HB

4096

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

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May, 1986

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS date base CM 14. In order to save space copies of minutes have not been left in the files.

Jeanie Henry

House Judiciary	2/7/86	1:30 pm
" "	3/3/86	1:30 pm
" "	3/7/86	1:30 pm
" "	3/18/86	7-10 pm
" "	3/26/86	1:30 pm

HOUSE

COMMITTEE REPORT

(7)

Date referred: 1/22/86

FURTHER REFERRALS: FINANCE

DATE: _____

The JUDICIARY Committee has considered HB 496

"An Act relating to spousal support and attorney fees during divorce proceedings, and to judicial review of marriage dissolution agreements; and providing for an effective date."

and recommends:

[ ] do pass

[ ] do not pass

[ ] do pass with attached amendment(s)

[ ] no recommendation

[ ] replace with CSHB 496 (JUD) [ ] same title

[ ] new title

and recommends _____

[ ] further referral to the _____ Committee

and attaches: [X] letter of intent
[ ] first fiscal note
[ ] new fiscal note
[ ] zero fiscal note

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

no rec

DO NOT PASS

no rec

No Rec

Chairman

Alaska State Legislature

House of Representatives
House Judiciary Committee

P. O Box V
State Capitol
Juneau, Alaska 99811
(907) 465-4990

LETTER OF INTENT for CSHB 496 (Jud)

House Judiciary Committee

The Court System submitted a fiscal note on HB 496 of $40[illegible],100 for FY 87. After inquiry, it was determined that the fiscal note assumed that there would be no increase in time between the filing and hearing of each dissolution petition and that the changes in Section 12 will require as much as two hours for each petition.

It is the intent of the Judiciary Committee to avoid imposing additional costs on the Court System by acknowledging that petitioners may experience some delays in the processing of non-emergency dissolution petitions. Furthermore, it is the intent of the committee that any additional screening of dissolution petitions which may become necessary be performed by existing personnel and within existing appropriations. Based upon this analysis, the Judiciary Committee believes that a zero fiscal note is most appropriate for CSHB 496(Jud).

Rep. M[illegible]ke Miller, Chair
House Judiciary Committee

Original sponsor: Rules/Governor

IN THE HOUSE BY THE JUDICIARY COMMITTEE

CS FOR HOUSE BILL NO. 496 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to divorce, dissolution, and annulment; and amending Rule 84(a), Alaska Rules of Civil Procedure."

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

* Section 1. AS 25.24.140 is repealed and reenacted to read:

Sec. 25.24.140. ORDERS DURING ACTION. (a) During the pendency of the action, upon application a spouse may, in appropriate circumstances, be awarded expenses, including

(1) attorney fees and costs that reasonably approximate the actual fees and costs required to prosecute or defend the action;

(2) reasonable spousal support, including medical expenses; and

(3) reasonable support for minor children in the care of the spouse, if there is a legal obligation of the noncustodial spouse to provide support.

(b) During the pendency of the action, upon application a spouse is entitled to necessary protective orders, which may include orders

(1) providing for the freedom of each spouse from the control of the other spouse;

(2) restraining each spouse from subjecting the other spouse or another person living in the household to domestic violence, as defined in AS 25.35.060;

(3) directing one spouse to vacate the marital residence or the home of the other spouse;

(4) restraining a spouse from communicating directly or indirectly with the other spouse;

(5) restraining a spouse from entering a propelled vehicle in the possession of or occupied by the other spouse; and

(6) prohibiting a spouse from disposing of the property of either spouse or marital property without the permission of the other spouse or a court order.

(c) After a hearing, the court may also order that the parties engage in personal or family counseling or mediation if both parties agree. The court shall provide in the order for the payment of the costs of counseling or mediation.

