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532



ALASKA BAR ASSOCIATION

P.O. BOX 279, ANCHORAGE, ALASKA 99510, (907) 272-7469

FAMILY LAW SECTION

RE: HB 532 (RULES)
MONDAY CALENDAR
FEB 22, 1982

February 3, 1982

EXECUTIVE COMMITTEE

CHAIRPERSON

John E. Reese
920 W. 6th Avenue
Anchorage, Alaska 99501
(907) 276-5231

Senator Tim Kelly
and Chairman, Senate Rules Committee
Pouch V
Juneau, AK 99811

MEMBERS

Judith J. Bazeley
Anchorage

Max F. Gruenberg, Jr.
Anchorage

William D. Hitchcock
Anchorage

Timothy M. Lynch
Anchorage

BOARD LIAISON

Harold M. Brown
Ketchikan

Re: HB 532, "An Act Providing for the
Visitation Rights to Grandparents"

Dear Senator Kelly:

I am writing on behalf of the Family Law Section of the Alaska Bar Association, which urges that AS 09.55.205 be amended to provide for an award of visitation rights to grandparents and other persons in the court's discretion. This will broaden the power of the court to award visitation to persons such as brothers and sisters, stepparents, aunts and uncles, etc. We support the above bill, but believe it is too narrow, being limited to grandparents. We would like to amend it to include "other persons" in the court's discretion.

Enclosed please find a copy of the present bill and our proposed amendment. The amendment would be simple, merely changing the title and adding the phrase "or any other persons" after "grandparents" on line 17 of page 1.

Enclosed also please find a reprint from the Family Law Reporter showing the recent trend around the country concerning this type of legislation. In Hawaii, Ohio, Virginia, Utah and Washington, any person or relative who has an interest in the welfare of the child may obtain visitation privileges if the court determines it is in the child's best interests. Our proposed legislation will do exactly that.

We would request that the Senate Rules Committee amend the bill accordingly. I would be willing to testify or submit any other evidence on behalf of the Alaska Bar Association Family Law Section if you so desire. We are also prepared to assist in obtaining the House's concurrence in this amendment.

MARRIAGE — REMARRIAGE — DURATION — MAINTENANCE

If a husband and wife divorce, remarry each other, and divorce again, the second marriage is to be viewed as a "continuation" of the first for the purpose of determining the amount of maintenance to be awarded, the Missouri Court of Appeals, Eastern District, decides. "Where, as here, children were born of the marriage and the wife was the homemaker, the financial, social and employment

status of the parties has been influenced by the totality of their relationship," the court says, so the total number of years of marriage should be considered. Although the issue had not previously been decided in Missouri, the court notes, courts in Iowa, Alabama, Montana, and California have considered the issue "tangentially" and have viewed both marriages as one for maintenance purposes. (*Toomey v. Toomey*; Mo CtApp EDist, 6/16/81)

IN THE LEGISLATURES



TRENDS IN GRANDPARENT THIRD-PARTY VISITATION RIGHTS LEGISLATION

Most states should have enacted legislation by year's end.

As the nation's divorce rate has climbed, the issue of grandparents' visitation rights has grown in importance. Out of concern for maintaining family relationships that can provide emotional security for the children of divorced parents, most states over the last decade have considered legislation to establish procedures by which grandparents and other family members can petition for visitation rights.

Prior to 1979, only a dozen or so states had enacted such statutes. The courts were given authority to grant grandparents visitation if it was determined to be in the best interests of the children of divorced parents. In some states the law included rights for grandparents who wanted access to the children of a deceased child.

In 1979 and 1980, at least 18 additional states passed laws on the point, bringing to 34 the number of jurisdictions in which grandparents were provided specific rights.

In 1981, the legislatures of seven more states took up the issue. In Indiana and Maryland, bills already have been signed into law. In Nebraska, a bill (HB 503) was killed in the Senate. Alaska, Mississippi, and South Carolina, where bills were introduced this term, may enact laws before adjournment. By the end of this year, grandparents' visitation laws may be on the books in as many as 40 states.

The legislation comes in all forms — from broad provisions that include not only grandparents but also other persons or relatives, to narrow laws that provide standing only when a parent is deceased. Some statutes allow a grandparent's petition only during a divorce proceeding, while others permit a hearing at any time after divorce.

In Hawaii, Ohio, Virginia, Utah, and Washington, any person or relative who has an interest in the welfare of the child may obtain visitation privileges if the court determines it is in the child's best interests.

In Alabama, Arkansas, Florida, New Hampshire, and West Virginia, the grandparents may be heard only in the context of a divorce or custody proceeding. But in most other states the petition may be heard anytime after separation or divorce. An Indiana law specifies that a grandparent may petition if the child is in the custody of foster parents.

Whether adoption of the child by a stepparent or a third party cuts off a grandparent's visitation rights has been addressed in only a few states. In Montana and New Mexico, for example, the statute specifically denies rights to the grandparents after adoption, unless the adoptive parent is a stepparent or a grandparent. In most other states the law on this point is unclear. However, in Missouri and Oklahoma, bills that make it clear that adoption does not terminate a grandparent's right to visitation are pending. And in Oregon, a bill under study provides that if a stepparent is the adoptive parent, adoption does not cut off grandparent visitation.

Two facts become evident after a survey of the state law on visitation rights for grandparents. First, it is easier to list the states where there is no law enacted or pending. These are Arizona, Kentucky, Maine, Massachusetts, Nebraska, North Dakota, South Dakota, Vermont, and Wyoming.

