joint custody, if a satisfactory arrangement can be worked out, is that it is most likely to preserve a meaningful access to both parents, moreover, neither parent "loses" the child or becomes a visitor in the child's life.

The disadvantage of joint custody even assuming that the parents are able to keep the child out of any residual battles between themselves, is that a child may continue to feel a sense of uncertainty and anxiety as he/she moves back and forth between two homes.

There is not a significant amount of data available to establish the effectiveness of joint custody as a primary method in divorce. There have been some small studies, and in over a short term, they have indicated that in the families studied, the joint custody has worked. The studies, however, indicate that there are certain conditions in these families; most of the divorced parents continue to live in the same neighborhood as their ex-spouses so the children have the same friends and the same schools regardless of which home they are in at any given time. It was also noted in the studies referred to that the parents have had counselling or psychotherapy prior to or well into the process of setting up the joint arrangements. It was also

and probably most important, each parent in the cases studied, expended a great deal of time and effort to make the plan work. In the cases studied where joint custody was given a positive review, it was noted that the actual amount of time spent in each home by the children did not have to be equal or balanced for them to feel positive about the plan, but what was important was the fact that they had access to both parents.

In response to the question, "Is joint custody the solution?" the answer has to be, "Not for every family". The answer depends on the wishes, motivations, and capacities of the parents and as the children get older, theirs as well. Specifically, the parents need to be moving to an emotionally completed divorce. They need to have a strong commitment to resolve their disagreements outside of court and/or have a back up arrangement for counselling to help them do so. While there are certain psychological advantages to the parents in the joint custody arrangement; that is, neither wins or loses the child. The same kind of arrangement could often be worked out informally in a sole custody situation, if the parents can, in fact, agree about the care of their children. The critical factor is the capacity for the parents to come to an agreement about the care of their children.

The concept of joint custody is not a solution for parents unable to come to an agreement. It definitely should not be imposed on a fighting couple as a way of compromising or resolving the dispute. Experiences show such arrangements simply cannot work. Joint custody, we believe, should be a goal; an end for divorcing parents to work toward, assuming that both of them can see it's value.

The legislation contemplated, starts with an assumption that shared custody or joint custody is the first order of priority in custodial plans.

In the experiences of this Custody Investigator, it should not be ranked as the preferential method of awarding custody. The method of awarding custody, used in this court for a number of years, has been what is best for the specific family situation.

On reviewing the Bill, I would expect passage of this piece of legislation could very well have a serious impact on the operation of the courts. In Anchorage alone, there are approximately 2,500 divorces a year. Currently, 10 percent of these cases come through the Custody Investigator's office as contested custody cases, and are handled through

MARCH 10, 1981

investigation/mediation and court presentation, either on a stipulated basis or in a contested matter for the final hearing. This Investigator would be very surprised if the impact, in terms of additional work load, on initial divorce filings were less than double with the consideration of shared custody being the preferable method. In addition, this Investigator would be very surprised if we were not to see a substantial number of filings for modification of decrees where sole custody existed, but where, because of the presumption, the non-custodial parent would file for equality in the divorce decree through the modification process.

FMS/lfs

Rudy;

Perhaps you saw a copy of the letter to a poor slob in Michigan whose ex-wife threatened to kill the child before allowing visitation, from the "Friane of the Court" a/k/a/ Guardian ad litem... In which he suggested rather than upset the poor woman further, make no attempt to visit and drop everything. It never occurred to the ass to take the children into protective custody and turn them over to the father... This is just the thing an idiot like your Judge Ripley would be likely to do.

Sincerely

Ken

Don Lamb has copies of the letter.

Dear Sir,

I Sherry Watkins am writing this letter at the request of an old family friend Rudy Johnson. It is in regards to separation and joint custody.

I set down and told my husband-Don, and son-Larry I was going to move to Alaska.

After twelve years of harassment from Don's ex-wife I decided it couldn't be that way for any one Don might want in his life and no way was I going to be up tight and caddy as she was. Our child was not going to suffer like theres did.

Larry was ten and we lived in California. When I moved out I drove to Alaska and softened the shock with the promise to Larry that he could fly on an Airplane to visit, that excited him and in two weeks he flew up for a few days visit. Don, his father realized how important the trip was and paid half.

I had no intention at that time of giving up my son. Three months later I moved back to California. I stayed with Don and Larry for six months to get a job and apartment. Promising I would get an apartment with a pool. This made the moving easier again. I don't know if the promises were right or not but I kept each one and it did make it easier for all involved.

