HB

210

HOUSE RESEARCH AGENCY
Pouch Y
Juneau, Alaska 99811
465-3991

KEY WORD: Child Custody

Research Request No: 82-78

RESEARCH EVALUATION

TO: Representative Mike Davies

FROM: Duncan L. Read, Director

RE: Evaluation of Research Products

To assist us in improving the quality of our research services, we would appreciate your response to the following questions:

- Was the information unbiased?

- Did it provide answers to (or, at least, useful information on) all the questions you posed?

- Was the research completed and delivered to you in a timely manner?

- Was it clearly written?

- May we release this information to the public?

  |___| Now

  |___| Three months from the date of transmittal

  |___| At the end of the current legislative session

Please be assured that we will take your comments seriously in performing future research for you.

Please return to House Research Agency, Mail Stop 3100.

Thank you.

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

January 29, 1981

MEMORANDUM

TO: Representative Mike Beirne
Attention: Jody Sutherland

FROM: Christine Johnson and Carol Biggs, Research Staff

SUBJECT: Research Request 82-18
Child Custody and Visitation Enforcement

This memorandum is in response to your request for information regarding joint custody and enforcement of parental visitation rights in California, Oregon, and Washington. The relevent statutes from each state are attached, and the major provisions summarized below.

Joint Custody

In California, Oregon, and Washington, as in many other states, the courts have the authority to award custody of children to both parents jointly. In California and Oregon, state statutes expressly give the court this power. In Washington, the court is empowered to award custody as it sees fit, based on a determination of the best interests of the child.

At present, California is the only one of these three states which has enacted legislation pertaining to presumptive joint custody. Legislation regarding presumptive joint custody was introduced in the Oregon Legislature in 1979, and a bill is currently under consideration in the Washington House of Representatives.

California. California is unique among states with joint custody laws in that its statutes establish specific procedural guidelines for the court; in other states, the tendency has been to simply grant the courts the power to award joint custody or to imply the availability of joint custody by defining it.

California law states that custody shall be awarded in the following order of preference, depending on the best interest of the child: first, to both parents jointly; and second, to one of the parents. It is important to note that this provision does not create a presumption of joint custody; rather, it states the public's preference for joint custody awards.

California law presumes that joint custody is in the best interest of the child only when both parents have agreed to this award. The court has the right to deny joint custody even under these circumstances; however, it is required by law to state the reasons for the denial.

Where only one parent desires joint custody, California law requires that the court consider it equally with sole custody. If joint custody is not awarded, the court must again explain its rationale.

Legislation is currently pending in the California State Legislature which would make joint custody the presumption in all cases unless:

(a) the parents have agreed that custody should be awarded to only one of them; or

(b) the court finds one parent unfit.

Oregon. Currently, under Oregon law, the courts may award custody of children to "one party or jointly."

Oregon House Bill 2538, which was not enacted, would have created a disputable presumption that joint custody is in the best interests and welfare of the child. In contrast to the current California law, this proposal would have made joint custody the presumption in all custody cases, not just cases where the parents had agreed upon a joint custody arrangement. A copy of the legislation is attached for your reference.

Washington. As noted above, legislation regarding joint custody is currently under consideration in Washington. The proposed legislation is similar to California's in that joint custody would be a disputable presumption when both parents were in agreement, and would be considered equally with sole custody at the request of either parent. Unlike California's current law, however, the legislation would establish a stream-lined procedure for modifying existing orders to stipulate joint instead of sole custody. The bill is expected to be revised in committee within the next two days, and we will forward a revised version to you as soon as it arrives.

Enforcement of Parental Visitation Rights

Neither the National Council of State Legislatures nor the National Association of Commissioners for Uniform State Laws were familiar

with any model legislation on visitation enforcement. A staff person for the latter felt that there was a general trend among the states towards provisions for mediation or arbitration of visitation disputes.

The procedures for enforcement of visitation in California, Oregon, and Washington are briefly outlined below.

California. An individual who willfully denies visitation can be prosecuted under California Penal Code section 278.5. An individual convicted under this code may be punished by imprisonment for not more than one year and one day, a fine of not more than $1,000, or both.

According to Jack Trier, who is in charge of visitation enforcement for the Sacramento area, very few people are criminally prosecuted in California for failure to grant visitation. Typically, non-custodial parents who have been denied visitation file a complaint with Trier's office. The custodial parent is then notified by letter that a complaint has been filed; he or she is warned of the possible consequences, and advised to contact the other parent, a private attorney, or Trier's office. Trier estimates that 75% of the cases are resolved by him or his staff, acting, in his words, as "social workers", and persuading the parties to compromise. The remaining cases are referred to the Family Court system for resolution.

Since January of 1981, California law has required that visitation disputes be subject to mediation before being referred to court. The law states that:

> The purpose of such mediation proceeding shall be to reduce acrimony which may exist between the parties and to develop an agreement assuring the child or children's close and continuing contact with both parents after the marriage is dissolved. The mediator shall use his or her best efforts to effect a settlement of the custody or visitation dispute.

Cases which are mediated result in a legal court order; however, attorneys are not necessary, and the procedures are less formal than in an actual courtroom.

Trier noted that in the majority of the cases handled by his office, there are conflicts regarding visitation because the original custody order did not specify precisely when and under what circumstances the non-custodial parent may see the child. Trier said that orders typically state that the non-custodial parent has the right to "rea-

sonable visitation". Problems arise because the two parents cannot agree about what this constitutes. According to Trier, generally what is necessary in these cases is negotiation of a formal visitation schedule.

Oregon. In Oregon, a non-custodial parent must return to court in order to enforce his or her visitation rights. According to Judge Nachtigal, of the Circuit Court for the Portland area, an individual who is willfully denying visitation may be held in civil contempt of court, and sentenced to up to six months in jail. Often, however, the court will refer the parents to the Family Concilation Service which attempts to resolve their disputes out of court.

Under Oregon law, there are no criminal penalties for withholding visitation. Oregon law does permit the court to eliminate or reduce child support payments if visitation is being denied; however, according to Judge Nachtigal, very few judges, if any, exercise this power. The court also has statuatory authority to award attorneys fees to parents who are in violation of a visitation order.

Washington. The procedure for enforcement of visitation in Washington is very similar to Oregon's. An individual who is being denied visitation must file a motion with the court in order to have his or her visitation order enforced. The court may charge the custodial parent with contempt. Parents are frequently referred to Family Court for mediation.

By law, the court may order a party to pay a reasonable amount for the cost to the other party of maintaining and defending a visitation enforcement proceeding.

We hope this information is of use to you. Please don't hesitate to call us if you require anything further.

CJ/cj

Attachments:

California Statutes
Oregon Statutes
Washington

Superior Court
State of Alaska

FIRST JUDICIAL DISTRICT
415 MAIN STREET, ROOM 402
KETCHIKAN, ALASKA 99901

Chambers of
THOMAS E. SCHULZ, Judge

Jody Sutherland
House HESS Committee
Pouch V
Juneau, Alaska 99811

Re: Work draft paper - domestic violence
Committee Substitute for HB 210

Dear Mr. Sutherland:

I have finally had an opportunity to review the work draft paper concerning domestic violence and the change in the definition. I cannot support those amendments that change the definition of domestic violence to include endangering the welfare of a minor, criminal nonsupport, failure to permit visitation or contributing to the delinquency of a minor. Those are matters that are particularly not suited to being handled in the expedited procedures available under the domestic violence legislation and, even if they were, that legislation provides only a short term method of dealing with the situation which is already equally available under existing statutes.

The main failure, however, is that the domestic violence procedure does not provide a suitable climate to actually work toward solutions in situations involving danger to the welfare of a minor, failure to permit visitation or even contributing to the delinquency of a minor.

The domestic violence legislation has been quite effective, so far as I can tell, in providing a readily accessible vehicle to deal with immediate threats to the physical welfare of both adults and children living in the same household, but it is successful only in that it gives the parties breathing time relatively free from the threat of further violence in order to work toward more permanent solutions for their problems. I do not believe it is a

particularly effective vehicle for dealing with other types of domestic problems such as are contemplated in the work draft.

I had an opportunity to review HB No. 210 last year, and I have also had an opportunity to review the work draft paper which is titled "a committee substitute for HB 210."

I do not know why it is necessary to transfer the custody considerations from Title 9 to Title 20. It seems to me, however, that if it is advisable to change these custody considerations from Title 9 to Title 20, it would be advisable to transfer the whole divorce code from Title 9 to Title 20 so that it is together in one section of the code.

I do not have any particular concern with the factors set out in the bill on which the court is to base a custody decision except for Subparagraph (d), and the fact that the language "all relevant factors including" is apparently being stricken from the current legislation. The seven factors listed are, I believe, probably the more important of the factors considered by the court in a custody dispute, but I believe it is impossible to list all of the factors that are relevant in a particular case in a statute and I think the court should retain the jurisdiction to consider other factors that may be relevant in a particular case. My concern with Subparagraph (d) is that the conduct, marital status, social or cultural environment, and lifestyle of a parent almost always have a bearing on the well-being of the children involved. In short, I can conceive of only a few cases where those factors would not be of some importance to anybody trying to make a child custody award. In other words, I do not see the necessity for Subparagraph (d) at all.

I am a strong supporter of mediation in child custody disputes and I tend to support on the concept of shared custody between divorcing parents. I do not read this bill as mandating shared custody, at least as far as the draft of the committee substitute is concerned. Section 4 of HB 210 does say that there is a rebuttable presumption that shared custody is in the best interest of the child, and that language causes me some concern. First of all, I think it is simply inaccurate in many cases to say that there is any kind of a presumption that shared custody is in the best interest of the child. I think the proposed committee substitute handles the situation much better in Section 4 when it says that if there is a request for shared custody, the reasons for the denial must be stated on the record.

If I can be of further assistance, please let me know.

Thomas E. Schulz
Superior Court Judge

TES:me

Memorandum

Alaska Court System

RECEIVED
Office of the Presiding Judge
3rd Judicial District

TO: The Honorable Ralph E. Moody
Presiding Judge

DATE : March 19, 1931

FROM: Honorable J. Justin Ripley
Superior Court Judge

SUBJECT: HB 210

At the request of Mr. Szal, my comments as to HB 210. Although it is difficult to quarrel with the stated intent of the legislation - to involve both divorcing parents in a continuous process of child rearing - I have grave concerns over the wisdom of HB 210.

In my 5-1/2 years on the bench, of which 18 months were devoted nearly full time to domestic relations matters, I have been nothing to suggest that in the usual divorce/custody situations joint custody is appropriate or beneficial. I have approved joint custody on only a few occasions - approximately six times if memory serves - and in only two cases does it appear to have worked smoothly. Those two sets of parents were highly unusual for divorcing couples. The men were professionals, one a doctor. The women were exceptionally intelligent, very stable, well educated, highly insightful and probably in the 99th percentile in parenting skills. The divorcing spouses had retained or developed a high level of effective communication. In both situations the new and old households were permanently located in Anchorage, physically close together, and the children, by all reports, visited very congenially back and forth. I have no doubt but that even if legal and physical custody had been vested in one exceptional parent or the other, the contact and consultation with the non-custodial parent would have been just as free and wholesome. In short, I believe that those situations worked out well in spite of or aside from the joint custody Order, and not because of it.

By contrast, the majority of such arrangements simply create a continuing line of issues to litigate. If the custodial parent wishes to relocate, or if major changes are contemplated in choice of religious or academic training, to mention only a few problem areas, the joint custodial parent sees it as his or her right, not merely to advise and persuade, but to insist, even to litigate to enforce his views. Since at these hearings the central issue is the best interest of the child, they can seldom be limited merely to consideration of the move, the

copy to: Wm Hitchcock
3/23/81 /tpf

Adm. F-1
Rev. 2-73

religion or the school. The current contested issue must be litigated in the context of general parental fitness and effectiveness, and the hearing becomes, in effect, an attempt to change custody. If there is anything more damaging to a child than the breakup of its home, it is the continuing legal battle coupled with the possible shift in custodial authority. Any statutory scheme which increases the potential for continual contest and instability in the child's life should be viewed with distrust.

Failure to communicate is viewed as a principal cause of divorce. I am incredulous that anyone would believe that two former non-communicators might become able to jointly resolve issues of significance after divorce. In my judgment, HB 210, by reposing equal decisional authority in each parent, will foster litigation and work to the detriment of the child.

I suggest that the author of Section 1.(b) of HB 210, a legislative finding that the best interests of the child are served by parental implementation of child care agreements "outside of the court setting", is more hopeful than practical. Certainly it is desireable that divorcing parents confer and intelligently agree upon a plan truly for the child's benefit. Unfortunately, the reality of nearly all divorces is that the parties are motivated by other factors such as disappointment, bitter vengefulness, and considerations of property division and child support payments. A classic, extreme, but not unique example of this type of motivation I once observed was the parties' agreement to give custody of the four year old to mother and the five year old to father. Since this result was contrary to common sense, case law and all literature on the subject, I inquired after any unusual factors in support of it. There were none. Further, it became apparent that the mother wished to remarry, therefore wanting the Dissolution to be swiftly concluded, and the father wished to minimize his support obligation, threatening an extended custody battle if his demands were not met. Hence, the trade-off. Any legislation which increases the possibility that children's interests may become the subject of tactical negotiation aught to be viewed with great caution.

The legislative creation of a presumption favoring joint custody will tend to make child custody a point of tactical negotiation. It is unfortunately true that by the time a separation reaches the litigation phase the parties have at least one issue upon which agreement appears impossible. In the majority of cases, it is my experience that custody is not the issue. It is either property division or the amount

of child support, or both. From this I conclude the parties recognize that the Court will attempt to determine custody objectively, applying the best interest of child criteria as established by case law and statute. It further signifies that in the majority of cases one party is clearly more suitable than the other, and the parties recognize this as a matter of common sense, with the assistance of counsel. It should be remembered the present A.S. 9.55.205 provides that neither parent is entitled to a preference.

If a presumption favoring joint custody is created, the presumption is something which must be overcome by the party desiring sole custody, and who, even applying the standards of HB 210, should be entitled to sole custody in the best interest of the child. The threat to aggressively assert the presumption, to the Supreme Court if necessary, thus creates a bargaining chip, a point of tactical negotiation, out of the critical issue of child custody. I see a real danger that, in the often highly charged atmosphere of a divorce litigation, such a threat could be used to coerce inappropriate concessions from a parent who should properly receive sole custody but who felt unwilling or unable to bear the expense, stress and delay involved in the litigation necessary to overcome the presumption.

I recognize while raising the foregoing concern that proposed A.S. 25.20.090 can be read so as to require the formal agreement of both parents on the record before the Court can award joint custody, and arguably, the coercion could never occur. I disagree. A close reading of proposed A.S. 25.20.060 and 25.20.070 in conjunction with proposed 9.55.205(c) clearly indicates that the presumption can be placed at issue in all custody proceedings by petition of "either parent". Thus, even though no .090 mutuality exists, the issue keeps the law suit alive until a court eliminates it, perhaps on Motion for Summary Judgment, with the expenditure of additional time, energy and money. Again, this works two potential harms. First, aggressive counsel can increase the nuisance value of his unfit parent's settlement posture by the threat of unnecessary litigation. Second, in a divorce or dissolution in which the parties are not represented by counsel the unfit but dominant parent has an even greater coercive lever.

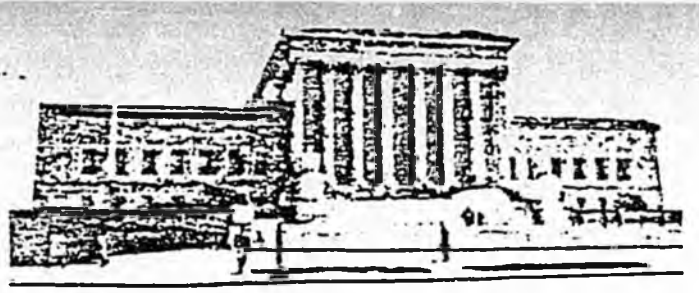
Because of the press of time I conclude without treating all possible deficiencies of the bill, such as its compliance with Art. IV §15 Constitution of the State of Alaska, the additional hatred and strife level that proposed 9.55.205(d) will

produce by making the child's "emotional or physical injury" the sole vehicle by which relevent background information as to a paren may be introduced, the absolute necessity of Courts to inquire fully for possible coercion, greatly extending divorce proceedings, the confusion proposed A.S. 25.20.150 may inject into existing statutes controlling termination of parental rights, and the enforcibility of proposed A.S. 25.20.170 as it cuts across federal and state privacy and confidentiality laws.

House Bill 210 is not necessary and it is potentially very harmful to children of separating parents. It is unnecessary because our existing system of laws already allows for an award of joint custody, which is seldom requested, seldom granted, and even less often functional. The potential harms to children are manifold, but particularly so because experience tells us that, by encouraging contentiousness and not compromise and adjustment between parents, the turmoil surrounding the divorce may continue, even to requiring a change of custody to one party or the other, with obvious unsettling of the child.

As one analyzes HB 210, one is struck with the wisdo of our present scheme of custody statutes and case law. There is a mechanism, through the courts continuing jurisdiction, to modify the custodial arranaments if the child is in danger of harm, or if a change in circumstances warrants it, but by requiring a high threshold for modification of custody decrees the temptation to contest disfavored parenting decisions simply out of preference is greatly diminished. Not so with joint custody.

Members of the family law section of the Anchorage Bar Association request that the Court's spokesman join with them in requesting that hearings be conducted on HB 210 in Anchorage. I concur. Moreover, if it is thought to be appropriate, I would be willing to appear to testify in Juneau, in an annual leave status and at my own expense if necessary.



FAMILY LAW REFORM AND JUSTICE COUNCIL OF ALASKA, INC.

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(907) 333-6693
"ALASKANS FOR CHILDRENS RIGHTS"

FAIRBANKS - BOX 73256
KETCHIKAN - BOX 7176
SITKA - BOX

March 21, 1981

Representative Don Clocksin
Chairman HESS Committee
Pouch U
Juneau, Alaska

Dear Mr. Chairman and Members of the Committee:

I am writing this letter to recommend a DO PASS recommendation from this committee concerning HB 210 a joint custody bill before you.

I had planned on testifing in person before you but we only learned of the hearings last Friday. With more time I would share the technical research I have from professionals involved in this area that includes numberous reports and studies, all in favor of the concepts reflected in the bill you are considering. Assuming you will have a sample of technical data from Representative Rogers, I will offer this more personal input based upon my own experience as an addvocate of divorce reform organizations and from the perspective of someone who have been there.

I litigated my own children's custody for almost six years in the existing advesary atmosphere of the Alaska Superior Court. That battle has taken me to the Alaska Supreme Court 5 Times and to the United States Supreme Court once. In the process of all this my ex-wife and I each spent in excess of 50,000 dollars. What was the end result?

In the interim my family was destroyed as every sacred detail of the eight and one half years my wife and I spent together was slowly and cruely presented to the court in the form of pleadings, reports and testimony. Before the dispute began, the one thing we agreed on was that we were both very good parents and loved our children. By the time we were done, one reading the pleadings would have thought the court was dealing with a couple psycopathic, child abusing parents that should bave been locked away from society and their children years before. Of course that is all part of the game necessary when playing child custody dispute in the advesary system. Regardless of the fact Alaska is a no fault state, the decision in the courtroom will get down to who does the judge think is the better person based upon his own morality. All attorneys know this and proceed accordingly.

The attorneys involved were nice people with children of their own and were simply doing their job.

But the sad part is the parents involved take the allegations and pleadings seriously and very personally. By the time it is all over they will be alienated from each other to the point it will be impossible to discuss any issue about their children constructively or objectively for years.

At the end of the initial round of legal games, the hearing that occupied about three weeks in total, the findings of fact of both the Superior Court and the Supreme Court were as they should be and are in most cases; we were both very fit parents and in fact, exceptional parents, and either of us would be a good choice to raise the children. The children were shuffled back and forth to my custody and then hers serveral times by court order, through our legal manuvers. Each time one of us won or lost custody the other was forced to lauch a new legal campaign with new strategy.

Everything we did or said had to be evaluated in terms of how it would affect our case. Every achievement or failure of our children was a weapon to use in the next hearing, one way or another.