* Sec. 2. AS 25.24.160 is amended to read:

Sec. 25.24.160. JUDGMENT. In a judgment in an action for divorce or action declaring a marriage void or at any time after judgment, the court may provide

(1) for the payment by either or both parties of an amount of money or goods, in gross or installments that may include cost-of-living adjustments, as may be just and proper for the parties to contribute toward the nurture and education of their children, and the court may order the parties to arrange with their employers for an automatic payroll deduction each month or each pay period, if the period is other than monthly, of the amount of the installment; if the employer agrees, the installment shall be forwarded by the employer to the clerk of the superior court which entered the judgment or to the court trustee, and the amount of the installment is exempt from execution;

(2) for the recovery by one party from the other of an amount of money for maintenance, in gross or in installments, as may be just and necessary without regard to which of the parties is in

fault;

(3) for the delivery to either party of that party's personal property in the possession or control of the other party at the time of giving the judgment;

(4) for the division between the parties of their property, whether joint or separate, acquired only during coverture, in the manner as may be just, and without regard to which of the parties is in fault; however, the court, in making the division, may invade the property of either spouse acquired before marriage when the balancing of the equities between the parties requires it; and to accomplish this end the judgment may require that one or both of the parties assign, deliver, or convey any of their real or personal property to the other party [;

(5) TO CHANGE THE NAME OF ONE OF THE PARTIES].

* Sec. 3. AS 25.24 is amended by adding a new section to read:

Sec. 25.24.165. CHANGE OF NAME IN DIVORCE. (a) In a judgment in an action for divorce or action declaring a marriage void, the court may change the name of either of the parties.

(b) If a party seeks a change of name to a name other than a prior name, the court shall set a date for hearing not less than 40 days after filing of the action. Notice of the application for a change of name to a name other than a prior name and the date of the hearing shall be published once each week for four consecutive calendar weeks before the hearing in a newspaper of general circulation in the judicial district. At the hearing, the court shall by judgment authorize the party to assume the new name in not less than 30 days after issuance of the judgment, if the court is satisfied that no reasonable objection exists to assumption of the new name. Within 10 days after issuance of the judgment the party shall publish notice of

the approval of the name change in a newspaper of general circulation in the judicial district.

* Sec. 4. AS 25.24.200(a) is amended to read:

(a) A husband and wife together may petition the superior court for the dissolution of their marriage under AS 25.24.200 - 25.24.260 if the following conditions exist at the time of filing the petition:

(1) incompatibility of temperament has caused the irremediable breakdown of the marriage;

(2) if there are minor children of the marriage or the wife is pregnant, the spouses have agreed on which spouse or third party shall be awarded custody of each minor child of the marriage and the extent of visitation, including visitation by grandparents and other persons, and support to be provided on the children's behalf, whether the payments are to be made through the child support enforcement agency, and the tax consequences of that agreement;

(3) the spouses have agreed as to the distribution of all jointly owned real and personal property, including retirement benefits and other career assets, and the payment of spousal support, if any, and the tax consequences resulting from these distributions and payments; and

(4) the spouses have agreed as to the payment of all unpaid obligations incurred by either or both of them, and as to payment of obligations incurred jointly in the future.

* Sec. 5. AS 25.24.200(b) is amended to read:

(b) A husband or wife may separately petition for dissolution of their marriage under AS 25.24.200 - 25.24.260 if the following conditions exist at the time of filing the petition:

(1) incompatibility of temperament, as evidenced by extended absence or otherwise, has caused the irremediable breakdown of the

marriage;

(2) the petitioning spouse has been unable to ascertain the other spouse's position in regard to the dissolution of their marriage and in regard to the division of property, including retirement benefits and other career assets, payment of debts, and custody, support, and visitation because the whereabouts of the other spouse is unknown to the petitioning spouse after reasonable efforts have been made to locate the absent spouse; and

(3) the other spouse cannot be personally served with process inside or outside the state.

* Sec. 6. AS 25.24.200(c) is amended to read:

(c) Except as provided in AS 25.24.220(i), nothing [NOTHING] in AS 25.24.200 - 25.24.290 [THIS SECTION] prohibits a spouse who has been personally served with a copy of a petition made under (a) of this section from executing an appearance, waiver of time to answer, and waiver of notice of hearing. The appearance and waivers shall include an acknowledgment signed before an officer authorized to administer an oath or affirmation that the spouse being served has read the petition; assents to the terms relating to custody of the children, child support, visitation, spousal support and resultant tax consequences, division of property, including retirement benefits and other career assets, and allocation of debts; agrees that the conditions otherwise required by (a) of this section exist; agrees that the petition constitutes the entire agreement between the parties; understands fully the nature and consequences of the action; and is not signing the appearance and waivers under duress or coercion.