Letting things ride for a while before I made any big decisions I realized while I was gone Don and Larry had developed a new relationship between the two of them. They were spending tremendous amounts of time together motorcycle riding, camping, fishing and working hard with Larry on school work. I could see Larry developing in school as well as in sports, it was terrific. Naturally I had some adjustments to make. Also I realized I financially I couldn't take care of Larry the way I would like. I don't believe any child should have to suffer by being taken out of the home environment, moved from school and friends. It's enough not to have both parents together.

The settlement was probably the easiest ever, Don kept the home and all furniture except the extras not needed which I took to start over again and 25,000.00 cash settlement.

It's been 2 1/2 years, we have had problems.

I have a rule I go by, when I get really upset with something Don is doing concerning Larry I wait two days before saying anything. This gives me time to cool down and to be able to discuss things in the proper manner. Then we set down and discuss the problem. Don has made some changes. It's not easy for a father to take over when every thing was taken care of by a wife for so many years.

Don is doing a good job and I am proud of him and of Larry for adjusting so well.

Larry is a good boy and we both love him. I would love to have him live with me but what is most important is what is best for him.

I've taken a lot of riticule and even been called an unfit mother. I am adjusting also feel it's easier for me to make the adjustments then it would be for either of them.

Don was married before, had two boys when his wife left she took both boys and gave Don a lot of static, heart break. He use to cry at night because he loved them so much and wanted them. He could see there was little if any discipline in there home. Well they are grown now, they are not modle citizens but naturally he still loves them. One is 21 and the other is 23. The youngest lives with him and the other he sees often. Anyway I didn't think Don could handle having another son taken from him.

All the changes we have made in our lives have been done between us deciding what is best for Larry, no Attornies no relatives no friends no courts. We haven't even filled for a devorce. We feel at this time there is no need, when one of us decides to re-marry again then we'll take care of the small details, in the mean time Larry is the one that is most important.

We can all give a lot if we want to and we can all adjust to changes if we try.

Small instance: Larry has a small wieght problem. Don doesn't allow him sweets. Easter came and I showed up with an Easter basket full of fruit. Larry loved it and also his father was pleased.

Larry lives with his father but I ca. see him any time I want. I don't go there with out calling first and they don't come to see me without calling first, this gives us both the privacy we need.

Don decides he needs to go out once in a while, he drops Larry off with me. This took a while Don said he didn't want to take advantage if me as a babysitter. Larry is almost 13 now but he still doesn't like being alone at night so we work it out together.

We think we've got things pretty well in control between the three of us. There is one small thing that Don and both have problems with: Relationships with other people, they can't quite accept the idea that Don and I are so close and we try hard to keep a good atmosphere between us because of Larry, they think we are still in love with each other. There is nothing sexual between us but I think even if Larry wasn't between us I would still like to keep Don as a friend for life. He has his faults just as I do but I feel he is still a very special person.

So far so good. I think we're going to have a son to be proud of as a good human being.

We are working on it together, and we would like to think other people in the same position could try to help each other also.

*Donald A. Watkins*

1850 Roberts Road  
Fairbanks, Alaska 99701  
September 26, 1981

Representative Mike Bierne  
P. O. Box 4-1539  
Anchorage, Alaska 99510

Attn: Jens Zebbe

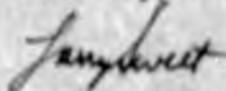
Ref: House Bill 210--Joint Custody for Children

Dear Dr. Bierne:

As I mentioned in our meetings enclosed are the following:

- My May 21, 1981 letter to Representative Brian Rogers which contains an analysis of documentation furnished to you by Rudy Johnson;
- James Cook's April 13, 1981 letter to Representative Brian Rogers giving a critique of House Bill 210. James Cook drafted the California bill which became law in that state on January 1, 1980;
- A statement in favor of Joint Custody by Ms. Karen DeCrow, past president of the National Organization of Women;
- An article from a California Newspaper analyzing how well joint custody has worked in California in the first year.

Sincerely,



Larry Sweet

Sally A. Lauster  
1908 W. Hillcrest #25  
Anchorage, Alaska 99503

March 20, 1981

Committee on Health, Education  
and Social Services  
Pouch V  
Juneau, Alaska 99811

Attn: Chairman Don Clocksin

Dear Mr. Clocksin and Committee Members:

I have been an Alaskan resident since 1962. While setting up a support group for joint custody parents through the Alaska Women's Resource Center, I learned of House Bill 210 and obtained a copy.

Three years ago while dissolving our marriage, my husband and I sought joint custody of our two children, then aged 2½ and 6. We were discouraged both by attorneys and the court system, but we persevered and have been operating as joint custody parents for three years. We feel the system is preferable to any alternative and is workable. Our two children are secure and loved, with no more than the usual childhood growing pains.

My feelings about joint custody are strong. If the parents are able to maintain some kind of co-parenting situation with healthy, albeit separate, relationships with the child(ren), I feel this is the best solution to an unfortunate situation.