How did all this affect our children? As the years went by they learned more about the supreme courts of this country than most adults ever know. They played Supreme Court like most children play dolls and trucks. They became intensley aware of the loyalty battle that was going on and the legal need both of their parents had for them to tell all the strangers who had become involved in their childhood that they wanted to live with Mom or Dad. Although the preference of the child is not determative in itself, all attorneys know it is a big, big, plus that he and his client need.

So as the battle went on both my ex wife and I tormented our children and robbed them of most of their childhood. They are now 11 and 13. We did this out of love and a sincere belief held by both of us that the children would be better off with us.

After each legal victory or loss, the attorneys, social workers and the judge went home to their routine life and for most of them to their families. They had dinner just as the night before and they all had a good nights sleep to begin another normal day. What about us? I still have few days go by that I do not reflect on one of the many hearings there were or the emotions that were involved. Six years later, here I am telling you about it rather than having forgotten it. My children are still affected by it as my ex wife and I continue to pay for it financially.

How would it have been different if HB 210 was law then and during the following years?

1. We would have been encouraged to communicate and solve our own differences istead of being instructed by our attorneys and the court not to discuss our case with each other.

2. We would have been told it was our responsibility to make sure our children had frequent access to the other parent instead

of being told how legally advantageous it would be to have enough time go by between hearings without the children seeing the other parent. (My own attorney definitely did not encourage me to withhold visitation but the other side did and it is common legal practice to do this as shown by the enclosed letter from Judge Robbin Taylor).

The games with withholding visitation would not have been tolerated by the court and if they were we would have had recourse for immediate orders from the Supreme Court using the legislative intent of HB 210.

4. Playing games with visitation would have been a legally destructive thing to do and we both would have been informed of this.

5. We would have been advised to seek mediation as an alternative to the court and would have been encouraged to make every effort possible to resolve our own differences.

6. Neither of us would have had to go through the indignity of being refused into a parent teachers conference because we never had the written permission of the parent with custody.

7. Neither of us would have had to suffer the indignity of having to say: I lost custody of my children. (When my ex wife lost custody at the initial hearing, her remark to me was; "you have made me the laughing talk of town.")

8. The dispute would not have dragged on for years after the initial decision was made.

It is now six years since the first pleadings were filed and although my ex wife and I are by no means friends, we are working together to raise our children and the children know we will have a united front when considering decisions affecting their lives. They know they can no longer manipulate us, as we taught them to do throughout the litigation by our example and they are feeling much more secure and know they are loved by us both.

We entered into an agreement, through mediation, that neither of us is totally satisfied with but that is dignified and we can both live with.

The brief description of the experience above could have been written about any of the hundreds of divorced families I have dealt with in the past few years in my organizational efforts. (see Judge Taylor's letter). Under the terms of HB 210 all of us would have felt better and because we felt better, we would have helped our children feel better and the State courts would have saved many millions of dollars in court related expenses.

What is more important is all the children involved would have been spared the enormous heartache they all endured because of their parent's divorce.

HB 210 will not guarantee children of divorce equal time with their parents, nor do I believe legislation should attempt to, but it will go a long way in guaranteeing shared time and shared parenting. Those children, there will be over 5000 of them in Alas this year, will have access to both parents. It will also provide the first link in the chain necessary

to break a trend that has devastated millions of families in America these past 50 years because of current attitudes and procedures used to resolve custody disputes.

SHARED PARENTING IS THE ONLY LOGICAL AND MORALLY ACCEPTABLE ALTERNATIVE TO A HAPPY, INTACT HOME FOR CHILDREN OF DIVORCE.

Respectively Submitted,

Rudy Johnson, President

FAMILY LAW REFORM AND JUSTICE COUNCIL OF ALASKA, INC.

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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, when 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 Shulz 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 parrents 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 interestof 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!

Personal attach.

As for Judge Ripleys' 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

This statement is hereby notified as I now understand the file a public record.

Rudy Johnson
9-24-81

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

/11

District Court

State of Alaska

FIRST JUDICIAL DISTRICT
P. O. BOX 869
WRANGELL, ALASKA
99929

ROBIN L. TAYLOR, Judge

June 24, 1981

Honorable J. Justin Ripley
Superior Court Judge
303 K Street
Anchorage, Alaska 99501

Dear Justin:

Your letter of April 7th left me hurt and dismayed. I have now written three letters in response, all of which I tore up because I didn't want you to feel as I did. Basically, I'll attempt to explain to you why I wrote the letter for Rudy Johnson and leave it up to you and others to weigh the validity of my previous and current comments.

I practiced law representing individual clients for over eight years. A significant portion of my practice involved domestic relations work. The real world of divorce work is quite different from the actual trial of a contested property or custody matter. The only people who can appreciate the significance of that statement are those members of the bar who have done a significant amount of domestic relations work in the private sector. I don't say this to be pompous; I say it from experience. Until you've had them crying in your office because they can't see their kids it's difficult to understand the torment this system of ours causes the people to whom we grant "reasonable rights of visitation."

Many times I have heard the following or something similar: "I've made all my payments. I sent presents on birthdays and holidays. The kids don't get the presents. I wrote to her a month in advance that I'd fly down to see the kids. When I got to the house her mother told me they had left the day before for a two week vacation."

Reasonable rights of visitation leaves the party who has physical custody with the option of acting totally unreasonable. The option left to the party without custody is to go back into court. Most attornies will charge well over $100.00 per hour and will normally want a retainer to take on such a case. There will likely be costs of travel to Alaska and a portion, if not all, of the other party's legal fees. It will take several months to resolve the matter as the civil docket is plugged. There also must be proof of the unreasonableness of the party with custody.

When it is all over the noncustodial parent has a paper that says the next time this happens he can go through the whole time consuming, expensive process again.

These are not isolated incidents where a kooky father wastes everyone's time to harass his ex-wife by dragging her through court. Far too often they are viewed that way. In fact, this problem of "reasonable visitation" is so prevalent and so poorly addressed by our adversary system that men have organized in almost every state to seek changes in the law so that they won't have to go through our expensive and time consuming process just to see their kids once in a while.

Love of one's children has nothing to do with sex. It is a matter of personality and individuality. There are parents of both sexes, and I'll suggest the percentages are equal, that don't really care about their children. Fortunately there are a greater number of mothers and fathers for whom their children are the most important people in the world.

Our society, which our system of justice reflects, believed that mothers were the sole possessors of parental love and this myth supported such antiquated concepts as the tender years doctrine. Most people today still find it difficult to believe that a father is capable of the loving, caring dedication necessary to raise young children as a single parent.

When each party is represented by counsel and the children have their own attorney, the courts of this state are probably some of the most liberal and forward thinking in the nation. It is the unusual case where visitation would be left to the vague terminology of reasonable rights. However, economic necessity forces the majority of people to utilize the uncontested method of a petition for dissolution. This often involves the appearance in court of only one party, the other having waived his or her right to appear. There is no contest regarding custody or visitation. I'm aware that the court gives "close scrutiny" to custody and visitation agreements as you indicate. But who and what is scrutinized? The one person who shows up in court? And what do they say? I also inquire in depth of these people when sitting as a master for Judge Schulz in Wrangell and Petersburg. The answers I receive are: "We'll work it out", "I guess he'll have to pay costs of transportation", "Yes, my husband agrees I should have custody", etc.

What happens when we have nothing else to go on but the bald assertions of that one person in court? Do we send them away to get counsel to make a custody fight out of it? Do we set specific dates of visitation? No, we allow it to go through and hope they can work it out.

From your letter (page 3, last paragraph) I assume that if only one person shows up for a dissolution hearing you won't proceed. Otherwise how can you be assured that there was no "coercion or other factor" involved and how else do you determine that it is a true agreement that is in the best interest of the children?

The courts of this district allow dissolutions involving children to proceed upon the written waiver of one party. Rather than have me recite the numbers of cases in this district which result in the visitation being left "reasonable rights of visitation", maybe you could have your masters in Anchorage tell you the number of decrees issued monthly where that's all that appears.

If you are requiring specific dates each year and minimum visitation and actual access to the noncustodial parent, then you and I have no disagreement. If, however, you are proceeding with only one parent in your courtroom, and most of those uncontested cases actually result in the reasonalbe right to try to see the kids, then you have overstated your case about "close scrutiny" and "best interest of the child".

The phrase "reasonable rights of visitation" is of course an enforceable right granted to the noncustodial party. But there is also a cost to such enforcement. If you truly believe it is as easy to enforce as your letter implies, call a few of the attornies presently litigating such matters in Anchorage and ask what the final cost was to the noncustodial party.

Knowing the humanitarian nature of your personality, I'm surprised that you would controvert the need for greater protection of children's rights to parental access. I'm also shocked that you would take phrases totally out of context from my letter and accuse me of approving of Mr. Johnson's illegal act or of disapproval of my fine colleagues who sat and ruled on his case. Though I don't even have a copy of my letter, I know that I strongly indicated my disapproval of his conduct and felt only sympathy and respect for the fine judges who sat on that difficult case. I'm sure I only mentioned his case to emphasize the illegal and rash actions that frustrated noncustodial parents often take. If his case was an isolated incident it would be different. You know it is not. You also know that child stealing became such a national tragedy that legislation was enacted during the last five years in almost every state. Thus people like Mr. Johnson can now be caught and punished by the long arm of the law. But we still haven't adequately addressed the problem that makes such people do these things and that is the issue.

Some people believe that HB 210 will help solve that problem. I'm not sure that it goes far enough. However, it at least raises the issue and requires the close scrutiny that both of us apparently feel is required. It is the children I am concerned about, Justin, and the knowledge that our system is not adequately protecting their rights to parental access in all cases.

I'll believe that we don't need further legislation and I'll join you in saying that the system is working as it should and we don't need any more changes when I see a guardian ad litum appointed for the kids in all divorce cases in this state; when I see a dissolution form which requires that a minimum number of days visitation be provided to noncustodial parents; and when I see the state actively enforcing the rights of noncustodial parents with at least the same degree of enthusiasm with which child support and URESA's are presently enforced. Until then let's work together to improve justice for children in Alaska and the next time you want to take a poke at your old friend, send me a copy. I'd appreciate the opportunity to respond.

I think you and I agree that the rights of children in a divorce case should be protected. Where we part company is that I believe the court has a duty to protect those rights in all cases and apparently you feel we should only be involved in contested cases. You see, I believe that the court, in all divorce actions where there are children involved, should receive a report and home study presented by an objective disinterested third party before we attempt to render a decree which establishes custody and visitation that is in the best interest of the unrepresented children.

I see that as an affirmative obligation implied by the statutes and case law of this state. The costs of such proceedings should be borne by the state and the parties where they have the ability to pay.

I received (from an unexpected source) a copy of your letter dated April 7th on June 11th. Since your letter was widely circulated, I have attempted to copy each of the people who it appears received your letter.

Justin, my door is always open and the coffee pot is always on. Furthermore, it has been too long since you've been in Wrangell. Ed and Delores Bradley send their regards and hope that you'll take us up on our invitation for Kaye and I would sure enjoy seeing you for a while this summer. The silvers should be here in early August and the river boat is running. We'd all love to see you.

Fraternally yours,

Robin L. Taylor

cc: Honorable Thomas B. Stewart
Honorable Thomas E. Schulz
Honorable Ralph E. Moody
Honorable Victor D. Carlson
Representative Don Clocksin
Representative Terry Gardiner
Representative Brian Rogers
Representative Bette Cato
Representative Jim Duncan
Representative Mike Beirne
Representative Terry Martin
Arthur H. Snowden, II
William Grant Callow, II
William Hitchcock
Rudy Johnson
James Bradley
Peter Page

HB210

Superior Court
State of Alaska
THIRD JUDICIAL DISTRICT
303 K STREET
ANCHORAGE, ALASKA 99501

CHAMBERS OF
J. JUSTIN RIPLEY, JUDGE

April 7, 1981

Mr. William Grant Callow, II, Esq.
General Counsel to Administrative Director
Alaska Court System
303 "K" Street
Anchorage, Alaska 99501

Re: Judge Robin L. Taylor's letter of May 3, 1979
re: presumptive joint custody

Dear Mr. Callow:

There are two things that can be said with absolute certainty about my great and good friend Judge Robin L. Taylor. First, he invests the philosophical positions that he espouses with his own immense personal sincerity. Second, he tends to express himself upon these issues with more eloquence than objectivity. Although his letter to Mrs. Miller and Mrs. Fisher of May 3, 1979 may represent a position which he would be willing to reevaluate in the light of his now two additional years of judicial service, insofar as it may be taken as representing current doctrine, I feel constrained to reply. This because I disagree with virtually all his assertions except that contained in the last sentence of paragraph number one.

Dealing first with our single source of agreement, I agree wholeheartedly with Judge Taylor that disputes over child custody have the potential for producing heart renching and tragic consequences. Where I begin my disagreement with Judge Taylor is that it appears to be his thesis in his letter that presumptions as to joint custody, and indeed joint custody decrees themselves, would reduce or discourage these disputes. I respectfully suggest in the strongest terms that the experience of the Bench generally and a careful analysis of the motivations

of the parties to divorce actions clearly indicate otherwise. As I repeatedly stated in my memorandum to Judge Moody of March 19, 1981, the principle evil of the joint custody presumption proposed in House Bill 210 is that it will encourage and to a certain degree even require continuing legal "disputes" over matters related to child custody, long after the divorce and custodial placement is finalized and the parties and children, in the interest of their emotional health, must be committed to going forward with the rebuilding of thier lives. Our existing statutes and decisional law provide this essential stability through a decree granting custody which would only be changed in the best interest of the child, and upon a showing of changed circumstances.

One of the factors the trial court must assess in the entry of such a decree is the custodial parent's willingness and ability to foster an open and loving relationship between the child and the noncustodial parent. The concept that the child needs and requires continuing contact with the noncustodial parent is as essential and central to present considerations of custody as it can possibly be. No joint custody presumption is required to make that concept more central to the judge's custody decision, and attempting to do so by inserting joint custody provisions which are likely to lead to further litigation is absolutely contrary to the conditions of stability which are at the heart of the "best interest of the child" analysis.

Strong issue must be taken with Judge Taylor's assertion in paragraph two that the Courts "blandly skip over" custody issues by the use of the phrase "reasonable rights of visitation". It might first be observed that "reasonable visitation" is not an unenforceable clause. A great body of decisional law exists to guide a reviewing court in the determination of whether a custodial party has been reasonable in complying with the visitation order. Further, such language has been found to be desirable since it encourages the parties to work toward agreement as to the amount and type of visitation which is desirable for the child and is possible for them. Finally, Judge Taylor's experience in this field does not appear to extend to the fact that the Court has the authority to be as specific in its visitation order as the parties request or as the conduct of the parties requires. I know of no situation in which I have refused nor can I envision a situation in which any judge would refuse to spell out rights of visitation with great specificity where visitation by the noncustodial parent was apparently consistent with the best interest of the child and such specificity appeared to be required. It is palpably false to suggest as Judge Taylor does in paragraph two that visitation is an issue

which is blandly skipped over.

Judge Taylor incorrectly suggests in paragraph three that the Courts have "only recently" and "very slowly" begun to meet their obligation to consider the necessity of appointment of guardians ad litem for children in contested divorces and in applying the best "interest of the child" standard. I don't know what Judge Taylor's experience has been, but since my appointment to the Anchorage Bench in 1975, guardians ad litem have been appointed routinely when requested by either party. Further, although it is not required, these guardians are often lawyers whose investigations and reports are given great weight by the Court deciding custody issues.

I feel compelled to further suggest that if, in his domestic relations practice as an attorney, Judge Taylor found that the Court was failing to adequately consider the concept of "best interest of the child" in awarding custody, he need only have appealed to the Alaska Supreme Court to have that oversight rectified. For the last nearly twenty years, since Rhodes v Rhodes 375 P2d 902 (Ak. 1962), the Alaska Supreme Court has been committed to the proposition that the welfare and the best interest of the children must be given paramount consideration. I suggest there is no basis in fact for Judge Taylor's suggestion that the Trial Courts of Alaska have given only grudging effect to the concept of "best interest of the child", even before that concept was made part of Alaska's statutory law more than thirteen years ago.

Although time does not permit me to continue with my sentence-by-sentence analysis, fairness and accuracy require me to dispute two theses stated by Judge Taylor in paragraphs four and seven. It cannot be said with accuracy that Courts "rubber stamp" the parties ignorance of the law by routinely and unquestioningly approving custody agreements between parties unrepresented by counsel or otherwise. I have spoken to a goodly number of Superior Court Judges who have primary responsibility for domestic relations matters as well as the two standing masters for domestic relations here in Anchorage. The concerns they express to me indicate that their attitude is the same as mine was when for more than a year and a half I was exclusively assigned to family and children's matters in 1976 and 1977. Agreed custody dispositions, particularly those between parties unrepresented by counsel, require close scrutiny by the Court to ensure that the agreement is in fact arrived at with the best interest of the child in view, and not some other motive, and further that the agreement is truly an agreement and not the result of coercion or some other factor. I call upon my friend Judge Taylor to substantiate this "rubber stamp" activity with any cases he wishes to put forward.

Judge Taylor's second thesis in paragraphs four and seven appears to be that in the usual and typical situation, the father, having consulted his trusted friends, advisors and even his attorney, becomes convinced that he has no opportunity to obtain custody, and further that he must be content with such visitation as his "ex-wife lets him" have. As I stated earlier in this letter, it is a false premise to assume that the phrase "reasonable and liberal rights of visitation" places the entire discretionary control with the ex-wife. Moreover, I challenge Judge Taylor or any other person to produce a single decree granted by the Courts of Alaska which vests total discretionary control over visitation in the custodial parent by its specific terms. (May I request, in order to save us all time, that if anyone is prepared to accept my challenge, he or she read the record which underlies that decree. I would venture an opinion that if such a decree is found, the record underlying it will be replete with evidence supporting the trial judge's decision that such control over the visitation was in fact in the best interest of the child based upon the continuing course of conduct of the noncustodial party.)

Judge Taylor's final paragraphs, eight through fourteen, appear to be a comment on the case of Mr. Rudy Jounson. I leave the record of that case in the various Courts of this jurisdiction to speak for itself, except to observe that it is difficult for me to understand how an allegedly loving and concerned noncustodial parent could attempt to justify, and a judicial officer appear to approve child hostage taking as "the only way left to strike back at a system that won't listen . . . ." Page 4, paragraph 13, line 6.

It has not been my intention in this letter to strongly critisize my brother Judge, although I personally believe that his letter of May 3, 1979 requires this type of comment. I would not be adverse however, if, before any of this letter is shared outside the Court System, you took counsel with the Administrator and the Chief Justice to determine the propriety of its release.

Very truly yours,

J. JUSTIN RIPLEY
Superior Court Judge

JJR:ail

CC: Arthur H. Snowden, II
Honorable Judge Ralph E. Moody
Honorable Victor D. Carlson
William Hitchcock
Andrew Brown
Francis Stevens

District Court

State of Alaska

FIRST JUDICIAL DISTRICT
P. O. BOX 869
WRANGELL, ALASKA
99929

ROBIN L. TAYLOR, Judge

May 3, 1979

Ms. Laura Miller and
Ms. Nancy Fischer

c/o:
Family Law Reform and
Justice Council of Alaska
Rudy Johnson, Coordinator
P.O. Box 4-1646
Anchorage, Alaska 99504

Dear Ms. Miller and Ms. Fischer:

I am a District Court Judge located in Wrangell, Alaska and have been on the bench for approximately 2½ years. Prior to my judicial duties I was actively involved in the private practice of law in Ketchikan, Alaska for 8½ years. During my years as a lawyer I dealt almost daily with divorce problems of one kind or another. Of all the problems faced in divorce work, none was so heart wrenching or had such tragic consequences as disputes over child custody.

In America we use 12 man juries and open the doors of our appellate process for a murderer who, if convicted, may receive a life sentence. In most states this means that with good behavior he will be out on the streets in 7½ years. Yet we daily allow judges, without the advice or assistance of juries, sentence innocent children to 18 years custody with one parent and blandly skip over the child's rights of access to the non-custodial parent with such non-enforceable clauses as "reasonable rights of visitation", etc.