Second, in states where some grandparent visitation law is already in force, the trend appears to be to extend the law to include other relatives (such as great-grandparents, stepparents, half-brothers and half-sisters, or to include any interested person in the statute) and to broaden the court's jurisdiction to consider the petition at any time.

REPORTS, PROPOSALS AND RULINGS

NEW JERSEY SUPREME COURT ISSUES DIVORCE PRACTICE REPORT

Committee recommends greater use of enforcement mechanisms, speedier custody dispute resolution, aid to pro se litigants, and use of settlement techniques.

The New Jersey Supreme Court has released the Final Report of its Supreme Court Committee on Matrimonial

Litigation. The report is the culmination of a two-year, extensive effort to review all aspects of matrimonial practice. The Committee, chaired by Associate Justice Morris Pashman, pursued the goal of transforming "doing justice" in family controversies from an object of cynicism to a more legitimate expectation."

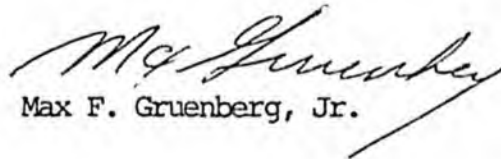
The report covers a wide range of subjects dealing with divorce. Most notable are its emphasis on the importance of enforcement; its recommendations concerning the

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When the Family Law Section took up this proposed amendment, we were frankly unaware that any such bill had been introduced in the Legislature or that it has been passed by the House and was awaiting final action in Senate Rules. It is for this reason that we are asking Senate Rules to make this amendment. I am unaware of any objection to this amendment and would urge your favorable consideration of it.

Thank you very much. I would appreciate knowing whether the above amendment is acceptable to you.

Cordially,


Max F. Gruenberg, Jr.

MFG/mt
Encls.

cc: Senator Mike Colletta
Senator Ed Dankworth
Senator Frank Ferguson
Senator Vic Fischer
Senator J. Kertula
Senator Charles Parr
Senator Pat Rodey
Senator Terry Stimson
Senator Arlis Sturgulewski
Senator Robert Ziegler
Representative Michael Beirne, Attn: Jody Sutherland
Representative Don Clocksin
Representative Mike Miller
John Reese, Chairman, Family Law Committee
William Hitchcock, Standing Master, Alaska Court System
Judith Basely, Member, Family Law Committee

POSITION PAPER

HOUSE BILL NO. 532

"An Act providing for the award of visitation rights to grandparents."

House Bill No. 532 adds to the section on visitation rights in judgments for custody during divorce or legal separation actions by providing that grandparents be allowed visitation rights. The fact that parents choose to divorce each other should not automatically preclude the child from visiting grandparents who love a child and can give him emotional support. Sometimes the conflict between parents serves to cut off a child from his grandparents; this may not be in the best interests of the child.

The Department of Health and Social Services is, therefore, supportive of House Bill No. 532.

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

DATE: 5/6/81

APPROVED BY: Helen D. Beirne
Helen D. Beirne
Commissioner

DATE: 5-11-81

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. HOUSE BILL NO. 532
 Title "An Act providing for the award of visitation rights to grandparents."
 Requested by Miller and Clocksin Date 4/24/81

II. FISCAL DETAIL

Agency Affected Department of Health and Social Services
 Program Category Affected Social Services
 BRU, Program, or Subprogram(s) Affected Various

(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 81	FY 82	FY 83	FY 84	FY 85	FY 86
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 Fund 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 Instructions, Section III)

House Bill No. 532 has no fiscal impact on the Department of Health and Social Services.

IV. DATE 4/30/81 PREPARED BY 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) M. Heuback M&S Approval M. Heuback Date 4/2/81

May 29, 1981

Mr. Chairman and members of the committee. My name is Emma Borbridge. I am a resident of Juneau and a grandmother. I appreciate the opportunity to be able to appear before this committee to make a few comments in support of House Bill NO 532. I would also like to take this opportunity to thank the Senate Committee on Health Education and Social Services for scheduling this hearing on House Bill 532 relative to grandparents and their visitation rights.

The relationship between grandparents and their grandchildren is a very special and unique one. During the early years of childhood, the world has a certain beauty when seen through the eyes of a small child. That beauty is seen and understood better by grandchildren and grandparents who see it together. Many people such as me are among the unfortunate who never knew their grandparents. My grandparents died before I was born, but I liked hearing about them from my mother and father. My image of them is very special and heartwarming. In today's world with the divorce rate at an all-time high, young children are often left to be cared for by their grandparents. In providing care for the child the grandparents once again become involved in the beautiful world of a small child. There is love and affection in a stable environment. One day without warning a parent may decide to exercise custodial right and take the child away from that stable and secure home. In many instances the child is not allowed to visit his or her grandparents. The child is confused and doesn't understand. It is a wrenching experience for the grandparents. It leaves scars that cannot be seen. The physical, emotional, mental, religious, and social well-being of a child can best be met if a normal and healthy grandchild-grandparent relationship can be maintained. In view of the high divorce rate in our state there is a greater need for grandparents to be involved in helping to maintain a continued and stable environment during the child's early growth.

There are pressures in our society that threaten the stability and continuity of the family unit. These same pressures damage the relationship of parents and their children. Now, these conditions are interfering with the life-line that the young and the old hold onto. The stability in the life of a child is strengthened when family ties are strong.

The Native people believe in the concept of the importance of the extended family in which the grandmother and grandfather love and guide the grandchildren in their growth and teach them who they are and from where they came. The role of the parents and grandparents is complementary and has deep roots in our culture. The continuing relationship of the grandchildren, the parents and the grandparents should not be allowed to become a casualty of the stresses being experienced by the family unit.

HB 532 is a positive step in the right direction