Personally I know perhaps five or six pairs of parents making some form of co-parenting work. The children are all happy, healthy, and "normal". This is not to say that all divorced couples will be able to cooperate to the extent that legal joint custody would require, but I give my full support to the notion that the courts will no longer discourage couples who strive for joint custody in a knowledgeable, thoughtful manner.

It is exciting to think that Alaskans are creative and sensitive enough to legislate support to a relatively new form of custody. It seems to me a matter of ultimate good sense and sensitivity to children's needs to make both parents available to them in spite of

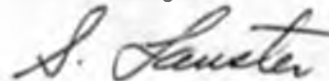
March 20, 1981

Page 2

the end of a satisfactory marital relationship. There are several good books supporting and explaining joint custody which I would like to recommend, especially Joint Custody and Co-Parenting by Miriam Galper, and Mom's House, Dad's House.

Thank you for the time you have spent on this legislation.

Sincerely,



Sally A. Lauster

479-  
6762

1850 Roberts Road  
Fairbanks, Alaska 99701  
May 21, 1981

Representative Brian Rogers  
Alaska State Legislature  
Pouch V  
Juneau, Alaska 99811

Ref: House Bill 210, Joint Custody for Children

Dear Representative Rogers:

The enclosed sheets are an analysis of letters and memorandums from the legal arena which are presently on file in your office. Some of these letters are lengthy and present insightful information.

One interesting pattern emerges however. If a marriage has to be dissolved, and if there are children involved, the judicial districts that the parties would want to live in, from most beneficial to least beneficial with respect to obtaining a mutually agreeable solution to a difficult problem are as follows:

First, the first judicial district. Three judges (Schulz, Stewart, Taylor) are, at least, not opposed to joint custody for children;

Second, the third judicial district. While all testimony from the legal arena is in opposition to HB 210, Anchorage has had for some dozen years or so a domestic relations system that at least attempts to reach an agreeable solution. Private communication from Mr. Francis Stevens, Custody Investigator in Anchorage, states that this has resulted in 96% settlement of contested cases, i.e. only 4% of contested situations went on into litigation;

Third, the fourth judicial district. While only one judge has gone on record (opposed to HB 210) there does not exist any mechanism in Fairbanks for mediation within the legal system. There are a dozen or so joint custody parents in Fairbanks who can state that their own experiences in attempting to obtain a joint custody resolution from the court system was difficult, trying, or, in some cases, unsuccessful, even though both parents were in agreement.

There is insufficient information, and, perhaps, population density, from the second judicial district to make a statement.

It may be coincidental, but the attitudes, practices, and services regarding joint custody for children follow a direct line from south to north.

Sincerely,



Larry R. Sweet

JOINT CUSTODY FOR CHILDRENLEGAL ARENA POSITIONS

NAME	TITLE	JUDICIAL DISTRICT	POSITION			COMMENTS
			IN FAVOR	OPPOSE	NO POSITION	
THOMAS E. SCHULZ	SUPERIOR COURT JUDGE	1	X			REF: MAY 9, 1981 LETTER TO CLOCKIN, ROGERS, GARDNER
THOMAS B STEWART	SUPERIOR COURT JUDGE	1	X ?			REF: MAY 9, 1981 LETTER FROM JUDGE SCHULZ, TO CLOCKIN, ROGERS, GARDNER, P 3
ROBIN L. TAYLOR	JUDGE	1	X ?			REF: APRIL 7, 1981 LETTER FROM JUDGE JUSTIN RIPLEY TO WILLIAM FRANT CALLOW, II, ESQ, GENERAL COUNSEL TO ADMINISTRATIVE DIRECTOR

# JOINT CUSTODY FOR CHILDREN

## LEGAL ARENA POSITION

NAME	TITLE	JUDICIAL DISTRICT	POSITION			COMMENTS
			IN FAVOR	OPPOSE	NO POSITION	
CHARLES TUNLEY	SUPERIOR COURT JUDGE	2		X		REF: APRIL 28, 1981, LETTER FROM FRANCIS STEVENS TO CLOCKSIW