Those children are often sentenced to a fate far worse than the murderer will receive and for a much longer term. The convict gets 3 meals a day, clothing and a roof over his head - to say nothing of medical, dental, optical and visitation. Only recently have we begun to appoint attorneys to represent the children in contested domestic matters. Only recently, and very slowly I might add, are the courts paying anything more than lip service to the term "best interest of the child".

The system usually works this way. Parents in mid-20's, and children under 5 years of age. Parents want divorce and each relies upon advice from friends, etc. If both husband and wife agree on the terms they file their own papers and the courts rubber stamp their ignorance of the law by granting the divorce because they have it all worked out. Only when they can't agree does the attorney get involved. Prior to this the husband has been told by his friends that he can't get the kids unless he can prove the wife unfit. The wife has been told that she would be a fool to give up the kids because of child support, tax deduction and society's suspicions of a divorced woman who "lost" her children.

The very phrases I've used above demonstrate the problem. The words always used by people discussing these matters are as follows: Wife=she lost her kids - the court took her children away from her - she had to give up her kids - etc. Husband=they just say "oh, he's divorced" and everyone assumes he didn't receive custody - if he did, the words are always spoken in exclamation or with the inuendo that his wife must have really been bad - why do you say that? "Well, they went to court and he got the kids!"

The typical situation I mentioned above usually results in the husband being told he can't get the kids. If he tries he will lose and it will cost him a fortune. Furthermore, he knows from what he has seen or heard happen to so many other divorced fathers that any semblance of father-child relationship will be shattered by the capricious whim of a vindictive ex-wife who will do anything possible to frustrate his exercise of those reasonable rights of visitation. I have personally seen each of the following occur and they are but a sample of the 8½ years I spent working on domestic matters.

1) Wife leaves town with children or moves in with relatives to prevent father from seeing the kids for the one week per year he was allowed under the old decree. This is after the father has given one month's notice of the visit and flown over 1,000 miles to see them. Husband has paid child support faithfully and is current.

2) Wife destroys all letters to children, gifts, etc. She has an unlisted phone number. She refuses to disclose address of residen

3) Children are sick so doctor and dental appointments, etc., are scheduled to make visitation impossible or impractical at best.

4) Wife refuses to send children to father even though ordered to by the court and the father has paid their round trip fare. She demands $6,000.00 bond in cash before allowing visitation.

Knowing of these situations the young father who loves his children (and I haven't seen any evidence that indicates that the sex of the parent is in any way an indicator of parental love) bites the bullet and goes along with the advice of his friends and usually the advice and experience of his attorney which results in the same cours

of conduct. He watches the ex-wife walk from the court room with a piece of paper that says he may only see his kids if his ex-wife lets him.

Mr. Rudy Johnson is a living example of the result that this system of ours creates. His case is only unique in two respects. First, he had the entire weight of a religious organization hiding his wife and children from him and providing his wife with unlimited financial support for legal assistance. It is also unique in that Mr. Johnson loved his children enough to take on the whole system and fight in the only way left to him - he broke the law. However, before he resorted to the extreme action of physically taking his children, he had spent years in litigation and a small fortune in attorney fees. The end result is that she has custody and he has specific enforceable visitation with his children. This is after 4 or 5 years of fighting the system, being hunted by the law as a child stealing parent and exceptional personal sacrifices on his part. I personally admire his stamina and dedication to be willing at this point to go on with the fight so that the future will hopefully provide better alternatives for other men and women than he was forced to face.

Don't misinterpret my comments as approval of his rash act of taking the children in violation of a standing court order. Nor should you be led by these remarks to believe that I'm critical of the five judges who had to render the difficult decisions posed by the Johnson case. They were only doing what they believed society and the law said should be done.

How many people like Rudy Johnson will have to throw their bodies into the machinery before the system changes? Though I don't know what the make-up of your conference or panel is, I would hope that there are several Rudy Johnsons sitting on that board. If they are not included and listened to, you will only perpetuate a dogma that daily wreaks havoc all across this nation.

When you listen to Mr. Johnson - and I sincerely hope you will - please remember that he is not just speaking for himself. He is saying things that have and will happen to untold numbers of other people unless change occurs.

I don't see this conference as a mere sounding board for agrieved non-custodial parents and their rights. Though these are important issues, they are not the crux of the problem. The real issue before you is "what are the rights of the child and how will those rights be protected?" In this year of the child I hope that the panel will concentrate on their rights to free access to both parent and to maintaining the parent-child relationship of the non-custodial parent.

Most divorced fathers see less of their children than does the summer camp counselor or their babysitter. The child has a right to better treatment than that and so does the non-custodial parent. Small wonder that the non-custodial parent refuses to pay child support or resorts to "child stealing". It's the only way left to strike back at a system that won't listen to them. Such conduct will continue until we all stop and listen.

I hope you will listen to Rudy Johnson. He's been there.

Sincerely yours,

Robin L. Taylor

Robin L. Taylor

FAMILY LAW REFORM AND JUSTICE COUNCIL OF ALASKA, INC.

P.O. BOX 4-1646
ANCHORAGE, ALASKA 99509

RUDY JOHNSON, PRESIDENT
(907) 333-0093
"ALASKANS FOR CHILDRENS RIGHTS"

FAIRBANKS - BOX 73256
KETCHIKAN - BOX 7176
SITKA - BOX 913

April 26, 1981

WRITTEN TESTIMONY
by
RUDY JOHNSON

IN SUPPORT
of
H. B. 210
JOINT CUSTODY

presented
April 22, 1981

via Teleconference Network
Anchorage

FAMILY LAW REFORM AND JUSTICE COUNCIL OF ALASKA, INC.

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KETCHIKAN - BOX 7176
SITKA - BOX

Present and past methods of dealing with disputed child custody issues have been a disasterous failure. Historically we have allowed biases and not the best interest of the children to be the determining factors in the millions of cases that have filtered through our court systems. The results of over a century of abusive dispositions of these cases are measurable as will be mentioned later. To thoroughly appreciate the need for H.B. 210 we must understand the failures of the present system and be realistic enough to accept the fact it is failing!

In a 1860 opinion the New Hamshire Supreme Court ruled in upholding an award of custody to a father;

> "It is a well settled doctine of the common law, that the father is entitled to the custody of his minor children, as against the mother and everybody else: that he is bound for their maintenance and nurture and has the corresponding right to their obedience and their services."
>
> "It is one of the cardinal principles of nature and of law that, as against strangers, the father, however poor and humble, if able to support the child in his own lifestyle and of good moral character, cannot without the most shocking injustice, be deprived of the privilege by anyone whatever, however brilliant the advantage he may offer. It is not enough to consider the interests of the child alone." (American Journal of Psychistry 133:12107, 1976, page 1370)

From this 18th century mentality we went to the other extreme as espoused in the Minnesota Family Law Practice Manual.

"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 or 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." (Volume 50, pg 75)

Has the tender years doctine been eliminated in our system today? In theory yes, we have very good case law and Alaska has some of the most progressive statatory law in the nation. But the facts are the biases still exist and preconcluded decisions are being made before the facts are ever established in awarding custody of children, to the detriment of the children.

Since 1977, we have been associated with over 185 divorce reform organizations around the nation that have collectively gathered the results of over 350,000 disputed child custody cases. The results shockingly demonstrate the above statements. Out of these cases only 4.5% of them were decided in favor of fathers. It is not remotely the intent of this writer to suggest fathers should receive custody most of the time but common sense tells us that it is not in the best interest of children to be placed in a single parent home headed by a mother 95.5% of the time, the long term negative effects on the children would no doubt be just as disturbing with the figures reversed. This organization is currently doing a study of the Anchorage Court System where we are examining the records of each divorce case for the past two years and the initial results show that in this city the statistical conclusions will not even be as impartial as the national study, as appauling as those figures are.

What are the results of the abuses spoken of so far?

1. 90% of all homocides are a direct result of domestic relation problems.

2. 90% of the american prision population is from a broken home.

3. 90% of all women murdered between the ages of 20 and 30 are killed by their husbands or ex-husbands.

4. 9 out of 10 women on welfare are products of divorce.

5. 20% of the civil case load in the Alaska Court system is domestic relations.

The criminal activities related to these problems are the results of people, normal everyday Americans, being pushed too far by an apathetic system. By being denied the access to their children, by being forced to be financially obligated to their ex-spouse to the point of ridiculousness, by having gasoline poured onto the smoldering pile of emotions by attorneys and others involved with the case as these people are going through the most difficult emotional experience they will ever encounter next to losing a loved one in death. (H.B. 210) will elliviate a lot of the grief for these people and give them alternatives that are encouraged by the courts and the related legal establishment that are more comfortable and that they can live with.

As the law has developed some courts have recognized the failures of the present system and have provided direction to the lower courts in their written opinions.

> "Parenthood is a continuing bilateral responsibility and opportunity. It cannot be avoided or successfully divided. A decree of divorce offers no excuse or alibi for the abatement of parental interest or obligation. The dissolution of the marriage contract, leaving in its wake children who are the innocent victims of the resultant broken home, should be a challenge to the fathers and mothers of such children to make an even greater effort to minimize, as far as possible, the incidental and unavoidable losses of love, council and guidance."
> (McBetrick vs. McBetrick 284 P2d 352, Oregon)

> "Whoever may have custody, it is the duty of each parent and each family member to the children to set aside personal feelings and act in a manner which is supportive of the relationship of the children to the other parent."
> (Warren vs. Warren 528 P2d 1088, Oregon, 1974)

Attitudes are slowly being changed and direction is being provided by the Alaskan courts on an individual basis. In a 1975 opinion from the Ketchikan Superior Court, Judge Thomas Schultz emphasized the positions taken here in his remarks as he awarded custody of a 4 year old boy and a 7 year old girl to the father.

> "Certainly a factor in determing the fitness of the parent is the kind of learning which might be called fitness that either or both parents are able and willing to provide. In terms of fitness, to provide the care that these children require and in terms of the relationship that the parties bear to the children I find both are fit and both are in fact good parents, have taken good care of the children, love the children and both have a good relationship with them. I am left with the very narrow basis on which to resolve the question and that is the view that I can take from the testimony that I've heard up till now, of which parent is better able to maintain the status quo to facilitate the children and their desire at this point as its reflected in the testimony the relationship they have with the parents, and maintaining a meaningful relation-

ship with both. I am satisfied from what I've heard that the father is better able to do that at this point. And ultimately in this case, it's my considered opinion that the parent most fit will be that parent that demonstrates the best ability to maintain open communications between both. These children were, as all others are, brought into the world without being asked about it and they're being left now in a situation that they didn't particularly ask for and probably don't want but they are entitled to the guidance and assistance from both their parents." (Johnson vs. Johnson, Transcript 186 to 189, Ketchikan Superior Court, April 7, 1975)

In considering child custody matters we must recognize the fact that most parents that come before the court are not only fit, they are very fit parents and the state would never consider interfering in their lives so long as there was not a divorce petition filed. (H.B. 210) is a necessary vehicle to help change attitudes. It also recognizes the right of the parents to control their own families and it encourages them to do this. It paves the road to making decisions in disputed custody cases based upon what is right with this family and these parents rather than what is wrong with the parents and the children. It provides a means for settlement that feels better for the parents which in turn helps the children feel better. Recent studies such as the one from California reporting the results of families in transition after divorce over a period of 5 years. (Psychology Today, January 1980, Enclosed) show that when the parents deal with their divorce constructively and creatively then the children are not adversely affected on the long run whereas if the parents have a lot of turmoil and grief for extended periods of time these children will be affected adversely for years to come and even into their adulthood.

Mediation and joint custody works! The Association of Family Conciliation Courts is an organization made up of judges, social scientists, attorneys and a few lay people like myself and they have concluded with their studies that 60 to 80% of all disputed child custody cases are settled out of court with the existing mediation programs by the parents themselves. The Association has officially endorsed joint custody as the best first choice in resolution of disputed cases and has published hundreds of studies showing joint custody, joint parenting, does and is working. The concept has been being used for up to 3 years in various jurisdictions and is working even when mediation is required rather than voluntary. Of course, the success rate is lower under those circumstances but if we can settle on the average, 70% of all cases out of court the dollar value alone is astronomical in terms of judicial costs not to mention the emotional benefits to the parties themselves and the resultant decrease in the criminal activities that are related and the welfare costs. But the most important consideration is how all this benefits the children of divorce. The results of the study from California can not be given too much emphasis.

What I have stated here is based upon fact not my opinion. Some people have opposed H.B. 210 but I say anyone who opposes it simply does not know enough about it and the facts surrounding the concept. One attorney for instance testified that by encouraging mediation a man could and will intimidate a women into agreeing to something she really does not want. I am positive that is not the rule as my experience has shown me and when such a rare thing happens the checks and balances written into the existing law are designed to catch it. For instance in the do it yourself kits available from the efforts of Representative Bradner and Gardiner in 1977 it is a requirement that one of the spouses appear before the court before the divorce is granted. The legislative intent was to allow the judge to ascertain from that party that the agreement was indeed mutual and not coerced.

Other checks and balances exist in H.B. 210. If the court finds that joint custody is not in the best interest of the family he only needs to state his reasons for that conclusion and dismiss the concept. The bill specifically states the presumption for joint cusotdy is rebutable. It is a long way past due that we require the courts to justify their disposition of child custody decisions, that is all this bill requires and it still leaves them a lot of discreation, too much discreation in my opinion but I am willing to compromise on that to get the bill.

Joint custody is not for everyone but it works for most, with direction, and I think it would be inhuman to deny this wonderful alternative to the present system to parents and children because of those few that are too immature to make it work. The courts and the present system will always be available for those people who decide they want to go that way.

It was reported that under present law we do not need H.B. 210. This is theoretically correct but what is so important about the bill is it will help change attitudes and attitudes are the key to helping divorcing people experience a creative divorce that will strengthen the family instead of destroying it.

If I have appeared anxious in my oral testimony as well as this written testimony, it is because I know that in the time it takes you to read this:

> there will be over 1,000 divorces in the United states affecting over 3,000 children;
>
> there will be at least two homocides as a result of the activities surrounding these people;
>
> there will be four more prison inmates;
>
> and we have just gotten 150 more people on our welfare rolls;
>
> 40 Alaskans were divorced today!

JOINT CUSTODY IS THE ONLY LOGICAL AND MORALLY ACCEPTABLE ALTERNATIVE TO A HAPPY INTACT HOME FOR CHILDREN OF DIVORCE. PARENTS DIVORCE EACH OTHER, CHILDREN NEVER DIVORCE THEIR PARENTS.

Enclosure: California Report

Carbon Copies sent to the following:

Governor Jay Hammond
Representative Rogers
Representative Gardiner
Representative Meekins
Senator Parr
Mr. Mark Lewis, Chicago, Illinois
Mr. Vern Lee, Fairbanks, Alaska
Mr. Wayne Ross, Esquire, Anchorage, Alaska
Mr. Bill Riech, Sitka, Alaska
Mr. John Reese, Esquire, Anchorage, Alaska
United Fathers Organization, Santa Ana, California
M.E.N. International, Wilmington, Delaware
Mr. Max Gruenberg, Esquire, Anchorage, Alaska

Respectfully Submitted:

RUDY JOHNSON

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 an 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 "gutted" without these two very important words. It is still better than nothing, but without any force or teeth.

The hast 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 over all 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 truely 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, irrebuttable 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 council that tells them the relationship between the other parent and the children must continue and be protected, short of showing the unfittness. 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 child en 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

Marko Lewis - Mom's Hou[illegible]- Dad's House- Box 136- Hyder, Ak. 99925
Feb. 4, 1982

To HESS

The committee substitute for HB 210 does not serve the legislative intent for which it was designed. It in no statuatory way encourages frequent and continuing and meaningful relationships between both parents and children after divorce, and instead of decreasing points for litigation, actually encourages litigation. It is no surprise that it encourages litigation- it was rewritten to please the legal community. The problem is that the legal community knows very little about child development or child psychology.

A recent California study by Everett Q. Pojman, Ph. D. "Emotional Adjustment of Boys in Sole Custody and Joint Custody Divorces Compared With Adjustment of Boys in Happy & Unhappy Marriages." shows that there is much better adjustment and psychological health in joint custody children than sole custody children. This is just one recent study of many which show similar results. SHARED CUSTODY IS BETTER FOR CHILDREN.

Another study by Alexander and Ilfield in the American Journel of Psychiatry " Does Joint Custody Work? A First Look at Outcome Data of Reconciliation " shows that when joint custody is decreed by the court over the objection of one parent there are FEWER RELITIGATIONS RETURNING TO COURT THAN SOLE CUSTODY DECREES.

If HB 210 is to serve its intent it must SHOW A STAUATORY PREFERANCE FOR SHARED CUSTODY. IT MUST PLACE THE BURDEN OF PROOF ON A PARENT WHO WISHES TO DENY A CHILD EQUITABLE CONTACT WITH THE OTHER PARENT.

Marko Lewis- Mom's House-Dad's House- Box 136
Ryder, Alaska 99923 Feb. 5, 1982

I have reowrked the draft copy of the committee substitute to reflect these needs, by making a ~~xxxxxxxx~~ preferance for shared custody instead of a ~~xxxxxxxx~~ presumption. I have also further clarified the definition of shared custody. I have added the 'Factors for consideration by the court' the words 'in its implementation'. If all these factors must be considered BEFORE an award of shared custody there will be more than ample factors for disagreement and litigation. The proper time to consider these factors is AFTER THE AWARD. I have also added a new section on parents leaving the state, more or less copied from a Wisconsin stauate. This is necessary to keep a parent from circumventing a court order simply by leaving the state...and certainly such a big change should be cause for reconsideration of the mechanics of sharing or custody/visitation arrangements.

In conclusion, the committee substitute is a bad bill. It doesnot serve the legislative intent, it doesnot reflect the need of children to have a relationship with both parents, it doesnot do anything to lessen the liklihood of litigation. It does not presume that parents are equal before the law. It continues to assure lengthy and recurring litigation and the ultimate destruction of at least one parent-child bond. I oppose the subcommittee substitute as it now reads.

TO HESS

PROPOSED AMENDMENTS TO THE COMMITTEE SUBSTITUTE BY MARKO LEWIS.

IN THE HOUSE Proposed COMMITTEE SUBSTITUTE

HOUSE BILL NO. 210
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to chi[illegible] custody."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. LEGISLATIVE INTENT. (a) The legislature finds that it is generally desirable to assure a minor child 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. ~~While actual physical custody may not be practical or appropriate in all cases~~, it is the intent of the legislature that when appropriate both parents have the opportunity to guide and nurture their child and to meet the needs of the child on an equal footing beyond the considerations of support or actual custody.

delete ← add.

(b) The legislature also finds that it is in the best interests of a child to encourage parents to implement their own ~~child care~~ parenting agreements outside of the court setting.

change ← word

* Sec. 2. AS 09.55.205 is repealed and reenacted to read:

Sec. 09.55.205. JUDGMENTS FOR CUSTODY. (a) In an action for divorce or for legal separation the court may, if it has jurisdiction under AS 25.30.020 and is an appropriate forum under AS 25.30.050 and 25.30.060, during the pendency of the action, at the final hearing, and at any time thereafter during the minority of a child of the marriage, make an order for the custody of or visitation with the minor child which may seem necessary or proper and may at any time modify or vacate the order.

(b) Any appointment of a guardian ad litem for a child shall be made under AS 09.65.130.

(c) The court shall determine custody in accordance with the best interests of the child under AS 25.20.060 - 25.20.180. In determining the best interests of the child the court shall also 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 child's preference if the child is of sufficient [illegible] and [illegible] from [illegible];

(4) the love and [illegible] parent

(5) the length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity;

(6) the desire and ability of each parent to allow an open and loving relationship between the child and his other parent.

(7) the desirability of offering the child a variety of life experience

This is now worse than the present law - leaves the door open to judges to consider cultural etc. from a prejudiced standpoint

(d) In making an award of custody under AS 25.20.060 - 25.20.180 and this section, the court may not consider the conduct, marital status, income, social or cultural environment, or life style of either parent unless it is shown that the factor relates to the well being of the child. ← change to original HB 210 wording

Sec. 3. AS 25.20.060 is amended to read: This is unconstitutional as it now reads.