* Sec. 7. AS 25.24.210(d) is amended to read:

(d) The petition shall request that the marriage be dissolved and that the [PRIOR] name of a spouse be changed [RESTORED], if

desired by that spouse.

* Sec. 8. AS 25.24.210(e) is amended to read:

(e) If the petition is brought by both spouses under AS 25.24.-200(a), the petition shall state in detail the terms of agreement as between the spouses with regard to the custody of children, child support, visitation, spousal support and tax consequences, if any, division of property, <u>including retirement benefits and other career assets,</u> and allocation of debts, and, in addition, shall state

(1) the respective occupations of the spouses;

(2) the income, assets, and liabilities of the respective spouses at the time of filing the petition;

(3) the date and place of the marriage;

(4) the name, date of birth, and current custodial status of each minor child born of the marriage or adopted by the petitioners;

(5) whether the wife is pregnant;

(6) other facts and circumstances which the petitioners believe should be considered; [AND]

(7) <u>that the petition constitutes the entire agreement between the parties; and</u>

<u>(8)</u> any other relief sought by the spouses.

* Sec. 9. AS 25.24.220(b) is repealed and reenacted to read:

(b) Both spouses shall attend the hearing personally and not through counsel. However, if the petition is brought by both spouses under AS 25.24.200(a) and if the petition is not subject to (i) of this section, a spouse may comply with AS 25.24.200(c); in that case only the spouse filing the petition is required to attend. Either spouse may have counsel at the hearing.

* Sec. 10. AS 25.24.220(d) is amended to read:

(d) If the petition is brought by both spouses under AS 25.24.-200(a), the court shall examine the petitioners or petitioner present and consider whether

(1) the spouses fully understand the nature and consequences of their action;

(2) the written agreements between the spouses concerning child custody, child support, and visitation are fair, just, and equitable as between the spouses and in the best interests of the children of the marriage;

(3) the written agreements between the spouses relating to the division of property, including retirement benefits and other career assets, spousal support, and the allocation of obligations are fair, just, and equitable; [AND]

(4) the written agreements constitute the entire agreement between the parties; and

(5) the conditions in AS 25.24.200(a) have been met.

* Sec. 11. AS 25.24.220(g) is amended to read:

(g) The court may amend the written agreements between the spouses relating to child custody, child support, visitation, spousal support, division of the property, including retirement benefits and other career assets, and allocation of obligations, but only if both petitioners concur in the amendment in writing or on the record.

* Sec. 12. AS 25.24.220 is amended by adding new subsections to read:

(h) In its examination of the petitioner or petitioners under (d) of this section, the court shall use a heightened level of scrutiny of agreements if

(1) one party is represented by counsel and the other is not;

(2) an unusually high or low amount of child support will

be awarded;

(3) a domestic violence complaint has been filed during the marriage;

(4) there are unusual child custody provisions; or

(5) there is a patently inequitable division of the marital estate.

(i) If the court finds that a higher level of scrutiny is required by (h) of this section, the court shall examine the written agreements between the spouses to determine that they are fair just, and equitable, that they constitute the entire agreement between the parties, and that the agreements concerning child custody, child support, and visitation are in the best interest of the children of the marriage, if any. The court shall require the presence of both spouses at a hearing for this purpose unless the court finds on the record that it would constitute a significant hardship on one of the spouses to appear, and that a fair, just, and equitable agreement has been reached.

* Sec. 13. AS 25.24.230(a) is amended to read:

(a) If the petition is brought by one or both spouses under AS 25.24.200(a), the court may grant the spouses a final decree of dissolution and shall order [PROVIDE THE] other relief as provided in this section if the court, upon consideration of the information contained in the petition and the testimony of the spouse or spouses at the hearing, finds that

(1) the spouses understand fully the nature and consequences of their action;

(2) the written agreements between the spouses concerning child custody, child support, and visitation are in the best interest of the children of the marriage, constitute the entire agreement of

the parties on child custody, child support, and visitation, and are not grossly unfair, unjust, or inequitable as between the spouses;

(3) the written agreements between the spouses concerning [CHILD CUSTODY, CHILD SUPPORT, VISITATION,] spousal support and tax consequences, if any, division of property, including retirement benefits and other career assets, and allocation of obligations are not grossly unfair, unjust, or inequitable and constitute the entire agreement between the parties [AND ARE IN THE BEST INTERESTS OF THE CHILDREN OF THE MARRIAGE, IF ANY]; and

(4) [(3)] the conditions in AS 25.24.200(a) have been met.