# JOINT CUSTODY FOR CHILDREN

## LEGAL ARENA POSITION

NAME	TITLE	JUDICIAL DISTRICT	POSITION			COMMENTS
			IN FAVOR	OPPOSE	NO POSITION	
RALPH E. MOODY	PRESIDING JUDGE	3		X		REF: APRIL 28, 1981 LETTER FROM FRANCIS STEVENS TO CLOCKSIN. APRIL 9, 1981 LETTER TO WILLIAM CALLUM
VICTOR D. CARLSON	SUPERIOR COURT JUDGE	3		X		REF: APRIL 28, 1981 LETTER FROM FRANCIS STEVENS TO CLOCKSIN; MARCH 19, 1981 TO CLOCKSIN
BUCKELEW	SUPERIOR COURT JUDGE	3		X		REF: APRIL 28, 1981 LETTER FROM FRANCIS STEVENS TO CLOCKSIN
J. JUSTIN RIPLEY	SUPERIOR COURT JUDGE	3		X		REF: APRIL 28, 1981 LETTER FROM FRANCIS STEVENS TO CLOCKSIN; MARCH 19, 1981 LETTER TO JUDGE RALPH E. MOODY
WILLIAM D. HITCHCOCK	MASTER, TRIAL COURTS	3		X		REF: MARCH 9, 1981, LETTER TO GRANT CALLUM, STAFF COUNSEL. MARCH 25, 1981 LETTER TO CLOCKSIN

JOINT CUSTODY FOR CHILDRENLEGAL ARENA POSITIONS

NAME	TITLE	JUDICIAL DISTRICT	POSITION			COMMENTS
			IN FAVOR	OPPOSE	NO POSITION	
WILSON L. CONDON by LINDA SCOCCIA ASST. ATTORNEY GENERAL	ATTORNEY GENERAL	—		X		REF: MARCH 26, 1991 LETTER TO CLOCKSIN
FRANCIS M. STEVENS	CUSTODY INVESTIGATOR	3		X		REF: APRIL 28, 1981 LETTER TO REPRESENTATIVE CLOCKSIN MARCH 10, 1981 LETTER TO WILLIAM HINTERCOCK, STAN- MASTER

# JOINT CUSTODY FOR CHILDREN

## LEGAL ARENA POSITION

NAME	TITLE	JUDICIAL DISTRICT	POSITION			COMMENTS
			IN FAVOR	OPPOSE	NO POSITION	
JAMES R. BLAIR	SUPERIOR COURT JUDGE	4		X		REF: April 20, 190. LETTER FROM FRANCIS M. STEVENS TO REPRESENTATIVE CLUCKIN

Box 381  
Kenai, Alaska 99611  
22 Feb. 1982

HB 210

Members of the HESS Committee

Dear Sirs,

I am the non-custodial parent of a beautiful eight-year old girl, Rachel. For the past three to four years, I have been shooting for joint custody at best, for shared custody outside the law at least. The process of reconciliation and building of a mutual trust has been painfully slow. We are not there yet, but we are now closer than we have ever been. We have just taken a giant step toward full understanding and cooperation with the developments over the past month.

Rachel came to visit us for four weeks following Christmas. Three weeks into the visitation, we decided to see if we could keep Rachel for the remainder of this school year. A number of factors went into making this decision; academic performance in the school here compared with performance in Washington, amount of supervision we were giving Rachel compared with the amount her mother was able to provide, and other factors as well. One very important factor was that Rachel definitely wanted to stay.

Initially, Rachel's mother's response was 'no', accompanied with no concrete reasons. She was simply afraid that she would not get her back, and that she might somehow compromise her position as the custodial parent. There was never any reference to what was the best for Rachel. I accepted her decision.

The night before Rachel was due to return to Washington, while packing her suitcases, Rachel broke down crying. She said that she did not want to go back. Attempts at reassurance did not alter her position. I decided to try convincing her Mother again. After an hour on the phone, I got a commitment from her mother that she would give this much more sincere consideration.

At this point, I contacted Rudy Johnson of Equal Rights for Fathers of Alaska. I told him that I was planning to have Rachel stay up with me and accept the consequences. Through his council, I realized that this course of action would not be the best for Rachel. Keeping in mind Rachel's best interests, Mr. Johnson counseled patience, nothing but positive involvement with Rachel's mother in the future, and further positive involvement with Rachel. He suggested ideas, such as, when parents feel good about themselves and their relationship with each other, kids feel good.

This last statement is what I feel is at the heart of HB-210. HB-210 will provide the mechanism whereby separated and divorced parents will no longer be made into legally sponsored adversaries. Instead, parents will be encouraged

to cooperate, to find grounds for agreement over what is the most important thing to each of them, the well-being of their children.

Through talking with Mr. Johnson at length, I know that he represents very closely what my philosophy is pertaining to this issue. Please listen very closely to what he has to say and know that he is a representative of more people than those belonging to his organization. There are a lot of children out there who are needlessly struggling through the kinds of tug-o-wars that this bill is going to eliminate.

Sincerely,



Dana W. Hallett

P.S.

Rachel's mother has consented to letting her stay through the remainder of the school year. Perhaps Mr. Johnson's advice had somehow tempered my attitudes and provided me with incentive to state my case in a more convincing, calm manner. Without his advice, this situation could have set back the painstaking progress to the beginning.