Sec. 25.20.060. CUSTODY OF THE CHILD. If there is a dispute over child custody, either parent may petition the superior court for resolution of the matter under AS 25.20.060 - 25.20.180. The court shall award custody on the basis of the best interests of the child. In determining the best interests of the child, the court shall consider all relevant factors including those factors enumerated in AS 09.55.205(c). Neither parent, regardless of the question of the child's legitimacy, is entitled to preference in the awarding of custody.

* Sec. 4 AS 25.20 is amended by adding new sections to read:

Sec. 25. 20.070 Custody should be awarded in the following order of preferance according to the best interests of the child:

(1) To both parents jointly. The court in its discretion may require the parents to submit a plan for implementation of the custody order. A parent may voluntarily submit a custody implementation plan to the court prior to issuance of a custody decree; a plan may be submitted individually or together with the other parent.

(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. In the event that one parent requests joint custody and the other parent requests sole custody the burden of proof that joint custody would not be in the childs best interest shall be on 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 proper care and guidance for the child.

(5) For the purpose of assisting the court in making a determination wheter an award of shardd custody is appropriate, the court may direct that an investigation be conducted.

(6) If the court declines to enter an award of shared custody the court shall state in its decision the reasons for a denial of shared custody.

Sec. 25.20.080. MEDIATION. The court considering a request for custody of a child may order the parties to participate in pre-trial mediation of the matters before the court pursuant to AS 09.55.115.

Sec. 25.20.090. MODIFICATION OF CUSTODY. An award of custody or visitation may be modified if the court determines that the best interests of the child require the modification of the award. If a parent opposes the modification of the award of custody or visitation, the court shall enter in the record its reason for modifying the award.

Sec. 25.20.100. PREFERENCE OF THE CHILD. If the child is of sufficient age and capacity to form an intelligent preference as to custody, the court shall give due weight to the preference of the child.

Sec. 25. 20. 110FACTORS FOR CONSIDERATION BY THE COURT. In an award of shared custody under AS 25.20.060- 25. 20. 180, the court shall consider in its implementation

I changed order + wording to reflect a more logical sequence. a Plain old "needs of the child" is to broad + is redundant.

(1) the needs of the child for frequent and continuing relationships with both parents

(2) the stability of the home environment likely to be offered by each parent

(3) the advantages of providing a varied life experiance for the child

(4) the quality and continuity of the education of the child

(5) the optimal time for the child to spend with each parent considering

(A) the actual time spent with each parent;

(B) the proximity of each parent to the other and to the school in which the child is enrolled;

(C) the feasibility of travel between the parents;

(D) special needs unique to the child that may be better met by one parent than the other;

Put this as (A') ← ~~(E) which parent is more likely to encourage frequent and continuing contact with the other parent;~~ wrong place for this -

(6) the findings and recommendations of a neutral mediator where mediation is recommended by the court;

(7) other factors the court considers pertinent.

Sec. 25.20.130. TEMPORARY CUSTODY. Unless it is shown to be detrimental to the welfare of the child, the child shall have, to the greatest degree practical, equal access to both parents during the time that the court considers an award of custody under AS 25.20.060 - 25.20.180. good

Sec. 25.20.140. AWARD OF CUSTODY TO NONPARENT. The court may not award custody to a person who is not a parent of the child unless the court finds that an award of custody to a parent would be detrimental to the best interests of the child.

Sec. 25.20.150. CONFIDENTIALITY OF PROCEEDINGS. At any stage of the proceedings, if the court finds it is in the best interests of the marital estate or the child, it may close the hearings or order the court records closed (except for statistical information required by law) or both, temporarily or permanently, and may modify or vacate the order at any time. good

Sec. 25.20.160. ACCESS TO RECORDS OF THE CHILD. A parent who is not the parent granted custody under AS 25.20.060 - 25.20.180 may have access to the medical, dental, school, and other records of the child notwithstanding any other provision of the law. good

Sec. 25.20.170 NOTIFICATION OF PARENT LEAVING THE STATE. A custodial parent leaving the state for the purposes of setting up residance in another state must notify the court and the other parent 90 days prior to the date of departure so that the court may consider any necessary modifications in custody orders.

Sec. 25.20.180 DEFINITIONS. In AS 25.20.060-25.20.180 shared custody means shared phisical and legal custody. Shared phisical custody means an order awarding each parent or party significent periods of phisical custody. Shared phisical custody shall be divided in such a way so as to assure a child of frequent and continuing contact with both parents. Shared legal custody means that the parents or parties share, in a manner determined between them or by the court, the decision making rights, responsibilities, and authority relating to the health, education and welfare of a child.

Superior Court

State of Alaska

Chambers of
VICTOR D. CARLSON, Judge

THIRD JUDICIAL DISTRICT
303 K STREET
ANCHORAGE, ALASKA
99501

March 19, 1981

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

Re: House Bill No. 210
Joint Custody of Children

Dear Mr. Chairman:

This letter is to express my concern over the amendments which House Bill No. 210 would engraft onto the child custody decisions made by judges in divorce proceedings. At present the standard is the child's best interests and an effort is made to structure each parent's relationship with the child in order to reduce the pressure on the child which usually accompanies a contested child custody proceeding.

If House Bill No. 210 becomes law, the presumption will be to leave custody with both parents giving each the same control over the major decisions affecting the child as married parents have. This would result in many opportunities for confrontation in which the child would be caught in the middle, e.g., the choice of a school, public or private, alternative or basic, etc. Neither parent would have the authority to make the decision and the child would be torn in having to make a choice and then the matter, ultimately, would have to be decided by the court.

It appears as if the objective of legislation should be to reduce the possibility of confrontation between divorced people and not to increase the opportunities for litigation with its attendant monetary and emotional costs. In addition, passage of the bill would require many additional custody investigator and judicial resources.

Thanking you for considering my comments and requesting that you give representatives of the judiciary the opportunity to testify, I am

Very truly yours,

Victor D. Carlson
Superior Court Judge

VDC:rw

cc: The Honorable Terry Gardiner
The Honorable Brian Rogers

IÑUICH IKAYUQTAAT SUTIGULLIQAA PITQURATIGÜN
ALASKA LEGAL SERVICES CORPORATION
P. O. BOX 309
BARROW, ALASKA 99723
907-852-2311

☐ URGENT
☐ PLEASE RESPOND BY _____
☐ NO REPLY NECESSARY

TO: House HESS Committee

DATE: November 30, 1981

SUBJECT: Testimony on HB 210

MESSAGE:

Please find enclosed written testimony on HB 210 from:

1. Linda Wingenbach
2. John Holmes

Thank you for your consideration of these comments.

SIGNED

REPLY:

SIGNED DATE

SENDER: SEND WHITE AND PINK COPIES.

FORM NO. MR23N THE STATIONERY HOUSE, INC., 1000 FLORIDA AVENUE, HAGERSTOWN, MD. 21740

TESTIMONY BEFORE THE HOUSE OF REPRESENTATIVES'
COMMITTEE ON HEALTH, EDUCATION & SOCIAL SERVICES
HOUSE BILL NO. 210

My name is Linda Wingenbach. I am an attorney with Alaska Legal Services Corporation in Barrow, Alaska. I have been in Barrow for five months. Prior to that, for a period of two years I was in private practice in Portland, Oregon, and during my last year of law school I worked as an intern for the Northwestern Legal Clinic in Portland. Oregon is a state that has a joint custody statute.

I favor joint custody, but I feel there are some problems with this specific bill.

I. §2 of the bill (page 1, subsection b of AS 09.55.205) reads: "An appointment of a guardian ad litem for a child shall be made under AS 09.65.130." The current AS 09.55.205 provides discretion in the appointment and reads, "Any appointment of a guardian ad litem for a child shall be made under AS 09.65.130." I believe this could be a typographical error in the bill, rather than the intent of this committee. But, as you can see, this particular error drastically changes the meaning of this provision. HB 210, as it reads now, would require a guardian ad litem to be appointed in all cases where an order is made on custody and visitation--that is, all divorce or dissolution cases where children are involved, whether or not custody and/or visitation is disputed.

If this is not a typographical error, then I wish to go on record opposing the unnecessary appointment of guardians ad litem in cases where custody, support, and/or visitation is not disputed. I agree with Master Francis Stevens' oral testimony on this point. In fact,

AS 09.65.130 provides the needed discretion:

> "(a) The court may, . . . upon its own motion, appoint an attorney to represent the minor with respect to his custody, support, and visitation. . . .
> (c) Instead of, or in addition to, appointment of an attorney under (a) of this section, the court may, . . . upon its own motion, appoint an attorney or other person to serve as guardian ad litem to represent the best interests of a minor in any legal proceedings involving his welfare."

Therefore, as written, HB 210 conflicts with the provisions of AS 09.65.130, by removing the discretion of the court in orders on custody and visitation. At the very least, the bill should make these two statutes consistent.

Further, the Alaska Supreme Court believes that the power to appoint guardians ad litem should remain discretionary. In dicta, the Court said: ". . .There will be many custody cases in which a guardian will not be needed, and in such cases neither the statute, the court rules, nor our decisions compel the court to waste its time and money, as well as that of the parties and counsel, in employing one." Veazey v. Veazey, 560 P2d 382, 385 (1977). AS 09.65.130 provides payment of the guardian ad litem from assets held jointly by the parents. It is unfair, then, when parents agree to custody and visitation to require them to pay for an unnecessary appointment of a guardian ad litem.

II. §2 of the bill (page 2, AS 09.55.205(c)(6)) permits the court, in determining the best interests of the child, to consider, "the desirability of offering the child a variety of life experiences." This particular consideration could work to the disadvantage of rural parents, especially if the custody decision is to be made by an urban judge. Many people persevere in the belief that "variety of life experiences"

can only be obtained in an urban setting. Therefore, when there is a conflict between a custodian in an urban setting and one in a rural setting, the rural parent would be placed at a disadvantage before an urban judge.

A variety of life experiences has not been defined and is so vague and ambiguous as to encourage individual bias in interpretation.

AS 09.55.205(c)(6) of this bill also seems to conflict with subsection (d) of the same bill wherein "the court may not consider the. . . income, social or cultural environment, . . .of either parent. . . ." Where would "variety of life experiences" come in except due to the "income, social or cultural environment" of a parent?

III. §3 of the bill (page 3, AS 25.20.060) allows the court to settle disputes over the custody of children, based on a child's best interest. The court is specifically instructed to consider the factors enumerated in AS 09.55.205(c). Besides my objections to AS 09.55.205(c)(6), I feel this section should also specifically prohibit the court from considering those factors enumerated in AS 09.55.205(d). Since 25.20.060 concerns the determination of custody of children, both the factors and the prohibitions in AS 09.55.205 should apply. By only specifying subsection (c), the bill suggests that the court may consider the otherwise prohibited factors.

IV. §4 of the bill (page 3, AS 25.20.070) creates a rebuttable presumption that shared custody is in the best interest of the child. I agree with Master Francis Stevens' and Attorney John Reese's testimony that shared or joint custody is an alternative to be considered in all cases, equally with custody in a single parent. Although shared custody is preferable to sole-parent custody, raising it to the level of a

rebuttable presumption is unnecessary and can create additional problems for the divorced parents they may not be prepared to handle. The attorney,Timothy Lynch, felt that if joint custody were not made a rebuttable presumption, this bill would completely lose its meaning. That, obviously, is no reason to make shared custody a rebuttable presumption. If it is decided the whole bill is worthless, that decision should be made. If the substance of a bill is lost, the bill should be eliminated--that is, a poor provision should not be retained simply because the bill would otherwise be meaningless. That is what these hearings and written testimony is all about.

Besides, statutorily promoting shared custody is worthwhile. However, shared custody should not be a rebuttable presumption because it brings an improper bias into the court. Shared custody is not always in the best interest of the child. It should be encouraged, yes, but in many cases, as Mr. Lynch and Mr. Reese pointed out, many couples who are divorcing cannot sort out their feelings sufficiently to agree to a joint custody arrangement. And if couples cannot agree to the shared custody arrangement, shared custody will not work because, as Ms. Louster testified, the ability to communicate with each other and come to mutually agreeable decisions concerning the welfare of the child is essential in a joint custody situation. Alaska cannot be compared with California, Oregon, or other lower 48 states where the state court systems provide family counselors to help couples come to agreement on shared custody and offer continuing aid. The majority of the state courts in Alaska cannot offer this kind of help.

With shared custody a rebuttable presumption, parents are pushed into that alternative. It becomes an easy tool to be used by one party or the other in negotiating other aspects of the divorce. It will tend

to delay the dissolution of a marriage, conflicting with the intent of the current statutes providing a speedy resolution to the petition, the delay and intervening bargaining being possibly detrimental to the child. The court should favor agreements between parents concerning the custody of children but should not presume that all caring parents can come up with a joint custody agreement at the time of the divorce. In some cases, the parents may even agree that one or the other of them should have sole custody.

V. §4 of this bill (page 3, AS 25.20.090(d)) allows a court to "require the parents to submit to the court a proposal for award of shared custody." This is objectionable for the same reasons as stated above. Where two people cannot come to an agreement by themselves, the court cannot force them to, particular where the interests of the child are at stake. And unless the parents agree to share custody, the proposal would not be workable. The court should not be able to force negotiations between possibly battling parents under circumstances the court is not fully apprised of. Even if this bill is passed with the above rebuttable presumption intact, this section should be eliminated. If this section is also retained, the court should be required to give the parties an "out" by permitting them to show that such a proposal is inappropriate. If the intent of this section is mediation between parents, that is handled under the proposed AS 25.20.080, which permits the court to appoint, or be, a third party mediator.

VI. §4 of the bill (page 4, AS 25.20.120(4-5)) permits a court, in determining shared custody, to consider "(4) the advantages of maintaining the child in the same community as compared with the potential advantages of a new community; (5) the advantages of providing a varied life experience for the child." This provision is objectionable

for the same reasons as my part II, above. Alaska is a state of vast land area. Many of its communities can only be reached by air or water. In many cases, divorced parents live far away from each other or, at least, in areas where it would be difficult to travel from one to the other. Again, the "variety of life experiences" factor would work to the disadvantage of the parent in the rural community, especially if it is one of the many isolated communities in this state, because of inherent biases against isolated villages. It is not possible, due to the size of Alaska and the distances between communities and the lack of urban centers, to compare this state with any other state in the "lower 48". These factors again conflict with AS 09.55.205(d), above, which prohibits the court from considering a parent's income, social or cultural environment. Those prohibitions should apply here because the determination of shared custody is a determination of custody and therefore the same criteria should apply.

VII. §4 of the bill (page 5, AS 25.20.150) allows the court to award custody to a nonparent if it "finds that an award of custody to a parent would be detrimental to the best interests of the child." This criterion does not give sufficient import to the parent-child relationship, which has Constitutional protection. See, for example, Meyer v. Nebraska, 262 US 390 (1923); Pierce v. Society of Sisters, 268 US 510 (1925); Skinner v. Oklahoma, 316 US 535 (1942); May v. Anderson, 345 US 528 (1953); Stanley v. Illinois, 405 US 645 (1972); Wisconsin v. Yoder, 406 US 205 (1972); Quilloin v. Walcott, 434 US 246 (1958). The Alaska Supreme Court has said:

> "We agree that the right of parents to the care, custody and control of their children is an important and substantial right protected by, although not specifically enumerated in, both the United

States and Alaska Constitutions." Matter of S.D.,Jr., 549 P2d 1190, 1200 (Alaska, 1976).

The Alaska Supreme Court, in Turner v. Pannick, 540 P2d 1051 (1975), specifically found, contrary to Mr. Lynch's testimony, that "detrimental to the best interest" is the wrong test to apply. In fact, the Supreme Court reversed the order of the Superior Court because the latter had applied the "best interest" test. The court found that custody in the parent is clearly "preferable and only to be refused where clearly detrimental to the child." 540 P2d at 1055. The Court held that "If 'best interest' of the child is the only criterion, then a judge may take children from their parents because the judge personally disagrees with the parents' limited means." 540 P2d at 1054. Therefore, "Unless the superior court determines that a parent is unfit, has abandoned the child, or that the welfare of the child requires that a non-parent receive custody, the parent must be awarded custody." 540 P2d at 1055.

It is difficult to distinguish between the test "best interest" and "detrimental to the welfare." The Alaska Supreme Court explained in Veazey v. Veazey, 560 P2d 382, 286 (1977), that "Between parents, custody is to be awarded according to the best interests of the child. . . Between parent and a non-parent, the parent is to be preferred unless placing custody with him or her would be detrimental to the child." Under the "Child in Need of Aid" statutes, the State has a set of certain minimum standards for parenting and when parents fall below that standard, the State can step in and make the child a ward of the court. That is, the State must show that the parental care is detrimental to the welfare of the child or the parents are unfit. The "detrimental to the best interests" criterion can be above that standard and interjects a comparative standard. That is, who can provide the most for the child. The "best interest test does not require a determination that the parent

creates harm or a danger to the child's welfare. Therefore, it is an improper test to use to determine custody as between a parent and a non-parent. As in Turner v. Pan[illegible] supra, the test should be "detrimental to the welfare of the child, abandonment of the child, or parental unfitness."

Thank you for considering my statements.

Linda M. Wingenbach
Attorney-at-Law
ALASKA LEGAL SERVICES CORPORATION

John M. Holmes,
Attorney at Law
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Barrow, Alaska 99723
Tel: 852-2311

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

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).

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

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Barrow, Alaska 99723
Tel: 852-2311

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

APPENDIX A

CALIFORNIA

California

(c) A concise summary of the provisions and procedures of this chapter and Sections 4514, 4530, and 4531.

(d) The nature of services of the conciliation court, where available.

(e) That neither party to the marriage can in the future obtain spousal support from the other.

(f) A statement in boldface type to the effect that upon entry of the final judgment, the rights and obligations of the parties to the marriage with respect to the marriage, including property and spousal support rights, will be permanently adjudicated without right of appeal, except that neither party shall be barred from instituting an action to set aside such final judgment for fraud, duress, accident, mistake, or other grounds at law or in equity, or to ake a motion pursuant to Section 473 of the Code of Civil Procedure.

(g) That the parties to the marriage retain the status of married persons and cannot remarry until final judgment dissolving the marriage is entered.

(h) Such other matters as the Judicial Council may deem appropriate.

Added Stats 1978 ch 508 § 2.

§ 4600. [Custody order: Consideration of child's wishes: Order of preference: Pleading and finding before award of custody to person(s) other than parent: Hearing and exclusion of public from hearing]

(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.

Amended by Stats 1972 ch 1007 § 1; Stats 1979 ch 204 § 1, ch 730 § 13, operative January 1, 1981, ch 915 § 3.

Amendments:

1972 Amendment: Deleted ", but, other things being equal, custody should be given to the mother if the child is of tender years" after "child" in subd (a).

1979 Amendment: (1) Substituted subds (a) and (b) for the former first paragraph which read:

"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 such child during his 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 his wishes in making an award of custody or modification thereof. Custody should be awarded in the following order of preference:

"(a) To either parent according to the best interests of the child.

"(b) To the person or persons in whose home the child has been living in a wholesome and stable environment.

"(c) 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."; and (2) redesignated the former second paragraph to be subd (c).

Note—Stats 1972 ch 1007 also provides: § 3. The amendments made by this act shall not be construed to affect any judgment or order made prior to the effective date of this act.

Note 2—See note following § 4600.5.

Law Revision Commission Comments:

Section 4600 is amended to add the last sentence to subdivision (a) and to make a few nonsubstantive changes. The addition of the last sentence to subdivision (a) makes clear that a nomination under the new Probate Code provisions is to be considered and given due weight, regardless of the nature of the custody proceeding.

Family Law Rules CRC Rules 1201 et seq.

Witkin Procedure 2d pp 330, 2358.

Witkin Summary (8th ed) pp 4531, 4587, 4590, 4594, 4598, 4599, 4510, 4610, 4615, 4641, 4673, 4675, 4678, 4680, 4682.

Cal Jur 3d Family Law §§ 205, 229, 232, 235, 237, 238, 243, 771.

6 Am Jur Proof of Facts 2d 499, Change in Circumstances Justifying Modification of Child Custody Order (§§ 7–25, in general) (§§ 26–46, proof of remarriage of noncustodian) (§§ 35–46, proof of remarriage of custodian).

Child custody litigation, 22 Am Jur Trials, 347.

The expanding role of the juvenile court in child custody disputes, (1975) 63 CLR 236.

Hitchens and Price, Trial strategy in lesbian mother custody case: the use of expert testimony. (1978–1979) 9 Golden Gate U LR 451.

Custody rights of unwed fathers. 4 Pacific LJ 922.

Review of Selected 1979 California Legislation. 11 Pacific LJ 478.

Custody rights of unwed fathers; prefere
New trends and requirements in adoptic
The evolution of California's child c
Southwestern U LR 1.
Role of child's wishes in California cust
Modern status of maternal preference r
Effect, in subsequent proceedings, of pa
in support or custody order made inci

De facto parents, such as foster pare
be permitted to appear as parties in juv
proceedings to assert and protect their
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agement of the child involved. The juv
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"the person or persons in whose home
has been living in a wholesome and stab
ment." B. G., In re (1974) 11 C3d 67
Rptr 444, 523 P2d 244.

Reversal of a juvenile court order
two children as dependent children of
and denying their mother legal and ph
tody was required, where the court
finding that an award of custody was
where the court made no finding that a
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before an order may be made awarding
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showing that such custody would b
harmful to the child, and where it re
case as closely balanced, with each
custody award presenting both advan
disadvantages. B. G., In re (1974) 11 C3
Cal Rptr 444, 523 P2d 244.

Civ. Code, § 4600, relating to custo
dren and enacted as a part of the Fa
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proceedings. The Legislature's specificat
statute that it applies to "any proceedi
there is at issue the custody of a mi
demonstrates that it was enacted to
objective of providing a uniform rule for
proceedings in which custody questio
litigated. B. G., In re (1974) 11 C3d 67
Rptr 444, 523 P2d 244.

In enacting Civ. Code, § 4600, which
the former requirement for awarding th
of a child to a nonparent as against a p
the parent be found "unfit" and substitu

such filing, the court shall, except in exceptional circumstances, enter an order awarding temporary custody in accordance with the agreement or understanding, or in accordance with any stipulation of the parties. In the absence of an agreement, understanding, or stipulation, the court may, if jurisdiction is appropriate, enter an ex parte order, set a hearing date within 20 days and issue an order to show cause on the responding party. If the responding party does not appear or respond within the time set, the temporary order may be extended as necessary pending the termination of the proceedings.

Added Stats 1976 ch 1399 § 2.

Review of Selected 1976 California Legislation, 8 Pacific LJ 315.

§ 4600.2. [Award of custody to parent receiving assistance: Order for support]

Any order awarding custody to a parent who is receiving, or in the opinion of the court is likely to receive, assistance pursuant to the Burton-Miller Act (Chapter 2 (commencing with Section 11200) of Part 3 of Division 9 of the Welfare and Institutions Code) for the maintenance of the child shall include an order pursuant to Section 4700 or 4702 directing the noncustodial parent to pay any amount necessary for the support of the child, to the extent of the noncustodial parent's ability to pay.

Added Stats 1979 ch 1030 § 3.

Review of Selected 1979 California Legislation, 11 Pacific LJ 481.

§ 4600.5. [Presumption regarding joint custody and award thereof: Reasons for denial: Modification or termination of order: Consultation with conciliation court: Access to child's records]

(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, l
custody without awarding

(d) Any order for joint c
petition of one or both pa
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order. The court shall st
termination of the joint c
tion or termination order.

(e) Any order for the cus
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jurisdictional requirement
at any time to an order of
this section.

(f) In counties having a c
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(g) Notwithstanding any
information pertaining to
medical, dental, and schoo
such parent is not the chil

Added Stats 1979 ch 915 § 2.

Note.—Another version of this sect
prevails. See Gov C § 9605.

Review of Selected 1979 California

In proceedings on an order to s
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ment under which the parties m
with the father and the minor girl
mother, the trial court prejudici
discretion by making its ruling aw
custody of both children to the for
basis of preexisting bias against
rather than on the evidence addu
trial court harbored and exhibited
prejudice against the parties' court

§ 4600.6. [Trial]

(a) In any case in which
sole contested issue, the c
except matters to which
assigning a trial date and

(b) In any case in which
the issues is of the custo
custody, shall order a
preference over other civi
may be given by law, for

Added Stats 1980 ch 863 § 1.

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by the parents in such a way
nd 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.

Added Stats 1979 ch 915 § 2.

—Another version of this section was added by Stats 1979 ch 204. The version enacted by ch 915 ails, Sec Go C § 9605.

Review of Selected 1979 California Legislation, 11 Pacific LJ 478.

In proceedings on an order to show cause filed by a former wife to modify a joint custody agreement under which the parties' minor boy lived with the father and the minor girl lived with the mother, the trial court prejudicially abused its discretion by making its ruling awarding physical custody of both children to the former wife on the basis of preexisting bias against split custody rather than on the evidence adduced where the trial court harbored and exhibited an unshakable prejudice against the parties' court-approved custody agreement and the possibility that the children might properly reside in different homes. The former husband was entitled to an order based on the trial court's review of all the evidence before it, as well as on the exercise of an impartial legal discretion. Moreover, agreements by the former husband and his counsel that split custody was improper, which agreements were the result of judicial arm-twisting, did not neutralize the prejudicial effect of the trial court's bias. Schwartz, In re (1980) 104 CA3d 92, 163 Cal Rptr 408.

§ 4600.6. [Trial]

(a) In any case in which a contested issue of custody of a minor child is the sole contested issue, the case shall be given preference over other civil cases, except matters to which special precedence may be given by law, for assigning a trial date and shall be given an early hearing.

(b) In any case in which there is more than one contested issue and one of the issues is of the custody of a minor child, the court, as to the issue of custody, shall order a separate trial. The separate trial shall be given preference over other civil cases, except matters to which special precedence may be given by law, for assigning a trial date.

Added Stats 1980 ch 863 § 1.

ns contained in the Judicial Council
of Order to Show Cause, and by

[Signature]

Award—Due to Change in Circum-
or Minor Children

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19__, to ____; 19__, respon-
children in that ____ *[specify*
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d of Temporary Custody to Parent

as made as required by law on the
portion of the parties' interlocutory
19__ at ____ and made
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____ *[name of minor child]* by
ney for petitioner and ____

ents of counsel, the court finds that
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ary custody of ____ *[name of*
correct, and that it would be in the
porary custodial rights during the
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the following temporary custodial

[Signature]

d and party in possession of

custody of a child has been
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r other order of the court.

(c) In performing the functions described in subdivisions (a) and (b), the district attorney shall act on behalf of the court and shall not represent any party to the custody proceedings.

Added Stats 1976 ch 1399 § 3.

Review of Selected 1976 California Legislation, 8 Pacific LJ 315.

§ 4605. [Expenses of district attorney]

(a) When the district attorney incurs expenses pursuant to Section 4604, including expenses incurred in a sister state, payment of such expenses may be advanced by the county subject to reimbursement by the state, and shall be audited by the State Controller and paid by the State Treasury according to law.

(b) The court in which the custody proceeding is pending, or which has continuing jurisdiction, shall, if appropriate, allocate liability for the reimbursement of actual expenses incurred by the district attorney to either or both parties to the proceedings and such allocation shall constitute a judgment for the state for the funds advanced pursuant to this section. The county shall take reasonable action to enforce such liability and shall transmit all recovered funds to the state.

Added Stats 1976 ch 1399 § 4.

Review of Selected 1976 California Legislation, 8 Pacific LJ 315.

62 Ops Atty Gen 369 (CC § 4605 authorizes state reimbursement for expenses incurred by a district attorney in retaining Canadian counsel to compel an individual to comply with a California custody order, where the individual has been charged in California with the offense of concealing a child in violation of a custody decree (Pen Code, § 278.5) and where criminal extradition of the individual appears futile).

§ 4606. [Appointment of counsel to represent minor child]

In any proceeding under this part where there is in issue the custody of a minor child, the court may, if it finds it would be in the best interests of the minor child, appoint private counsel to represent the interests of the minor child. When the court appoints counsel to represent the minor, counsel shall receive a reasonable sum for compensation and expenses, the amount of which shall be determined by the court. Such amount shall be paid by the parents in such proportions as the court deems just.

Added Stats 1976 ch 583 § 1.

Appointment of legal counsel for ward, proposed ward, conservatee, or proposed conservatee, Prob C §§ 1470–1472.

§ 4607. [Mediation]

(a) Where it appears on the face of the petition or other application for an order or modification of an order for the custody or visitation of a child or children that either or both such issues are contested, as provided in Section 4600, 4600.1 or 4601, the matter shall be set for mediation of the contested issues prior to or concurrent with the setting of the matter for hearing. The purpose of such mediation proceeding shall be to reduce acrimony which may exist between the parties and to develop an agreement assuring the child or children's close and continuing contact with both parents after the

marriage is dissolved. The mediator shall use his or her best efforts to effect a settlement of the custody or visitation dispute.

(b) Each superior court shall make available a mediator. Such mediator may be a member of the professional staff of a family conciliation court, probation department, or mental health services agency, or may be any other person or agency designated by the court. In order to provide mediation services, the court shall not be required to institute a family conciliation court. The mediator shall meet the minimum qualifications required of a counselor of conciliation as provided in Section 1745 of the Code of Civil Procedure.

(c) Mediation proceedings shall be held in private and shall be confidential, and all communications, verbal or written, from the parties to the mediator made in a proceeding pursuant to this section shall be deemed to be official information within the meaning of Section 1040 of the Evidence Code.

(d) The mediator shall have the authority to exclude counsel from participation in the mediation proceedings where, in the discretion of the mediator, exclusion of counsel is deemed by the mediator to be appropriate or necessary. The mediator shall have the duty to assess the needs and interests of the child or children involved in the controversy and shall be entitled to interview the child or children when the mediator deems such interview appropriate or necessary.

(e) The mediator may, consistent with local court rules, render a recommendation to the court as to the custody or visitation of the child or children. The mediator may, in cases where the parties have not reached agreement as a result of the mediation proceeding, recommend to the court that an investigation be conducted pursuant to Section 4602, or that other action be taken to assist the parties to effect a resolution of the controversy prior to any hearing on the issues. The mediator may, in appropriate cases, recommend that mutual restraining orders be issued, pending determination of the controversy, to protect the well-being of the children involved in the controversy. Any agreement reached by the parties as a result of mediation shall be reported to the court and to counsel for the parties by the mediator on the day set for mediation or any time thereafter designated by the court.

(f) The provisions of this section shall become operative on January 1, 1981.

Added Stats 1980 ch 48 § 5, effective March 27, 1980, operative January 1, 1981.

§ 4700. [Order for child support]

(a) In any proceeding where there is at issue the support of a minor child, the court may order either or both parents to pay any amount necessary for the support, maintenance, and education of the child. At the request of either party, the court shall make appropriate findings with respect to the circumstances on which the order for the support of a minor child is based. Upon a showing of good cause, the court may order the parent or parents required to make the payment of support to give reasonable security therefor. All payments of support shall be made by the person owing the support payment prior to the payment of any debts owing to creditors. Any order for child support may be modified or revoked as the court may deem necessary, except as to any amount that may have accrued prior to the date of the filing of the notice of motion or order to show cause to modify or revoke. The order of modification or revocation may be made retroactive to

the date of the filing of the r
modify or revoke, or to any da
tion or revocation may include
the prevailing party.

(b) When a court orders a pers
a child during the child's mino
emancipated, the liability of t
upon the happening of the c
person having physical custod
made, fails to notify the pers
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and all support payments whi
original order for support, or
whom payments are to be ma
payments, or his or her att
contingency.

(c) In the event obligations
bankruptcy, the court may ma
nance and education of the chi

Amended by Stats 1972 ch 1118 § 2; Stats

Amendments:
1972 Amendment: Added the third and s
1980 Amendment: (1) Substituted "the" f
adding the second sentence; and (b) su
persons owing such amounts"; in the f
person ordered to pay support" for
sentences; (b) substituting the person
substituting "the overpayments shall" f
sentence; and (d) adding "or her" after

Note—Stats 1972 ch 1118 also provid
Responsibility Act of 1972.

Family Law Rules: CRC Rules 1201 et se
Witkin Summary (8th ed) pp 4531, 463
5188.
Cal Jur 3d Family Law §§ 305, 310, 318,
Cal Forms 37:66.
1 Am Jur Proof of Facts 2d 1, Change in
§§ 6 et seq. (Proofs that circumstances
to justify modification of order).
Rights and obligations of child support.
Annulment of later marriage as reviving
agreement. 45 ALR3d 1033.
Right to credit on accrued support payn
expenditures. 47 ALR3d 1031.
Retrospective increase in allowance for a
Provision in decree that one party obtain
ALR3d 9.
Right to credit on child support payme
made for benefit of child. 77 ALR3d 1
Father's liability for support of child fo
but made no provision for support. 91

Birth Control § 5, Criminal Law §§ 60, 216, 1700, 2352, 2353, 2357, 2358, 2360, 2365, 2366, 2368, 2377, 2379, 3169; Witkin Crimes pp 519, 520, 522, 523, 525, 991; Criminal Procedure p 46; Summary (8th ed) p 3557.

§ 275. [Soliciting and taking drug or submitting to an attempt to procure miscarriage: Exceptions: Punishment.] Every woman who solicits of any person any medicine, drug, or substance whatever, and takes the same, or who submits to any operation, or to the use of any means whatever, with intent thereby to procure a miscarriage, except as provided in the Therapeutic Abortion Act, Chapter 11 (commencing with Section 25950) of Division 20 of the Health and Safety Code, is punishable by imprisonment in the state prison. [1872; 1967 ch 327 § 4; 1976 ch 1139 § 168, operative July 1, 1977.] *Cal Jur 3d Criminal Law §§ 60, 216, 2352, 2353, 2357, 2365, 3169.*

§ 276. [Soliciting woman to submit to operation, etc., to procure miscarriage: Exceptions: Punishment: Proof necessary.] Every person who solicits any woman to submit to any operation, or to the use of any means whatever, to procure a miscarriage, except as provided in the Therapeutic Abortion Act, Chapter 11 (commencing with Section 25950) of Division 20 of the Health and Safety Code, is punishable by imprisonment in the county jail not longer than one year or in the state prison, or by fine of not more than five thousand dollars ($5,000). Such offense must be proved by the testimony of two witnesses, or of one witness and corroborating circumstances. [1957 ch 270 § 1; 1967 ch 327 § 5; 1976 ch 1139 § 169, operative July 1, 1977.] *21 Cal Jur 3d Criminal Law §§ 2352, 2353, 2365, 2387; Witkin Crimes pp 78, 79, 520, 525, 526.*

CHAPTER 4

Child Abduction

[The heading of Chapter 4, consisting of §§ 278–280, was amended to read as above by Stats 1976 ch 1399 § 8.]

§ 278. [Definition and penalty; Return of child.] (a) Every person, not having a right of custody, who maliciously takes, entices away, detains or conceals any minor child with intent to detain or conceal such child from a parent, or guardian, or other person having the lawful charge of such child shall be punished by imprisonment in the state prison for two, three or four years, a fine of not more than ten thousand dollars ($10,000), or both, or imprisonment in a county jail for a period of not more than one year, a fine of not more than one thousand dollars ($1,000), or both.

(b) A child who has been detained or concealed in violation of subdivision(a) shall be returned to the person having lawful charge of the child. Any expenses incurred in returning the child shall be reimbursed as provided in Section 4605 of the Civil Code. Such costs shall be assessed against any defendant convicted of a violation of this section. [1976 ch 1399 §§ 10, 10.5, operative July 1, 1977.]

§ 278.5. [Detention or concealment of child in violation of custody decree.] (a) Every person who in violation of a custody decree takes, retains after the expiration of a visitation period, or conceals the child from his legal custodian, and every person who has custody of a child pursuant to an order, judgment or decree of any court which grants another person rights to custody or visitation of such child, and who detains or conceals such child with the intent to deprive the other person of such right to custody or visitation shall be punished by imprisonment in the state prison for a period of not more than one year and one day or by imprisonment in a county jail for a period of not more than one year, a fine of not more than one thousand dollars ($1,000), or both.

(b) A child who has been detained or concealed in violation of subdivision (a) shall be returned to the person having lawful charge of the child. Any expenses incurred in returning the child shall be reimbursed as provided in Section 4605 of the Civil Code. Such costs shall be assessed against any defendant convicted of a violation of this section. [1976 ch 1399 § 11.]

APPENDIX B

OREGON

House Bill 2538

Sponsored by Representative RICHARDS

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure as introduced.

Creates a disputable presumption that joint custody is in the best interests and welfare of the child.

NOTE: Matter in bold face in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted; complete new sections begin with SECTION.

A BILL FOR AN ACT

Relating to domestic relations; amending ORS 107.137.

Be It Enacted by the People of the State of Oregon:

Section 1. ORS 107.137 is amended to read:

107.137. (1) In determining custody of a minor child pursuant to ORS 107.105 or 107.135, the court shall give primary consideration to the best interests and welfare of the child. In determining the best interests and welfare of the child, the court may consider the following relevant factors:

(a) The emotional ties between the child and other family members;

(b) The interest of the parties in and attitude toward the child; and

(c) The desirability of continuing an existing relationship.

(2) The best interests and welfare of the child in a custody matter shall not be determined by isolating any one of the relevant factors referred to in subsection (1) of this section, or any other relevant factor, and relying on it to the exclusion of other factors.

(3) No preference in custody shall be given to the mother over the father for the sole reason that she is the mother.

(4) It is a disputable presumption that joint custody is in the best interests and welfare of the child.

[(4)] (5) In determining custody of a minor child pursuant to ORS 107.105 or 107.135, the court shall consider the conduct, marital status, income, social environment or life style of either party only if it is shown that any of these factors are causing or may cause emotional or physical damage to the child.

visitation rights of the parent or parents not having custody of such children.

(c) For the restraint of a party from in any manner molesting or interfering with the other or the minor children.

(d) That if minor children reside in the family home and the court considers it necessary for their best interest to do so, the court may require either party to move out of the home for such period of time and under such conditions as the court may determine, whether the home is rented, owned or being purchased by one party or both parties.

(e) Restraining and enjoining either party or both from encumbering or disposing of any of their property, real or personal, except as ordered by the court.

(f) For the temporary use, possession and control of the real or personal property of the parties or either of them and the payment of instalment liens and encumbrances thereon.

(g) That even if no minor children reside in the family home, the court may require one party to move out of the home for such period of time and under such conditions as the court determines, whether the home is rented, owned or being purchased by one party or both parties if that party assaults or threatens to assault the other.

(2) In case default is made in the payment of any moneys falling due under the terms of an order pending suit, any such delinquent amount shall be entered and docketed as a judgment, and execution may issue thereon to enforce payment thereof in the same manner and with like effect as upon a final decree. The remedy provided in this subsection shall be deemed cumulative and not exclusive.

(3) The court shall not require an undertaking in case of the issuance of an order under paragraph (c), (d), (e), (f) or (g) of subsection (1) of this section.

(4) In a suit for annulment or dissolution of marriage or for separation, wherein the parties are copetitioners or the respondent is found by the court to be in default, the court may, when the cause is otherwise ready for hearing on the merits, if support or custody of minor children is not involved, in lieu of such hearing, enter a decree of annulment or dissolution or for separation based upon an affidavit of the petitioner, setting forth a prima facie case, and covering such additional matters as the court may require.

[1971 c.280 §12; 1973 c.502 §7; 1977 c.205 §1; 1977 c.847 §1; 1977 c.878 §1a]

107.100 [Amended by 1953 c.553 §2; 1953 c.635 §2; 1961 c.540 §1; 1963 c.476 §1; 1965 c.603 §6; 1969 c.198 §53; 1969 c.591 §283; repealed by 1971 c.280 §28]

107.105 Provisions of decree. (1) Whenever the court grants a decree of annulment or dissolution of marriage or of separation, it has power further to decree as follows:

(a) For the future care and custody of the minor children of the marriage by one party or jointly and for the visitation rights of the parent or parents not having custody of such children as it may deem just and proper.

(b) For the recovery from the party not allowed the care and custody of such children, or from either party or both parties if joint custody is decreed, such amount of money, in gross or in instalments, or both, as may be just and proper for such party, either party or both parties to contribute toward the support and welfare of such children. The court may at any time require an accounting from the custodian of the children with reference to the use of the money awarded.