February 14, 1985

SUBJECT: Saturday duty  
TO: Legal Services Staff  
FROM: Lynn Barnes *Lynn*

Staff on duty this Saturday, February 16, will be:

George Edwards

Lynn Barnes

1850 Roberts Road  
Fairbanks, Alaska 99701  
October 10, 1981

Representative Bette Cato  
P. O. Box 775  
Valdez, Alaska 99680

Ref: House Bill 210--Joint Custody for Children

Dear Mrs. Cato,

At the teleconference hearing April 22, 1981 regarding House Bill 210 you asked questions of many of the people who testified about what they considered to be an age at which a child could reasonably state which parent they chose to live with. We have discussed this subsequently and I still have strong feelings that this can put many children in an impossible situation which can give them psychological problems in the future.

House Bill 210 starts with a positive approach by presuming that a child has two loving and responsible parents (most do) and that each parent wants to maintain "an open and loving frequent relationship between the child and his other parent." (1). The second step in the preference of award in HB 210 would be to give custody to the parent who would "allow the child to have frequent and continuing contact with the parent not granted custody."

I have a situation in which the children have 50% time with each of their parents. This is a situation I have found that many other fathers would like to have because it is equal. I asked my sons, individually, what they think of the present arrangement. They both responded in the affirmative, and stated that they could not think of a better or more equitable arrangement and said, "besides, we get twice as many birthdays and Christmases and have two homes".

I know other children in similar circumstances and they like it, whether or not their parents live in the same town.

The following statement made by Ms. Karen DeCrow, Past President of the National Organization for Women (1975-77) on August 28, 1980, sums things up:

"(Joint custody is) definitely the custody arrangement of the future.

The practice of nearly always awarding custody of children to the mother reflects negatively on women who aren't awarded custody; the public automatically thinks they are unfit to care for the children."

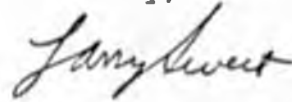
Representative Bette Cato

Page 2

October 10, 1981

Mrs. Cato, I have deeply appreciated our open discussions and I hope you can support HB 210 this next session.

Sincerely,



Larry Sweet

→ Representative Mike Bierne, Chairman, HESS  
Senator Charlie Parr  
Representative Brian Rogers

(1) Alaska Code of Civil Procedure, Sec 09.55.205 JUDGEMENT FOR CUSTODY,  
paragraph (6).

ELLIS & WHITTAKER, INC.

1285 TONGASS AVENUE KETCHIKAN ALASKA 99901

1577 C STREET - SUITE 218 ANCHORAGE, ALASKA 99501

907-225-9661 - KETCHIKAN

907-272-9632 - ANCHORAGE

PETER R. ELLIS

RICHARD WHITTAKER

DENNIS L. McCARTY

DREW H. PETERSON

5 May 1981

MARY ANN VANDECASTLE\*

BRUCE O. DAVIES\*

\*Not Admitted in Alaska

Alaska State Legislature  
Health & Social Services Committee  
Juneau, Alaska 99811

Dear Committee Member:

In many respects child custody continues to be in the dark ages in Alaska. By the time the matter gets to Court (the parents, being distressed to the point of having to hire lawyers), matters are so out of focus that the Courts can only approximate and hope they are able to find for the best interests of the children.

What we really need is an Alaska change of policy such as is suggested by House Bill 210. Joint custody and mediation work well elsewhere and need to be a firm policy of the State of Alaska. Somehow parents need to be aware of alternatives to all-out warfare prior to the time when relationships have become polarized between themselves.

I am aware there are many people who will probably never be able to respond to reasonableness, still I am astounded, every month, by the general lack of knowledge on the part of fathers and mothers as to what their rights are or what makes sense if there comes a time when dissolution of marriage is indicated.

I would recommend that the Legislature pay considerable attention to the emerging possibilities of mediation and the importance of training mediators toward a successful conclusion of the problems of the parties.

I strongly recommend to the Legislature that it consider House Bill 210 as a step forward in human relations.

Yours truly,

Richard Whittaker

RW:mh

Copy: Rep. Terry Gardiner  
Pouch V  
State Capitol  
Juneau, Alaska 99801

LM27-J-D 12



**FAMILY LAW REFORM AND JUSTICE COUNCIL OF ALASKA, INC.**

**P.O. BOX 4-1646  
ANCHORAGE, ALASKA 99509**

**RUDY JOHNSON, PRESIDENT  
(907) 333-6493  
"ALASKANS FOR CHILDRENS RIGHTS"**

**June 3, 1981**

**FAIRBANKS - BCX 73255  
KETCHIKAN - BCX 717c  
SITKA - BCX**

Judge Robin Taylor  
State of Alaska  
District Court  
First Judicial District  
P.O. Box 869  
Wrangell, Alaska 99929

Dear Judge Taylor:

I would presume you have seen the enclosed letter from Judge Ripley, but on the other hand it did not indicate it was sent to you so maybe you have not.

As I have worked in my lobbying efforts in support of HB 210, Joint Custody, I was puzzled as to why Representative Clocksin would not respond to any of my telephone calls, letters or telegrams. After seeing Judge Ripley's letter all the pieces fit. In spite of their opposition we are making good progress and I think the bill will fly next year.

I wanted to apologize to you, personally, for the embarrassment Judge Ripley's letter might have caused you. I have always admired you for your willingness to tell the bureaucrats the truth about the system as it relates to divorce and child custody matters. I would never have sent your letter to the HESS committee if I had thought it was going to be released, I assumed that file was confidential. Apparently, I was wrong and the damage is done. All I can do at this point is say I am sorry and I sincerely mean it. I have been very careful with your letter since you wrote it and it has gone a long way (outside the state) in helping to get more fair and equitable legislation passed.

Judge Taylor

-2-

June 3, 1981

I suspect you probably know Judge Schultz has been very supportive of this bill and has written the legislature. Also, several out of state judges have expressed their strong support. I am a little dismayed at the way the Anchorage Bar is responding, they seem to see the bill as a grave threat to their power. Many judges and attorneys are supportive though and they are slowly coming out of the woodwork to voice that support.

If there is anything I could do beyond the response I have made to balance any damage to yourself please let me know and it will be done. Organizations outside have been made aware of the challenge Judge Ripley has made in his letter and I suspect that challenge will be accepted.

Sincerely,

RUDY JOHNSON

Enclosure(s)

We concur and offer the support of Equal Rights For Fathers of Alaska.

James Bradley  
Chairman, Board  
of Directors

ELLIS LAW OFFICES, INC.

1285 Tongass Avenue  
2518 E. Tudor Road

Ketchikan, Alaska 99901  
Anchorage, Alaska 99507

907-225-9661  
907-272-9632

Peter R. Ellis  
Draw H. Peterson  
Bruce O. Davies  
Christopher M. Keyes

February 4, 1982

Alaska State Legislature  
House of Representatives  
Health, Education and  
Social Services Committee  
Pouch V  
Juneau, Alaska 99811

Re: House Bill 210

Dear Committee Member:

This is the written supplemental testimony which I promised I would provide during my brief oral testimony to your Committee by teleconference on January 29, 1982. You were running late that day and I promised to be brief but to follow up with this letter thereafter.

As was apparently true of many of the witnesses during the teleconference hearing, I first saw the Committee Substitute for House Bill 210 upon arriving at the teleconference hearing room. Thus my remarks were initially tailored to the earlier version of H. B. 210, although I have now obviously had a chance to review the Committee Substitute as well. I am an attorney in private practice in Anchorage and have been in the active practice of law for approximately nine and one half years. A substantial amount of my practice during that time has been in the area of family law. I have resided in and practiced law in Alaska since July of 1976. I am also married, and have two children, ages one and one half and seven.

My initial reaction after reading the original H.B. 210, and my intent in testifying, was that I was substantially in favor of the bill, and the concepts contained therein, but troubled by some of the language which I thought needed work. Upon now reviewing the Committee Substitute, I find that much of the language which previously troubled me has been cleaned up, but at the same time that much of the heart of the original bill has been removed from the Committee Substitute to its detriment.

The primary difference in the bills, of course, is the removal of the rebuttable presumption in favor of joint custody. I am in favor of such a rebuttable presumption, although I would like to see the concept better defined than was the case in the original H. B. 210.

I do not necessarily agree with some of the other witnesses who testified at the hearing that the Committee Substitute totally guts the bill and is worse than having no bill at all. The Committee Substitute if enacted would, in my opinion, be a step in the right direction. I believe that the crux of the matter is that joint custody is a very useful and helpful concept, of substantial benefit in a large number of cases in resolving bitterly acrimonious disputes, by means which are frequently mostly semantic and with little practical difference from traditional custodial awards except that joint custody is considered more satisfactory to a parent who does not have primary custody of children after a divorce or a dissolution is granted. Joint custody is an extremely useful tool which should be encouraged for use in future custody disputes. It is my further belief that the present state of the law in Alaska actually discourages the use of joint custody, benignly if not actively, and that any step towards the more frequent use of joint custody by the courts is a step in the right direction. The Committee Substitute is in fact such a step in the right direction, although it is not nearly as strong a step as I would like to see because it has little substantive effect beyond its mere rhetoric. The adoption of a rebuttable presumption, such as that contained in the original H.B. 210 would be a much stronger step in the right direction.