(c) For the support of a party, in gross or in instalments, or both, such amount of money for such period of time as it may be just and equitable for the other party to contribute. The court may approve, ratify and decree voluntary property settlement agreements providing for contribution to the support of a party. If requested by either party, the court shall make and set forth in its decree the findings of fact upon which its award or denial of support was based. In making such support order, the court shall consider the following matters:

(A) The duration of the marriage;

(B) The ages of the parties;

(C) Their health and conditions;

(D) Their work experience and earning capacities;

(E) Their financial conditions, resources and property rights;

(F) The provisions of the decree relating to custody of the minor children of the parties;

(G) The ages, health and dependency conditions of the children of the parties, or either of them;

(H) The need for maintenance, retraining or education to enable the spouse to become employable at suitable work or to enable the spouse to pursue career objectives; and

(I) Such other matters as the court shall deem relevant.

(d) For the delivery to one party of such party's personal property in the possession or

control of the other at the time of the giving of the decree.

(e) For the division or other disposition between the parties of the real or personal property, or both, of either or both of the parties as may be just and proper in all the circumstances. The court shall view the contribution of a spouse as a homemaker in the contribution of marital assets. There is a rebuttable presumption that both spouses have contributed equally to the acquisition of property during the marriage. The court shall require full disclosure of all assets by the parties in arriving at a just property division.

(f) If there is a minor child of the marriage:

(A) For the appointment of one or more trustees to hold, control and manage for the benefit of the children of the parties of the marriage or otherwise, such of the real or personal property of either or both of the parties, as the court may order to be allocated or appropriated to their support and welfare; and to collect, receive, expend, manage or invest any sum of money decreed for the support and welfare of minor children of the parties.

(B) For the appointment of one or more trustees to hold, manage and control such amount of money or such real or personal property of either or both of the parties, as may be set aside, allocated or appropriated for the support of a party.

(C) The court shall direct the terms of the trust and make provision for the disposition or distribution of such money or property to or between the parties, their successors, heirs and assigns after the purpose of the trust has been accomplished. Upon petition of a party or a person having an interest in the trust showing a change of circumstances warranting a change in the terms of the trust, the court shall have the power to make and direct reasonable modifications in its terms.

(g) To change the name of either spouse to a name the spouse held before the marriage. The court must decree a change if it is requested by the affected party.

(h) A judgment against one party in favor of the other for any sums of money found to be then remaining unpaid upon any enforceable order or orders theretofore duly made and entered in the proceedings pursuant to any of the provisions of ORS 107.095, and for any such further sums as additional attorney fees or additional costs and expenses of suit or defense as the court finds reasonably and necessarily incurred by such party; or, in the absence of any such order or orders pendente lite, a like judgment for such amount of money as the court finds was reasonably necessary to enable such party to prosecute or defend the suit.

(2) In determining the proper amount of support and the proper division of property pursuant to paragraphs (b), (c) and (e) of subsection (1) of this section, the court may consider evidence of the tax consequences on the parties of its proposed decree.

(3) If an appeal is taken from a decree of annulment or dissolution of marriage or of separation or from any part of a decree rendered in pursuance of the provisions of ORS 107.005 to 107.105, 107.115 to 107.142, 107.405, 107.425, 107.445 to 107.520, 107.540 and 107.610, the court making such decree shall provide for the temporary support of the minor children of the parties thereto, and may provide for the temporary support of a party. The order may be modified at any time by the court making the decree appealed from, shall provide that the support money be paid in monthly instalments, and shall further provide that it is to be in effect only during the pendency of the appeal. No appeal lies from such temporary order.

(4) If an appeal is taken from the decree or other appealable order in a suit for annulment or dissolution of a marriage or for separation, and the appellate court awards costs and disbursements to the prevailing party, it may also award to that party, as part of the costs, such additional sum of money as it may adjudge reasonable as an attorney fee on the appeal.

(5) If, as a result of a suit for the annulment or dissolution of a marriage or for separation, the parties to such suit become owners of an undivided interest in any real or personal property, or both, either party may maintain supplemental proceedings by filing a petition in such suit for the partition of such real or personal property, or both, within two years from the entry of said decree, showing among other things that the original parties to such decree and their joint or several creditors having a lien upon any such real or personal property, if any there be, constitute the sole and only necessary parties to such supplemental proceedings. The procedure in the supplemental proceedings, so far as applicable, shall be the procedure provided in ORS 105.405, for the partition of real property, and the court granting such decree shall have in

the first instance and retain jurisdiction in equity therefor.
[1971 c.280 §13; 1973 c.502 §8; 1975 c.722 §1; 1975 c.733 §2;1977 c.205 §2; 1977 c.847 §2; 1977 c.878 §2a]

107.108 Support or maintenance for child attending school. (1) In addition to any other authority of the court, the court may provide for the support or maintenance of a child attending school:

(a) After the commencement of a suit for annulment or dissolution of a marriage or for separation from bed and board and before the decree therein;

(b) In a decree of annulment or dissolution of a marriage or of separation from bed and board; and

(c) During the pendency of an appeal taken from all or part of a decree rendered in pursuance of ORS 107.005 to 107.142, 107.260, 107.405, 107.425, 107.445 to 107.520, 107.540, 107.610 or this section.

(2) An order providing for temporary support pursuant to paragraph (c) of subsection (1) of this section may be modified at any time by the court making the decree appealed from, shall provide that the support money be paid in monthly instalments, and shall further provide that it is to be in effect only during the pendency of the appeal. No appeal lies from any such temporary order.

(3) If the court provides for the support and maintenance of a child attending school pursuant to this section, the child is a party for purposes of matters related to that provision.

(4) As used in this section, "child attending school" means a child of the parties who is unmarried, is 18 years of age or older and under 21 years of age and is a student regularly attending school, community college, college or university, or regularly attending a course of vocational or technical training designed to fit him for gainful employment.
[1973 c.827 §12b]

107.110 [Amended by 1965 c.603 §4; 1969 c.179 §1; 1969 c.198 §54; 1969 c.591 §284; repealed by 1971 c.280 §28]

107.115 Effect of decree; effective date; appeal. (1) A decree of annulment or dissolution of a marriage restores the parties thereto to the status of unmarried persons, unless a party is married to another person. Such decree shall give the court jurisdiction to award, to be effective immediately, the relief provided by ORS 107.105. The decree shall revoke a will pursuant to the provisions of ORS 112.315, but the decree shall not be effective in so far as it affects the marital status of the parties until the expiration of 60 days from the date of the decree, or, if an appeal is taken, until the suit is determined on appeal, whichever is later.

(2) In case either party dies within the 60-day period specified in subsection (1) of this section, the decree shall be considered to have entirely terminated the marriage relationship immediately before such death, unless an appeal is pending.

(3) (a) The Court of Appeals or Supreme Court shall continue to have jurisdiction of such an appeal pending at the time of the death of either party. The appeal may be continued by the personal representative of the deceased party. The attorney of record on the appeal, for the deceased party, may be allowed a reasonable attorney fee, to be paid from the decedent's estate. However, costs on appeal may not be awarded to either party.

(b) The Court of Appeals or Supreme Court shall have the power to determine finally all matters presented on such appeal. Before making final disposition, the Court of Appeals or Supreme Court may refer the proceeding back to the trial court for such additional findings of fact as are required.

(4) The marriage relationship is terminated in all respects at the expiration of the 60-day period specified in subsection (1) of this section, or, if an appeal is taken, when the suit is determined on appeal, whichever is later, without any further action by either party. However, at any time within the 60-day period or while an appeal is pending, the court may set aside the decree upon motion of both parties.

(5) A decree declaring a marriage void or dissolved shall specify the date on which the decree becomes finally effective to terminate the marriage relationship of the parties.

(6) The 60-day period specified in subsection (1) of this section does not apply when a decree declares a marriage void under ORS 107.005.
[1971 c.280 §14]

107.120 [Repealed by 1971 c.280 §28]

107.125 [1965 c.386 §3; repealed by 1971 c.280 §28]

107.126 Decrees and orders as liens; duration. No order or decree for the future payment of money in gross or in instalments, entered under ORS 107.095 or 107.105, shall continue to be a lien on real property for a period of more than 10 years from the date of

(5) In a proceeding held under subsection (1) of this section, the court may assess against either party a reasonable attorney fee for the benefit of the other party.
[1975 c.500 §3]

107.415 Notice of change of status of minor child required; effect of failure to give notice. (1) If a party is required by a decree of a court in a domestic relations suit, as defined in ORS 107.510, to contribute to the support, nurture or education of a minor child while the other party has custody thereof, the custodial parent shall notify the party contributing such money when the minor child receives income from his own gainful employment, or is married or enters the military service.

(2) Any custodial parent who does not provide notice, as required by subsection (1) of this section may be required by the court to make restitution to the contributing party of any money paid, as required by the decree. The court may enter a judgment or satisfy all or part of any accrued judgment to accomplish the restitution.
[1971 c.314 §1]

107.420 [1961 c.340 §1; repealed by 1971 c.280 §28]

107.425 Investigation of parties in domestic relations suit involving welfare of children; counsel for children; staff. (1) Whenever a domestic relations suit, as defined in ORS 107.510, is filed, or whenever a habeas corpus proceeding or motion to modify an existing decree in a domestic relations suit is before the court, the court having jurisdiction may, in cases in which there are minor children involved, cause an investigation to be made as to the character, family relations, past conduct, earning ability and financial worth of the parties to the suit for the purpose of protecting the children's future interest. The court may defer the entry of a final decree until the court is satisfied that its decree in such suit will properly protect the welfare of such children. The investigative findings shall be offered as and subject to all rules of evidence.

(2) The court, on its own motion, may:

(a) Cite either party to the suit to appear and testify as a witness during this investigation; and

(b) Appoint counsel for the children. A reasonable fee for an attorney so appointed may be charged against either or both of the parties or as a cost in the proceedings.

(3) The court having jurisdiction of cases described in subsection (1) of this section may hire and fix the salaries of such professional and clerical personnel as are necessary to carry out the purposes of this section. The salaries of the professional and clerical assistants shall be paid in the same manner as the salaries of county officers are paid.
[1971 c.280 §3; 1973 c.502 §11]

107.430 [Formerly 107.180; 1963 c.223 §1; repealed by 1971 c.280 §28]

107.431 Modification of portion of decree regarding visitation of minor child; procedure. At any time after a decree of annulment or dissolution of a marriage or a separation is granted, the court may set aside, alter or modify so much of the decree relating to visitation of a minor child as it deems just and proper or may terminate or modify that part of the order or decree requiring payment of money for the support of the minor child with whom visitation is being denied after:

(1) Motion to set aside, alter or modify is made by the parent having visitation rights;

(2) Service of notice on the parent or other person having custody of the minor child is made in the manner provided by law for service of a summons; and

(3) A showing that the parent or other person having custody of the child or a person acting in that parent or other person's behalf has interfered with or denied without good cause the exercise of the parent's visitation rights.
[1977 c.878 §4]

107.435 [1971 c.280 §19; repealed by 1973 c.502 §18]

107.440 [1963 c.434 §14; 1965 c.386 §1; repealed by 1971 c.280 §28]

107.445 Attorney fees in certain domestic relations proceedings. In any proceeding brought under ORS 108.110 and 108.120, and in any contempt proceeding brought to compel compliance with any orders authorized by ORS 107.095, or with the decree in any suit to annul or dissolve a marriage or for separation the court may make an order awarding to a party a sum of money determined to be reasonable as an attorney fee therein. The order shall be entered and docketed as a judgment, and execution may issue thereon in the same manner and with like effect as upon a final decree.
[1971 c.280 §18]

107.450 [1963 c.434 §13; 1965 c.386 §2; repealed by 1971 c.280 §28]

APPENDIX C

WASHINGTON

upon the payment of a license fee as fixed in RCW 36-.18.010 shall require each applicant therefor to make and file in his office upon blanks to be provided by the county for that purpose, an affidavit showing that they are not afflicted with any contagious venereal disease. He shall also require an affidavit of some disinterested credible person showing that neither of said persons is an habitual criminal, and that the applicants are the age of eighteen years or over: *Provided, further,* That if the consent in writing is obtained of the father, mother, or legal guardian of the person for whom the license is required, the license may be granted in cases where the female has attained the age of seventeen years or the male has attained the age of seventeen years. Such affidavit may be subscribed and sworn to before any person authorized to administer oaths. Anyone knowingly swearing falsely to any of the statements contained in the affidavits mentioned in this section shall be deemed guilty of perjury and punished as provided by the laws of the state of Washington. [1979 ex.s. c 128 § 2; 1973 1st ex.s. c 154 § 29; 1970 ex.s. c 17 § 5; 1963 c 230 § 4; 1959 c 149 § 3; 1909 ex.s. c 16 § 3; 1909 c 174 § 3; Code 1881 §§ 2391, 2392; 1867 p 104 § 1; 1866 p 83 §§ 13, 14; RRS § 8451.]

Severability——1973 1st ex.s. c 154: See note following RCW 2.12.030.

Penalty for violation of marriage requirements: RCW 26.04.230.

26.04.220 Retention of license by person solemnizing——Auditor's record. The person solemnizing the marriage is authorized to retain in his possession the license, but the county auditor who issues the same, before delivering it, shall enter in his marriage record a memorandum of the names of the parties, the consent of the parents or guardian, if any, and the name of the affiant and the substance of the affidavit upon which said license issued, and the date of such license. [Code 1881 § 2393; 1866 p 84 § 15; RRS § 8453.]

26.04.230 Penalty for violation of marriage requirements. Any person knowingly violating any of the provisions of *this act shall, upon conviction thereof, be punished by a fine of not more than one thousand dollars, or by imprisonment in the state penitentiary for a period of not more than three years, or by both such fine and imprisonment. [1909 ex.s. c 16 § 4; 1909 c 174 § 4; Code 1881 § 2394; 1866 p 84 § 16; RRS § 8452.]

*Reviser's note: "this act" is codified as RCW 26.04.030, 26.04.040, 26.04.210, and 26.04.230.

26.04.240 Penalty for unlawful solemnization——Code 1881. Any person who shall undertake to join others in marriage knowing that he is not lawfully authorized so to do, or any person authorized to solemnize marriage, who shall join persons in marriage contrary to the provisions of *this chapter, shall, upon conviction thereof, be punished by a fine of not more than five hundred, nor less than one hundred dollars. [Code 1881 § 2395; 1866 p 84 § 17; RRS § 8454. FORMER PART OF SECTION: 1909 c 249 § 419; RRS § 2671 now codified as RCW 26.04.250.]

*Reviser's note: "this chapter" (chapter 182, Code 1881) is codified as RCW 26.04.010, 26.04.050 through 26.04.140 and 26.04.220 through 26.04.240. Code 1881 §§ 2391 and 2392, being part of chapter 182, Code 1881, appear to be superseded by 1909 ex.s. c 16 § 3 (RCW 26.04.210) which is subject to the penalties of RCW 26.04.230.

26.04.250 Penalty for unlawful solemnization——1909 c 249. Every person who shall solemnize a marriage when either party thereto is known to him to be under the age of legal consent or a marriage to which, within his knowledge, any legal impediment exists, shall be guilty of a gross misdemeanor. [1979 ex.s. c 128 § 3; 1909 c 249 § 419; RRS § 2671. Formerly RCW 26.04-.240, part.]

Punishment of gross misdemeanor when not fixed by statute: RCW 9.92.020.

Chapter 26.09

DISSOLUTION OF MARRIAGE——LEGAL SEPARATION——DECLARATIONS CONCERNING VALIDITY OF MARRIAGE

Sections

Living in marital relationship within state submits person to state jurisdiction as to proceedings under this chapter: RCW 4.28.185.

Process——Domestic relations actions: Rules of court: CR 4.1.

26.09.010 Civil practice to govern——Designation of proceedings——Decrees. (1) Except as otherwise specifically provided herein, the practice in civil action shall govern all proceedings under this chapter, except that trial by jury is dispensed with.

(2) A proceeding for dissolution of marriage, legal separation or a declaration concerning the validity of a marriage shall be entitled "In re the marriage of ---------- and ----------." Such proceeding may be filed in the superior court of the county where the petitioner resides.

(3) In cases where there has been no prior proceeding in this state involving the marital status of the parties or custody or support obligations, a separate custody or support proceeding shall be entitled "In re the (custody) (support) of ----------."

(4) The initial pleading in all proceedings for dissolution of marriage under this chapter shall be denominated a petition. A responsive pleading shall be denominated a response. Other pleadings, and all pleadings in other matters under this chapter shall be denominated as provided in the civil rules for superior court.

(5) In this chapter, "decree" includes "judgment".

(6) A decree of dissolution, of legal separation, or a declaration concerning the validity of a marriage shall not be awarded to one of the parties, but shall provide that it affects the status previously existing between the parties in the manner decreed. [1975 c 32 § 1; 1973 1st ex.s. c 157 § 1.]

26.09.020 Petition in proceeding for dissolution of marriage, legal separation, or for a declaration concerning validity of marriage——Contents——Parties. (1) A petition in a proceeding for dissolution of marriage, legal separation, or for a declaration concerning the validity of a marriage, shall allege the following:

(a) The last known residence of each party;

(b) The date and place of the marriage;

(c) If the parties are separated the date on which the separation occurred;

(d) The names, ages, and addresses of any child dependent upon either or both spouses and whether the wife is pregnant;

(e) Any arrangements as to the custody, visitation and support of the children and the maintenance of a spouse;

(f) A statement specifying whether there is community or separate property owned by the parties to be disposed of;

(g) The relief sought.

(2) Either or both parties to the marriage may initiate the proceeding. [1973 2nd ex.s. c 23 § 1; 1973 1st ex.s. c 157 § 2.]

26.09.030 Petition for dissolution of marriage——Court proceedings, findings——Transfer to family court——Legal separation in lieu of dissolution. When a party who is a resident of this state or who is a member of the armed forces and is stationed in this state, petitions for a dissolution of marriage, and alleges that the marriage is irretrievably broken and when ninety days have elapsed since the petition was filed and from the date when service of summons was made upon the respondent or the first publication of summons was made, the court shall proceed as follows:

(1) If the other party joins in the petition or does not deny that the marriage is irretrievably broken, the court shall enter a decree of dissolution.

(2) If the other party alleges that the petitioner was induced to file the petition by fraud, or coercion, the court shall make a finding as to that allegation and, if it so finds shall dismiss the petition.

(3) If the other party denies that the marriage is irretrievably broken the court shall consider all relevant factors, including the circumstances that gave rise to the filing of the petition and the prospects for reconciliation and shall:

(a) Make a finding that the marriage is irretrievably broken and enter a decree of dissolution of the marriage; or

(b) At the request of either party or on its own motion, transfer the cause to the family court, refer them to another counseling service of their choice, and request a report back from the counseling service within sixty days, or continue the matter for not more than sixty days for hearing. If the cause is returned from the family court or at the adjourned hearing, the court shall:

(i) Find that the parties have agreed to reconciliation and dismiss the petition; or

(ii) Find that the parties have not been reconciled, and that either party continues to allege that the marriage is irretrievably broken. When such facts are found, the court shall enter a decree of dissolution of the marriage.

(4) If the petitioner requests the court to decree legal separation in lieu of dissolution, the court shall enter the decree in that form unless the other party objects and petitions for a decree of dissolution or declaration of invalidity. [1973 1st ex.s. c 157 § 3.]

26.09.040 Petition to have marriage declared invalid or judicial determination of validity——Procedure——

Findings——Grounds——Legitimacy of children. (1) While both parties to an alleged marriage are living, and at least one party is resident in this state or a member of the armed service and stationed in the state, a petition to have the marriage declared invalid may be sought by:

(a) Either or both parties, or the guardian of an incompetent spouse, for any cause specified in subsection (4) of this section; or

(b) Either or both parties, the legal spouse, or a child of either party when it is alleged that the marriage is bigamous.

(2) If the validity of a marriage is denied or questioned at any time, either or both parties to the marriage may petition the court for a judicial determination of the validity of such marriage.

(3) In a proceeding to declare the invalidity of a marriage, the court shall proceed in the manner and shall have the jurisdiction, including the authority to provide for maintenance, custody, visitation, support, and division of the property of the parties, provided by this chapter.