The largest single difficulty with past joint custody arrangements which I have observed has been when the joint custody concept has been inadequately defined and structured. Thus I would like to see a bill enacted which would create a rebuttable presumption of joint custody but further require that such arrangements be tightly defined in the vast majority of cases. The use of mediation as authorized under both versions of H.B. 210 would be a significant help in arriving at such definition. I believe that all joint custody agreements should be required to include with specificity provisions for the actual physical custody of the children, together with the time to be spent with the children with the non-physical custodian, except in those unusual cases

where such specificity is not required for good reasons which are stated by the Court on the record. Such a requirement of specificity in joint custody awards would, I believe, resolve the major concerns of those persons who have opposed the rebuttable presumption concept. Such an approach also comports with my own experience in dealing with joint custody, which is that carefully defined joint custody arrangements seem to work very satisfactory, whereas loosely defined joint custody arrangements can frequently create more problems than they solve.

Just as there may be rare cases where a loosely defined joint custody arrangement may be appropriate, and should I believe be authorized if good reasons are stated on the record, it is certainly even more true that there are many cases where joint custody is not appropriate. I do not see that as being in any way inconsistent, however, with the rebuttable presumption. My experience has been that such cases are relatively obvious and the presumption can easily be rebutted and thereby disappear. One thing not addressed directly in either of the bills, although at least an attempt was made in the original H.B. 210, would be to provide some additional teeth to the laws and encouragement to the Courts to actively prosecute and stop the sort of outrageous conduct, harassment, manipulating of children and the like which occurs in the all too large minority of cases. While not essential to H.B. 210, such problems are, I believe, worthy of consideration.

I would also like to speak briefly to the mediation provisions of the bill. I am in complete agreement with the comments of Superior Court Judge Tom Schulz in his letter to your Committee dated May 4, 1981, which I found to be an excellent and thought provoking letter and would commend once again to your attention. I firmly believe, as does Judge Schulz, that mediation should be required in all but the most exceptional of cases, and further that doing so would work a tremendous improvement in the resolution of custody disputes, and thereby pay for itself almost immediately in terms of time savings from the crowded Court dockets. Mediation is already authorized by Alaska statute, but virtually never ordered by the Courts, and anything which your Committee can do to change that situation could, I believe, be of substantial benefit to the entire domestic relations field in the State of Alaska. Again, H.B. 210 is a step in the right direction but does not go far enough.

Alaska State Legislature  
February 4, 1982  
Page 4

One final note. Concerning the comments of myself and other witnesses at the hearing as to language problems with the bill, I feel that such problems do exist with both versions of H.B. 210. I have been involved in legislative drafting in the past, however, and am well aware of the difficulties involved in drafting good statutory language. I have always believed that critics in that regards should be willing to invest some of their own time in attempting to resolve problems which they note, in effect put their time where their mouth is. Should the Committee be interested in my suggestions, you should feel willing to call on me and I will be available to attempt to help draft legislative language along the lines which I have recommended herein.

Thank you for your consideration.

Yours very truly,

ELLIS LAW OFFICES, INC.

By 

Drew Peterson

DP/jb

# STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K-STATE CAPITOL  
JUNEAU, ALASKA 99811

(907) 6 3603

March 26, 1981

Donald E. Clocksin, Chairman  
House HESS Committee  
Alaska State Legislature  
Pouch V  
Juneau, Alaska 99811

Re: House Bill 210

Dear Mr. Clocksin:

You have asked us to comment on HB 210, "an Act relating to child custody." Although this bill has no direct impact on our department, we do have some concerns over the policy expressed in the bill.

The intent of the bill is laudable. It addresses concerns that have been surfacing with increasing regularity around the country. The bill, in promoting shared custody, embodies the notion that it is in the child's interest to perpetuate his or her relationship with both parents. Shared custody also appears to be, in some cases, more equitable with regard to the parents, giving legal recognition to the rights of both parents to participate in decisions which significantly affect the child's life. Although judges probably have inherent power to make shared custody awards in appropriate cases, statutory recognition and authority for such awards may ensure that shared custody is given serious consideration as an alternative in custody disputes. Additionally, statutory authority for a shared custody award may help in surmounting the sexual stereotypes that often operate in custody disputes.

However, conferring upon the notion that shared custody is in the best interests of the child the status of a rebuttable presumption, and requiring that first preference in making an award be given to shared custody, regardless of whether, in either case, the parents actually agree on shared custody, may be going overboard.