(4) After hearing the evidence concerning the validity of a marriage, if both parties to the alleged marriage are still living, the court:

(a) If it finds the marriage to be valid, shall enter a decree of validity;

(b) If it finds that:

(i) The marriage should not have been contracted because of age of one or both of the parties, lack of required parental or court approval, a prior undissolved marriage of one or both of the parties, reasons of consanguinity, or because a party lacked capacity to consent to the marriage, either because of mental incapacity or because of the influence of alcohol or other incapacitating substances, or because a party was induced to enter into the marriage by force or duress, or by fraud involving the essentials of marriage, and that the parties have not ratified their marriage by voluntarily cohabiting after attaining the age of consent, or after attaining capacity to consent, or after cessation of the force or duress or discovery of the fraud, shall declare the marriage invalid as of the date it was purportedly contracted;

(ii) The marriage should not have been contracted because of any reason other than those above, shall upon motion of a party, order any action which may be appropriate to complete or to correct the record and enter a decree declaring such marriage to be valid for all purposes from the date upon which it was purportedly contracted;

(c) If it finds that a marriage contracted in a jurisdiction other than this state, was void or voidable under the law of the place where the marriage was contracted, and in the absence of proof that such marriage was subsequently validated by the laws of the place of contract or of a subsequent domicile of the parties, shall declare the marriage invalid as of the date of the marriage.

(5) Any child of the parties born or conceived during the existence of a marriage of record is legitimate and remains legitimate notwithstanding the entry of a declaration of invalidity of the marriage. [1975 c 32 § 2; 1973 1st ex.s. c 157 § 4.]

26.09.050 Provisions for child support, custody and visitation——Maintenance——Disposition of property and liabilities. In entering a decree of dissolution of marriage, legal separation, or declaration of invalidity, the court shall consider, approve, or make provision for child custody and visitation, the support of any child of the marriage entitled to support, the maintenance of either spouse, and the disposition of property and liabilities of the parties. [1973 1st ex.s. c 157 § 5.]

26.09.060 Temporary maintenance or child support——Temporary restraining order——Preliminary injunction. (1) In a proceeding for:

(a) Dissolution of marriage, legal separation, or a declaration of invalidity; or

(b) Disposition of property or liabilities, maintenance, or support following dissolution of the marriage by a court which lacked personal jurisdiction over the absent spouse; either party may move for temporary maintenance or for temporary support of children entitled to support. The motion shall be accompanied by an affidavit setting forth the factual basis for the motion and the amounts requested.

(2) As a part of a motion for temporary maintenance or support or by independent motion accompanied by affidavit, either party may request the court to issue a temporary restraining order or preliminary injunction, providing relief proper in the circumstances, and restraining or enjoining any person from:

(a) Transferring, removing, encumbering, concealing, or in any way disposing of any property except in the usual course of business or for the necessities of life, and, if so restrained or enjoined, requiring him to notify the moving party of any proposed extraordinary expenditures made after the order is issued;

(b) Molesting or disturbing the peace of the other party or of any child;

(c) Entering the family home or the home of the other party upon a showing of the necessity therefor;

(d) Removing a child from the jurisdiction of the court.

(3) The court may issue a temporary restraining order without requiring notice to the other party only if it finds on the basis of the moving affidavit or other evidence that irreparable injury could result if an order is not issued until the time for responding has elapsed.

(4) The court may issue a temporary restraining order or preliminary injunction and an order for temporary maintenance or support in such amounts and on such terms as are just and proper in the circumstances.

(5) A temporary order, temporary restraining order, or preliminary injunction:

(a) Does not prejudice the rights of a party or any child which are to be adjudicated at subsequent hearings in the proceeding;

(b) May be revoked or modified;

(c) Terminates when the final decree is entered or when the petition for dissolution, legal separation, or declaration of invalidity is dismissed. [1975 c 32 § 3; 1973 1st ex.s. c 157 § 6.]

26.09.070 Separation contracts. (1) The parties to a marriage, in order to promote the amicable settlement of disputes attendant upon their separation or upon the filing of a petition for dissolution of their marriage, a decree of legal separation, or declaration of invalidity of their marriage, may enter into a written separation contract providing for the maintenance of either of them, the disposition of any property owned by both or either of them, the custody, support, and visitation of their children and for the release of each other from all obligation except that expressed in the contract.

(2) If the parties to such contract elect to live separate and apart without any court decree, they may record such contract and cause notice thereof to be published in a legal newspaper of the county wherein the parties resided prior to their separation. Recording such contract and publishing notice of the making thereof shall constitute notice to all persons of such separation and of the facts contained in the recorded document.

(3) If either or both of the parties to a separation contract shall at the time of the execution thereof, or at a subsequent time, petition the court for dissolution of their marriage, for a decree of legal separation, or for a declaration of invalidity of their marriage, the contract, except for those terms providing for the custody, support, and visitation of children, shall be binding upon the court unless it finds, after considering the economic circumstances of the parties and any other relevant evidence produced by the parties on their own motion or on request of the court, that the separation contract was unfair at the time of its execution.

(4) If the court in an action for dissolution of marriage, legal separation, or declaration of invalidity finds that the separation contract was unfair at the time of its execution, it may make orders for the maintenance of either party, the disposition of their property and the discharge of their obligations.

(5) Unless the separation contract provides to the contrary, the agreement shall be set forth in the decree of dissolution, legal separation, or declaration of invalidity, or filed in the action or made an exhibit and incorporated by reference, except that in all cases the terms for custody, support, and visitation shall be set out in the decree, and the parties shall be ordered to comply with its terms.

(6) Terms of the contract set forth or incorporated by reference in the decree may be enforced by all remedies available for the enforcement of a judgment, including contempt, and are enforceable as contract terms.

(7) When the separation contract so provides, the decree may expressly preclude or limit modification of any provision for maintenance set forth in the decree. Terms of a separation contract pertaining to custody, support, and visitation of children and, in the absence of express provision to the contrary, terms providing for maintenance set forth or incorporated by reference in the decree are automatically modified by modification of the decree.

(8) If at any time the parties to the separation contract by mutual agreement elect to terminate the separation contract they may do so without formality unless the contract was recorded as in subsection (2) of this section, in which case a statement should be filed terminating the contract. [1973 1st ex.s. c 157 § 7.]

26.09.080 Disposition of property and liabilities—— Factors. In a proceeding for dissolution of the marriage, legal separation, declaration of invalidity, or in a proceeding for disposition of property following dissolution of the marriage by a court which lacked personal jurisdiction over the absent spouse or lacked jurisdiction to dispose of the property, the court shall, without regard to marital misconduct, make such disposition of the property and the liabilities of the parties, either community or separate, as shall appear just and equitable after considering all relevant factors including, but not limited to:

(1) The nature and extent of the community property;

(2) The nature and extent of the separate property;

(3) The duration of the marriage; and

(4) The economic circumstances of each spouse at the time the division of property is to become effective, including the desirability of awarding the family home or the right to live therein for reasonable periods to a spouse having custody of any children. [1973 1st ex.s. c 157 § 8.]

26.09.090 Maintenance orders for either spouse—— Factors. (1) In a proceeding for dissolution of marriage, legal separation, declaration of invalidity, or in a proceeding for maintenance following dissolution of the marriage by a court which lacked personal jurisdiction over the absent spouse, the court may grant a maintenance order for either spouse. The maintenance order shall be in such amounts and for such periods of time as the court deems just, without regard to marital misconduct, after considering all relevant factors including but not limited to:

(a) The financial resources of the party seeking maintenance, including separate or community property apportioned to him, and his ability to meet his needs independently, including the extent to which a provision for support of a child living with the party includes a sum for that party as custodian;

(b) The time necessary to acquire sufficient education or training to enable the party seeking maintenance to find employment appropriate to his skill, interests, style of life, and other attendant circumstances;

(c) The standard of living established during the marriage;

(d) The duration of the marriage;

(e) The age, physical and emotional condition, and financial obligations of the spouse seeking maintenance; and

(f) The ability of the spouse from whom maintenance is sought to meet his needs and financial obligations while meeting those of the spouse seeking maintenance. [1973 1st ex.s. c 157 § 9.]

26.09.100 Child support——Apportionment of expense. In a proceeding for dissolution of marriage, legal separation, declaration of invalidity, maintenance, or child support, after considering all relevant factors but without regard to marital misconduct, the court may order either or both parents owing a duty of support to any child of the marriage dependent upon either or both spouses to pay an amount reasonable or necessary for his support. [1973 1st ex.s. c 157 § 10.]

26.09.110 Minor or dependent child——Court appointed attorney to represent——Payment of costs, fees, and disbursements. The court may appoint an attorney to represent the interests of a minor or dependent child with respect to his custody, support, and visitation. The court shall enter an order for costs, fees, and disbursements in favor of the child's attorney. The order shall be made against either or both parents, except that, if both parties are indigent, the costs, fees, and disbursements shall be borne by the county. [1973 1st ex.s. c 157 § 11.]

Process——Domestic relations actions: Rules of court: CR 4.1.

26.09.120 Support or maintenance payments——To whom paid——Arrearages. (1) The court may, upon its own motion or upon motion of either party, order support or maintenance payments to be made to:

(a) The person entitled to receive the payments; or

(b) The department of social and health services pursuant to chapters 74.20 and 74.20A RCW; or

(c) The clerk of court as trustee for remittance to the person entitled to receive the payments.

(2) If payments are made to the clerk of court:

(a) The clerk shall maintain records listing the amount of payments, the date when payments are required to be made, and the names and addresses of the parties affected by the order; and

(b) The parties affected by the order shall inform the clerk of the court of any change of address or of other conditions that may affect the administration of the order; and

(c) The clerk of the court shall, if the party fails to make required payment, send by first class mail notice of the arrearage to the obligor. If payment of the sum due is not made to the clerk of the court within ten days after sending notice, the clerk of the court shall certify the amount due to the prosecuting attorney. [1973 1st ex.s. c 157 § 12.]

26.09.130 Support or maintenance payments——Order to make assignment of periodic earnings or trust income——Duty of payor to withhold and transmit. The court may order the person obligated to pay support or maintenance to make an assignment of a part of his periodic earnings or trust income to the person or agency entitled to receive the payments: *Provided*, That the provisions of RCW 7.33.280 in regard to exemptions in garnishment proceedings shall apply to such assignments. The assignment is binding on the employer, trustee or other payor of the funds two weeks after service upon him of notice that it has been made. The payor shall withhold from the earnings or trust income payable to the person obligated to support the amount specified in the assignment and shall transmit the payments to the person specified in the order. The payor may deduct from each payment a sum not exceeding one dollar as reimbursement for costs. An employer shall not discharge or otherwise discipline an employee as a result of a wage or salary assignment authorized by this section. [1973 1st ex.s. c 157 § 13.]

26.09.140 Payment of costs, attorney's fees, etc. The court from time to time after considering the financial resources of both parties may order a party to pay a reasonable amount for the cost to the other party of maintaining or defending any proceeding under this chapter and for reasonable attorney's fees or other professional fees in connection therewith, including sums for legal services rendered and costs incurred prior to the commencement of the proceeding or enforcement or modification proceedings after entry of judgment.

Upon any appeal, the appellate court may, in its discretion, order a party to pay for the cost to the other party of maintaining the appeal and attorney's fees in addition to statutory costs.

The court may order that the attorney's fees be paid directly to the attorney who may enforce the order in his name. [1973 1st ex.s. c 157 § 14.]

26.09.150 Decree of dissolution of marriage, legal separation, or declaration of invalidity——Finality——Appeal——Conversion of decree of legal separation to decree of dissolution——Name of wife. A decree of dissolution of marriage, legal separation, or declaration of invalidity is final when entered, subject to the right of appeal. An appeal which does not challenge the finding that the marriage is irretrievably broken or was invalid, does not delay the finality of the dissolution or declaration of invalidity and either party may remarry pending such an appeal.

No earlier than six months after entry of a decree of legal separation, on motion of either party, the court shall convert the decree of legal separation to a decree of dissolution of marriage. The clerk of court shall complete the certificate as provided for in RCW 70.58.200 on the form provided by the department of social and health services. On or before the tenth day of each month, the clerk of the court shall forward to the state registrar of vital statistics the certificate of each decree of divorce, dissolution of marriage, annulment, or separate maintenance granted during the preceding month.

Upon request by a wife whose marriage is dissolved or declared invalid, the court shall order a former name restored and may, on motion of either party, for just and reasonable cause, order the wife to assume a name other than that of the husband. [1973 1st ex.s. c 157 § 15.]

26.09.160 Failure to comply with decree or temporary injunction——Obligation to make support or maintenance payments or permit visitation not suspended——Motion. If a party fails to comply with a provision of a decree or temporary order of injunction, the obligation of the other party to make payments for support or maintenance or to permit visitation is not suspended, but he may move the court to grant an appropriate order. [1973 1st ex.s. c 157 § 16.]

26.09.170 Modification of decree for maintenance or support, property disposition——Termination of maintenance obligation and child support——Grounds. Except as otherwise provided in subsection (7) of RCW 26.09.070, the provisions of any decree respecting maintenance or support may be modified only as to installments accruing subsequent to the motion for modification and only upon a showing of a substantial change of circumstances. The provisions as to property disposition may not be revoked or modified, unless the court finds the existence of conditions that justify the reopening of a judgment under the laws of this state.

Unless otherwise agreed in writing or expressly provided in the decree the obligation to pay future maintenance is terminated upon the death of either party or the remarriage of the party receiving maintenance.

Unless otherwise agreed in writing or expressly provided in the decree, provisions for the support of a child are terminated by emancipation of the child or by the death of the parent obligated to support the child. [1973 1st ex.s. c 157 § 17.]

26.09.180 Child custody proceeding——Commencement——Notice——Intervention. (1) A child custody proceeding is commenced in the superior court:

(a) By a parent:

(i) By filing a petition for dissolution of marriage, legal separation or declaration of invalidity; or

(ii) By filing a petition seeking custody of the child in the county where the child is permanently resident or where he is found; or

(b) By a person other than a parent, by filing a petition seeking custody of the child in the county where the child is permanently resident or where he is found, but only if the child is not in the physical custody of one of its parents or if the petitioner alleges that neither parent is a suitable custodian.

(2) Notice of a child custody proceeding shall be given to the child's parent, guardian and custodian, who may appear and be heard and may file a responsive pleading. The court may, upon a showing of good cause, permit the intervention of other interested parties. [1973 1st ex.s. c 157 § 18.]

26.09.190 Child custody——Relevant factors in awarding custody. The court shall determine custody in accordance with the best interests of the child. The court shall consider all relevant factors including:

(1) The wishes of the child's parent or parents as to his custody and as to visitation privileges;

(2) The wishes of the child as to his custodian and as to visitation privileges;

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

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

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

The court shall not consider conduct of a proposed guardian that does not affect the welfare of the child. [1973 1st ex.s. c 157 § 19.]

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

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

If a custody proceeding commenced in the absence of a petition for dissolution of marriage, legal separation, or declaration of invalidity, (subsection (1) of RCW 26.09.180) is dismissed, any temporary order is vacated. [1973 1st ex.s. c 157 § 20.]

26.09.210 Child custody——Interview with child by court——Advice of professional personnel. The court may interview the child in chambers to ascertain the child's wishes as to his custodian and as to visitation privileges. The court may permit counsel to be present at the interview. The court shall cause a record of the interview to be made and to be made part of the record in the case.

The court may seek the advice of professional personnel whether or not they are employed on a regular basis by the court. The advice given shall be in writing and shall be made available by the court to counsel upon request. Counsel may call for cross-examination any professional personnel consulted by the court. [1973 1st ex.s. c 157 § 21.]

26.09.220 Child custody——Investigation and report. (1) In contested custody proceedings, and in other custody proceedings if a parent or the child's custodian so requests, the court may order an investigation and report concerning custodian arrangements for the child. The investigation and report may be made by the staff of the juvenile court or other professional social service organization experienced in counseling children and families.

(2) In preparing his report concerning a child, the investigator may consult any person who may have information about the child and his potential custodian arrangements. Upon order of the court, the investigator may refer the child to professional personnel for diagnosis. The investigator may consult with and obtain information from medical, psychiatric, or other expert persons who have served the child in the past without obtaining the consent of the parent or the child's custodian; but the child's consent must be obtained if he has reached the age of twelve, unless the court finds that he lacks mental capacity to consent. If the requirements of subsection (3) of this section are fulfilled, the investigator's report may be received in evidence at the hearing.

(3) The court shall mail the investigator's report to counsel and to any party not represented by counsel at least ten days prior to the hearing unless a shorter time is ordered by the court for good cause shown. The investigator shall make available to counsel and to any party not represented by counsel the investigator's file of underlying data and reports, complete texts of diagnostic reports made to the investigator pursuant to the provisions of subsection (2) of this section, and the names and addresses of all persons whom the investigator has consulted. Any party to the proceeding may call the investigator and any person whom he has consulted for cross-examination. A party may not waive his right of cross-examination prior to the hearing. [1973 1st ex.s. c 157 § 22.]

Authority to make reports to assist courts of other states: RCW 26.27.200.

26.09.230 Child custody——Priority status of proceedings——Hearing——Record——Expenses of witnesses. Custody proceedings shall receive priority in being set for hearing.

Either party may petition the court to authorize the payment of necessary travel and other expenses incurred by any witness whose presence at the hearing the court deems necessary to determine the best interests of the child.

The court without a jury shall determine questions of law and fact. If it finds that a public hearing may be detrimental to the child's best interests, the court may exclude the public from a custody hearing, but may admit any person who has a direct and legitimate interest in the work of the court.

If the court finds it necessary to protect the child's welfare that the record of any interview, report, investigation, or testimony in a custody proceeding be kept secret, the court may make an appropriate order sealing the record. [1973 1st ex.s. c 157 § 23.]

26.09.240 Child custody——Visitation rights. A parent not granted custody of the child is entitled to reasonable visitation rights unless the court finds, after a hearing, that visitation would endanger the child's physical, mental, or emotional health. The court may order visitation rights for any person when visitation may serve the best interest of the child whether or not there has been any change of circumstances.

Any person may petition the court for visitation rights at any time including, but not limited to, custody proceedings.

The court may modify an order granting or denying visitation rights whenever modification would serve the best interests of the child but the court shall not restrict a parent's visitation rights unless it finds that the visitation would endanger the child's physical, mental, or emotional health. [1977 ex.s. c 271 § 1; 1973 1st ex.s. c 157 § 24.]

26.09.250 Child custody——Powers and duties of custodian——Supervision by appropriate agency when necessary. Except as otherwise agreed by the parties in writing at the time of the custody decree, the custodian may determine the child's upbringing, including his education, health care, and religious training, unless the court after hearing, finds, upon motion by the noncustodial parent, that in the absence of a specific limitation of the custodian's authority, the child's physical, mental, or emotional health would be endangered.

If both parents or all contestants agree to the order, or if the court finds that in the absence of the order the child's physical, mental, or emotional health would be endangered, the court may order an appropriate agency which regularly deals with children to exercise continuing supervision over the case to assure that the custodial or visitation terms of the decree are carried out. Such order may be modified by the court at any time upon petition by either party. [1973 1st ex.s. c 157 § 25.]

26.09.260 Child custody decree——Modification. (1) The court shall not modify a prior custody decree unless it finds, upon the basis of facts that have arisen since the prior decree or that were unknown to the court at the time of the prior decree, that a change has occurred in the circumstances of the child or his custodian and that the modification is necessary to serve the best interests of the child. In applying these standards the court shall retain the custodian established by the prior decree unless:

(a) The custodian agrees to the modification;

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

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

(2) If the court finds that a motion to modify a prior custody order has been brought in bad faith, the court shall assess the attorney's fees and court costs of the custodian against the petitioner. [1973 1st ex.s. c 157 § 26.]

26.09.270 Child custody——Temporary custody order or modification of custody decree——Affidavits required. A party seeking a temporary custody order or modification of a custody decree shall submit together with his motion, an affidavit setting forth facts supporting the requested order or modification and shall give notice, together with a copy of his affidavit, to other

parties to the proceedings, who may file opposing affidavits. The court shall deny the motion unless it finds that adequate cause for hearing the motion is established by the affidavits, in which case it shall set a date for hearing on an order to show cause why the requested order or modification should not be granted. [1973 1st ex.s. c 157 § 27.]