By its nature, shared custody requires extensive cooperation between the parents. Without question, there are many instances in which such an arrangement is simply not feasible due to the existence of extreme antagonism between the parents, or perhaps due to other factors (this is implicitly recognized by the listing of the factors to be considered in making an award, § 25.20.120). Many states have recently authorized shared or joint custody awards, and several have accorded it the presumption that it is in the best interests of the child where the parents can agree on an arrangement, but we are aware of none which give shared custody the blanket presumption provided by this bill.

We would suggest the requirement that parents agree on a shared custody award, at least before the presumption and first preference come into operation. Additionally, it may be advisable to require the parents to submit to the court a proposal setting out guidelines for resolution of disputes, and a workable plan if shared physical custody is contemplated, rather than to leave it in the court's discretion.

Section 2, amending AS 09.55.205, is also problematic. Subsection (d) of that statute would prohibit consideration of several factors in making an award of custody -- the conduct, marital status, income, social and cultural environment, and life style of either parent, unless those factors are shown to have caused or to potentially cause emotional or physical injury to the child. While the intent here may be to dispose of many of the conventional but perhaps unfounded presumptions regarding what is and is not a proper and suitable environment for children, this section seems to leave little that can be considered. We wonder, for example, how an assessment of each parent's capability to meet the physical, emotional, mental, religious, and social needs of the child, as required by subsection (c)(2), can be made if there is an exclusion of all reference to the parent's social and cultural environment and life style unless it is shown to be detrimental. We believe that this section is overly broad.

Sincerely,

WILSON L. CONDON  
ATTORNEY GENERAL

By: *Linda Scoccia*  
Linda Scoccia  
Assistant Attorney General

cc: Art Peterson

LS:ml



Official Business

# Alaska State Legislature

## House of Representatives

Committee on

Health, Education & Social Services

Pouch V  
State Capitol  
Juneau, Alaska 99811

### SECTIONAL ANALYSIS

HOUSE BILL 210: An Act relating to child custody.

#### Section 1 PURPOSE

Bill seeks to assure children "frequent and continuing contact with both parents after the parents have separated..." . Amends child custody laws in A.S. 9.55.205 and 25.20.060. Intent is to grant to both parents equal opportunity to guide and nurture the children of the marriage. In addition, out-of-court child care agreements are encouraged.

Section 2 Amends present section of A.S. 9.55.205 specifying that the court shall determine custody in accordance with the best interest of the child under A.S. 25.20.060-25.20.180 (new sections added by the bill-to follow below). Adds that the court shall consider the child's preference if the child is of sufficient capacity to form a preference. The court shall consider the "desirability of offering the child a variety of life experience". Also, the court may not consider lifestyle, income, marital status, social or cultural environment of either parent unless detriment of such factor towards the child can be shown.

Section 3 Custody of the Child. Bill expands on existing section relating to child custody (AS 25.20.060) by adding several new sections to AS 25.20 relating to custody disputes and awards. New sections added are set out in the following section.

#### Section 4

--Sec. 25.20.070 "Shared Custody". When a question involving custody is before the court, there is a rebuttable presumption that shared custody is in the best interest of the child.

--Sec. 25.20.080 "Mediation". Allows court considering child custody case to request the parties to participate in pre-trial mediation.

--Sec. 25.20.100 "Award of Custody". Outlines conditions for award of shared custody (by application and agreement). Also provides that court shall enter reason for denying shared custody when it declines such.

--Sec. 25.20.100 "Modification or Termination of Custody" Court may modify or terminate custody award if in child's best interest.



Official Business

# Alaska State Legislature

## House of Representatives

Committee on

Health, Education & Social Services

Pouch V  
State Capitol  
Juneau, Alaska 99811

### SECTIONAL ANALYSIS (cont'd) HB 210

--Sec. 25.20.110 "Preference of the Child" If the child is of sufficient age and capacity to form an intelligent preference, such preference shall be considered by the court.

--Sec. 25.20.120 "Factors for Consideration by the Court". Outlines factors to be considered by the court in an award of shared custody.

--Sec. 25.20.130 "Preferences on Award". Sets forth the order of preference by which custody should be awarded "according to the best interests of the child".

--Sec. 25.20.140 "Temporary Custody". Unless harm is shown, child shall have equal access to both parents while custody is determined.

--Sec. 25.20.150 "Award of Custody to Nonparent". No custody shall be awarded to a nonparent unless it is demonstrated that award of custody to a parent is detrimental to the best interests of the child.

--Sec. 25.20.160 "Pleadings" An allegation that custody award to the parent would be detrimental may only appear in the pleadings by a general allegation to that effect.

--Sec. 25.20.170 "Access to Records of the Child" A parent not granted custody may have access to medical, school, and other records of the child.

--Sec. 25.20.180 "Definition" Shared Custody is defined as "an award of custody of the child to both parents and includes an award of physical custody which assures the child of frequent and continuing contact with each parent".