26.09.280 Child custody or support actions or proceedings——Venue. Hereafter every action or proceeding to change, modify, or enforce any final order, judgment, or decree heretofore or hereafter entered in any dissolution or legal separation or declaration concerning the validity of a marriage, whether under this chapter or prior law, in relation to the care, custody, control, or support of the minor children of the marriage may be brought in the county where said minor children are then residing, or in the court in which said final order, judgment, or decree was entered, or in the county where the parent or other person who has the care, custody, or control of the said children is then residing. [1975 c 32 § 4; 1973 1st ex.s. c 157 § 28.]

26.09.290 Final decree of divorce nunc pro tunc. Whenever either of the parties in a divorce action is, under the law, entitled to a final judgment, but by mistake, negligence, or inadvertence the same has not been signed, filed, or entered, if no appeal has been taken from the interlocutory order or motion for a new trial made, the court, on the motion of either party thereto or upon its own motion, may cause a final judgment to be signed, dated, filed, and entered therein granting the divorce as of the date when the same could have been given or made by the court if applied for. The court may cause such final judgment to be signed, dated, filed, and entered nunc pro tunc as aforesaid, even though a final judgment may have been previously entered where by mistake, negligence or inadvertence the same has not been signed, filed, or entered as soon as such final judgment, the parties to such action shall be deemed to have been restored to the status of single persons as of the date affixed to such judgment, and any marriage of either of such parties subsequent to six months after the granting of the interlocutory order as shown by the minutes of the court, and after the final judgment could have been entered under the law if applied for, shall be valid for all purposes as of the date affixed to such final judgment, upon the filing thereof. [1973 1st ex.s. c 157 § 29.]

26.09.300 Restraining orders——Notice——Refusal to comply——Penalty——Defense. (1) Any person having had actual notice of the existence of a restraining order issued by a court of competent jurisdiction in an action for the dissolution of a marriage under this chapter who refuses to comply with the provisions of such order when requested by any peace officer of the state shall be guilty of a misdemeanor.

(2) The notice requirements of subsection (1) may be satisfied by the peace officer giving oral or written evidence to the person subject to the order by reading from or handing to that person a copy certified to be an accurate copy of the original on file by a notary public or the clerk of the court of the court order which copy may be supplied by the court, the complainant or the complainant's attorney.

(3) The remedies provided by this section shall not apply unless restraining orders subject to this section shall bear the legend: VIOLATION OF THIS ORDER WITH ACTUAL NOTICE OF ITS TERMS IS A CRIMINAL OFFENSE UNDER CHAPTER 26.09 RCW AND IS ALSO SUBJECT TO CIVIL CONTEMPT PROCEEDINGS.

(4) It is a defense to prosecution under subsection (1) of this section that the court order was issued contrary to law or court rule: *Provided*, That no right of action shall accrue against any peace officer acting upon a properly certified copy of a court order lawful on its face if such officer employs otherwise lawful means to effect the arrest. [1974 ex.s. c 99 § 1.]

26.09.900 Construction——Pending divorce actions. Notwithstanding the repeals of prior laws enumerated in section 30, chapter 157, Laws of 1973 1st ex. sess., actions for divorce which were properly and validly pending in the superior courts of this state as of the effective date of such repealer (July 15, 1973) shall be governed and may be pursued to conclusion under the provisions of law applicable thereto at the time of commencement of such action and all decrees and orders heretofore or hereafter in all other respects regularly entered in such proceedings are declared valid: *Provided*, That upon proper cause being shown at any time before final decree, the court may convert such action to an action for dissolution of marriage as provided for in RCW 26.09.901. [1974 ex.s. c 15 § 1.]

26.09.901 Conversion of pending action to dissolution proceeding. Any divorce action which was filed prior to July 15, 1973 and for which a final decree has not been entered on February 11, 1974, may, upon order of the superior court having jurisdiction over such proceeding for good cause shown, be converted to a dissolution proceeding and thereafter be continued under the provisions of this chapter. [1974 ex.s. c 15 § 2.]

26.09.902 RCW 26.09.900 and 26.09.901 deemed in effect on July 16, 1973. The provisions of RCW 26.09.900 and 26.09.901 are remedial and procedural and shall be construed to have been in effect as of July 16, 1973. [1974 ex.s. c 15 § 3.]

26.09.905 Construction of chapter with uniform child custody jurisdiction act (chapter 26.27 RCW). See RCW 26.27.900.

Chapter 26.12
FAMILY COURT

Sections

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-2991

February 15, 1982

MEMORANDUM

TO: Representative Mike Beirne
Attn: Jody Sutherland

FROM: Christine Johnson, Research Staff

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
47th Legislature
1982 Regular Session

by Committee on Ethics, Law & Justice (originally sponsored by Representatives Wang, Ellis, Armstrong, Owen, Patrick, Tupper, Becker, King (J), Winsley, Brown, Berleen, Granlund, Mitchell, Vander Stoep, Salatino, Lewis, Hankins, Johnson, Sherman and Teutsch)

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

AN ACT Relating to child custody; amending section 9A.40.050, chapter 260, Laws of 1975 1st ex. sess. and RCW 9A.40.050; amending section 19, chapter 157, Laws of 1973 1st ex. sess. and RCW 26.09.190; amending section 20, chapter 157, Laws of 1973 1st ex. sess. and RCW 26.09.200; amending section 26, chapter 157, Laws of 1973 1st ex. sess. and RCW 26.09.260; amending section 28, chapter 157, Laws of 1973 1st ex. sess. as amended by section 4, chapter 32, Laws of 1975 and RCW 26.09.280; amending section 9, chapter 50, Laws of 1949 and RCW 26.12.090; amending section 10, chapter 50, Laws of 1949 and RCW 26.12.100; amending section 12, chapter 50, Laws of 1949 and RCW 26.12.120; amending section 18, chapter 50, Laws of 1949 and RCW 26.12.180; amending section 19, chapter 50, Laws of 1949 and RCW 26.12.190; amending section 20, chapter 50, Laws of 1949 and RCW 26.12.200; adding new sections to chapter 26.09 RCW; creating a new section; prescribing penalties; and providing an effective date.

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

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

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

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

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

Sec. 3. Section 19, chapter 157, Laws of 1973 1st ex. sess. and RCW 26.09.190 are each amended to read as follows:

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

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

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

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

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

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

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

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

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

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

(1) Residential arrangements for the child;

(2) Financial resources in support of the child;

(3) Frequent and continuing contact with the parties when such contact is appropriate;

(4) Subsequent amendments of the plan in the event of the relocation of a party or other major changes affecting the minor child; and

(5) Resolution of disputes which may arise between the parties.

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

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

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

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

(i) Residential arrangements for the child;

(ii) Provisions for resources in support of the child;

(iii) Provisions for amendments to the implementation plan adopted by the court; and

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

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

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

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

Sec. 7. Section 20, chapter 157, Laws of 1973 1st ex. sess. and RCW 26.09.200 are each amended to read as follows:

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

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

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

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

Sec. 8. Section 26, chapter 157, Laws of 1973 1st ex. sess. and RCW 26.09.260 are each amended to read as follows:

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

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

(a) The custodian agrees to the modification;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Prior to the filing of any action for ((divorce, annulment--or--separate--maintenance)) dissolution of marriage, legal separation, or declaration concerning the validity of a marriage, either spouse or both spouses may file in the family court a petition invoking the jurisdiction of the court for the purpose of preserving the marriage by mediating or effecting a reconciliation between the parties or for amicable settlement of the controversy between the spouses so as to avoid further litigation over the issue involved. Prior to the filing of any action for child custody or modification of an order for child custody, any party may file in the family court a petition invoking the jurisdiction of the court for the purpose of mediating or effecting an amicable settlement of the controversy between the parties so as to avoid further litigation over the issue involved. In any case where an action for ((divorce, annulment--or--separate--maintenance)) dissolution of marriage, legal separation, a declaration concerning the validity of a marriage, child custody, or modification of an order for child custody shall have been filed, either party thereto may by petition filed therein have the cause transferred to the family court for proceedings in the same manner as though action had been instituted in the family court in the first instance.

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

The petition shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. CSHB 210
Title An Act Relating to Child Custody
Requested by House Judiciary Committee Date 3/3/82

II. FISCAL DETAIL
Agency Affected Alaska Court System
Program Category Affected Trial Courts
BRU, Program, Or Subprogram(s) Affected
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS,CLAIMS,ETC.						
TOTAL	0	0	0	0	0	0

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

IV. DATE 3/3/82 PREPARED BY Richard P. Barrier
AGENCY Alaska Court System
PHONE 264-0545

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)
33-001 (Rev. 12/81)

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. CSHB 210 (HESS)
Title "An act relating to child custody."
Requested by Repr. Barnes, House Judiciary Date March 9, 1982

II. FISCAL DETAIL
Agency Affected Department of Law
Program Category Affected General Government
BRU, Program, Or Subprogram(s) Affected Legal Services
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS,CLAIMS,ETC.						
TOTAL	Ø	Ø	Ø	Ø	Ø	Ø

FUNDING (Thousands of Dollars)

GENERAL FUND	Ø	Ø	Ø	Ø	Ø	Ø
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

FULL TIME	Ø	Ø	Ø	Ø	Ø	Ø
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

This bill involves child custody upon the separation of parents or the dissolution of a marriage which is a matter between private parties and it will therefore not have a fiscal impact on any of the department's activities.

Richard I. Peques

IV. DATE March 9, 1982 PREPARED BY Richard I. Peques, Director, Admin. Svcs.
AGENCY Department of Law
PHONE 465-3672

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)
33-001 (Rev. 12/81)

The need for Alaska to switch to 'joint custody' of children

by John Havelock

A BILL NOW pending in the Legislature would make "joint custody" the presumptive form of custody of children in divorce proceedings. This bill should pass.

Up to the late 19th century, children, along with wives, were treated in the law as a special form of property of men. In the rare event of a divorce, the man, of course, kept his property in any children of the union.

Women in the 20th century have shucked off the remnants of their role as property, but the powerful analogy of property rights applied to children has persisted in a number of legal arrangements. Now, the man no longer keeps his title to children. As a new, early 20th century image of woman as omniscient nurturant emerged, the title in children has been customarily passed by the courts to the divorced woman.

THE CHILD'S INTEREST. But children should not be treated on an analogy to property. If a child of divorcing parents, thinking of her own best interests, could speak for herself she would say, "I am not interested in being under the exclusive control of one of you. I want to maximize my relationship with each of you, despite the circumstance that you will live apart."

Joint custody, adopted by California as the presumptive first choice among custody arrangements in 1979, recognizes that the child's logical preference should be honored to the extent possible. Joint custody arrangements can be worked out to fit the personal circumstances of each parent and child.

The current preference in fact for single parent custody has burdened the rest of society with a heavy burden of direct and indirect costs. Unfortunately, but understandably, the parent who "loses" custody will tend to divorce the child along with the parent.

SOLE CUSTODY COST. Directly, this translates into a massive national legal system for the pursuit, frequently unsuccessful, of child support payments and public welfare costs for aid to dependent children. The non-custodial parent, psychologically severed from the child, is permitted to consider the support obligation on the same level as the overdrawn revolving credit account at Sears. In fact, it may be much worse as the non-custodial parent is allowed to indulge in the fantasy that the support payment is actually being used to support the custodial parent in a life of idle debauchery.

Joint custody will not, of course, result in the dismantling of the child support and welfare systems. We will continue to have parents who will prefer to be shed of the child along with the parent. There are lots of people who do not have the psychic capacity to be parents while (regrettably) maintaining the biological capacity. But as joint custody becomes the most common form of custodial relationship, it will help reduce these system costs.

The child is the hook. To the extent that the law supports the customary and natural obligation of a parent to care in an immediate sense for the welfare of a child it will strengthen the parent's psychological stake in the child. That link of direct responsibility and caring, in turn, supports the child's claim on the parent for economic support.

RELATION TO DELINquency. The indirect social costs of forced single parent custody are, of course, greater than the direct. When we speak of a child who is the "product" of a "broken" home, we are referring to a child who has been victimized by his divorcing parents. Both parents have put their preference for combat before the interest of the child. Regrettably, the law encourages the adversarial disposition of the child's interests in the context of parental warfare over property and emotional injury.

There is no necessity in this. A divorce need not be a calamity for the child. The divorce becomes the child's disaster to the extent that the relationship with one of the parents is seriously diminished and the role model and learning bond severed. The society bears this cost in delinquent acting out by the hurt and angry child.

CHANGING MARRIAGE CUSTOMS. A generation ago, custom dictated that unhappy parents stick together "for the sake of the children." The current conventional wisdom is that the state of unhappiness in such cases was such that the interests of the child were not in fact served by the cohabitation. However, it is likely that in many cases the parental sacrifice worked, when one or the other spouse adjusted to a lower expectation from the marriage relationship.

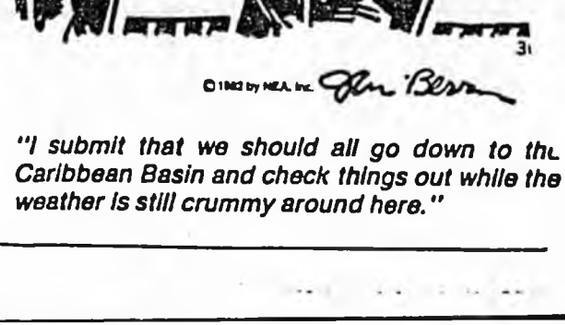
Contemporary adult Americans are less likely to sacrifice their own interests on this justification. For better or worse the trend to multiple marriages continues. Its increasing ordinariness has made divorce less explosive and less painful for parent and child alike.

The last remnants of "fault" divorce are now eliminated from the statutes. But our treatment of custody as an adversarial contest of title in the child remains.

While recognizing the best interests of the child in a number of other legal arrangements, the law of child custody has not kept up with the changing social order. We incorrectly assume that the child's interest consists of putting all the chips in one basket. On the contrary, in a divorce, the presumptive best interest of the child is to maximize her relationship with each parent. Alaska should follow California in encouraging joint custodial arrangements.

John Havelock is director of legal studies at the University of Alaska, Anchorage. He served as attorney general to Gov. William A. Egan, was a White House Fellow in the Johnson administration and has won several Alaska Press Club awards for writing.

Berry's World



"I submit that we should all go down to the Caribbean Basin and check things out while the weather is still crummy around here."

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.

Alaska State Legislature

House of Representatives

Committee on

Health, Education & Social Services

Official Business

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".

Box 381
Kenai, Alaska 99611
22 Feb. 1982

HB 210

Members of the HESS Commitee

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 coustody 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 developements 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 counciled patience,nothing but positive involvement with Rachel's mother in the future, and further poitive 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.

Alaska State Legislature

House of Representatives

Official Business

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

1/25/82

1/15/82

6320 LOST CIRCLE
ANCH. AK
99502

REPRESENTATIVE JOE MONTGOMERY
POUCH V
JUNEAU, AK
99811

DEAR MR. MONTGOMERY,

I AM A REGISTERED VOTER IN THE 12th 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 COMITTED. 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 SUCESSFUL CAREERS. IN ESSENCE, WOMEN HAVE BECOME SOCIO-ECCONOMICALLY 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 NOTURING 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 OOTSIDE 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 IN 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 SUCESSFUL ONE.

SINCERELY

Kathi Green

Memorandum

Alaska Court System

TO:
Grant Callow
Staff Counsel

DATE : March 9, 1981

FROM: William D. Hitchcock
Master, Trial Courts

SUBJECT: HB 210

At this stage, I have only a few brief remarks and observations about this bill which I want to pass on to you. The concept of shared or joint custody is an appealing one from a philosophical standpoint but in practicality it has many pitfalls. Even where all of the objective criteria of close geographic proximity of the parents and ease of travel are met, the fact remains that the adults involved have been unable to reconcile their various differences and may be equally as incapable of agreeing on the ongoing decisions in the life of their child or children. Joint custody has been a very popular "cause" around the country. In my contacts with other judges from around the nation at the National Judicial College family law course in Reno last year, I have found that there is an overall skepticism as to how well joint custody is working in fact. I would venture to say that a general sampling of opinion among judges, domestic relations practitioners and professional counsellors in this state would yield a similar result.

Assuming however that the bill may already be a fait accompli, there are certain considerations which the court needs to deal with. One of these is to assess possible fiscal impacts this bill would have. If courts are going to be routinely presented with shared custody agreements by parties in consensual petitions, e.g. dissolutions, I submit that the court is going to have to rely heavily on professional evaluations of the wisdom of those plans. While it may be philosophically appealing to view such services as coming from the private sector, the hard economic realities are that most parents in dissolution proceedings are not going to be in a position to pay for these. Therefore, the court is either going to have to field these proposals from the bench or have the investigative resources at its disposal to review them. My recommendation is therefore that the court, if it is going to support this bill at all, give serious consideration to mandating and providing statewide custody investigation services within the system.

I am also concerned as to the meaning of the mediation provision, A.S 25.20.080. Does that cover child custody investigation as well or is it solely traditional mediation? I believe I have clarified the section regarding guardian ad litem appointments. That appears to be nothing more than a restatement of existing language which is already within A.S.9.55.205 rather than any new requirement mandating GAL appointments in all cases.

cc: Victor D. Carlson
Andrew M. Brown

Adm. F-1
Rev. 2-73

Trial Courts
State of Alaska
THIRD JUDICIAL DISTRICT
303 K STREET
ANCHORAGE, ALASKA 99501

RALPH E. MOODY
Presiding Judge

April 9, 1981

Mr. William Grant Callow, II
General Counsel to Administrative Director
Alaska Court System
303 K Street
Anchorage, Alaska 99501

Re: Presumptive Joint Custody

Dear Mr. Callow:

I wish to convey to you my concurrence in the opinions expressed by the Honorable J. Justin Ripley on April 7, 1981, with regard to presumptive joint custody.

Sincerely,

Ralph E. Moody
Presiding Judge

REM:dpd

cc: A. H. Snowden, II
Judge J. Justin Ripley
Judge Victor D. Carlson
Master William Hitchcock
Master Andrew Brown
Francis Stevens

POSITION PAPER/Department of Health & Social Services

POSITION PAPER

CS FOR HOUSE BILL NO. 210 (HESS)

"An Act relating to child custody."

CS for House Bill No. 210 (HESS) provides a statutory basis for shared custody in judgements for custody. The Department feels the Committee Substitute improves on the original Bill. However, we would still question the language in Section 09.55.205(c) due to the deletion of the phrase, "all relevant factors include." This deletion seems to imply that the court's considerations are limited to those factors delineated in the section. It is felt that in the best interests of the child "all relevant factors" should be considered.

In addition, the Department would recommend that the definition of shared custody not necessarily include physical custody. This stems from the concept that, whenever possible, shared physical custody, as well as legal custody, is beneficial but recognizes that shared physical custody is not always possible.

RECOMMENDED BY: John R. Pugh

John R. Pugh, Director
Division of Family and
Youth Services

DATE: 1/29/82

APPROVED BY: Helen D. Beirne

Helen D. Beirne
Commissioner

DATE: 3-10-82

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. CS for House Bill No. 210 (HESS)
Title "An Act relating to child custody."
Requested by _____ Date _____

II. FISCAL DETAIL
Agency Affected Department of Health and Social Services
Program Category Affected _____
BRU, Program, Or Subprogram(s) Affected _____
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS,CLAIMS,ETC.						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS	-0-	-0-	-0-	-0-	-0-	-0-
OTHER (Specify Source)	-0-	-0-	-0-	-0-	-0-	-0-
	-0-	-0-	-0-	-0-	-0-	-0-
	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS

FULL TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART TIME	-0-	-0-	-0-	-0-	-0-	-0-
TEMPORARY	-0-	-0-	-0-	-0-	-0-	-0-

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

CS for House Bill No. 210 (HESS) has no fiscal impact on the Department of Health and Social Services.

IV. DATE 1/28/82 PREPARED BY R. Pugh John R. Pugh, Director
AGENCY Division of Family and Youth Services
PHONE 465-3170

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)
33-001 (Rev. 12/81)

fcc