* Sec. 14. AS 25.24.230(e) is amended to read:

(e) If the petition is brought by both spouses under AS 25.24.200(a), the court shall change [RESTORE] either spouse's [PRIOR] name, if the spouse seeking a change of name to a name other than a prior name complies with AS 25.24.165(b), [SO REQUESTED, AND] shall fully and specifically set out in the decree the written agreements of the spouses, [RELATING TO CHILD CUSTODY, CHILD SUPPORT, VISITATION, SPOUSAL SUPPORT, DIVISION OF PROPERTY, AND THE ALLOCATION OF THE OBLIGATIONS OF THE SPOUSES;] and [THE COURT] shall order the performance of those written agreements. The court shall also state, in the decree, whether child support payments are to be made through the child support enforcement agency. If the petition is brought by one spouse under AS 25.24.200(b), the decree shall state that it does not bar future action on the issues not resolved in the decree.

* Sec. 15. AS 25.24.250 is amended by adding a new subsection to read:

(c) Forms or instructions prepared under (a) of this section must specify that the dissolution petition constitutes the entire agreement between the parties and provide examples of kinds of property and obligations that are subject to distribution.

* Sec. 16. AS 25.24 is amended by adding a new section to article 2 to read:

Sec. 25.24.290. DEFINITION. In AS 25.24.200 - 25.24.290 "career assets" means tangible and intangible assets and obligations resulting from a spouse's education, profession, or employment that were acquired at least in part as a result of direct or indirect contributions made by the other spouse. A division of career assets shall take into consideration the extent to which each spouse contributed to the acquisition of the career assets.

* Sec. 17. AS 25.24.165 as added by sec. 3 of this Act, AS 25.24.210(d) as amended by sec. 7 of this Act, and AS 25.24.230(e) as amended by sec. 14 of this Act have the effect of amending Rule 84(a), Alaska Rules of Civil Procedure, to allow a change of name to a name other than a prior name to be commenced in a complaint for divorce or annulment or a petition for dissolution of marriage.

Clocksin Draft
Utermohle
3/12/86

Original sponsor: Rules/Governor

IN THE HOUSE BY THE JUDICIARY COMMITTEE

CS FOR HOUSE BILL NO. 496 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

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(b) During the pendency of the action, upon application a spouse is entitled to necessary protective orders, which may include orders

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(6) prohibiting a spouse from disposing of the property of either spouse or marital property without the permission of the other spouse or a court order.

(c) After a hearing, the court may also order that the parties engage in personal or family counseling or mediation if both parties agree. The court shall provide in the order for the payment of the costs of counseling or mediation.

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(2) for the recovery by one party from the other of an amount of money for maintenance, in gross or in installments, as may be just and necessary without regard to which of the parties is in

fault;

(3) for the delivery to either party of that party's personal property in the possession or control of the other party at the time of giving the judgment;

(4) for the division between the parties of their property, whether joint or separate, acquired only during coverture, in the manner as may be just, and without regard to which of the parties is in fault; however, the court, in making the division, may invade the property of either spouse acquired before marriage when the balancing of the equities between the parties requires it; and to accomplish this end the judgment may require that one or both of the parties assign, deliver, or convey any of their real or personal property to the other party [;

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the approval of the name change in a newspaper of general circulation in the judicial district.

* Sec. 4. AS 25.24.200(a) is amended to read:

(a) A husband and wife together may petition the superior court for the dissolution of their marriage under AS 25.24.200 - 25.24.260 if the following conditions exist at the time of filing the petition:

(1) incompatibility of temperament has caused the irremediable breakdown of the marriage;

(2) if there are minor children of the marriage or the wife is pregnant, the spouses have agreed on which spouse or third party shall be awarded custody of each minor child of the marriage and the extent of visitation, including visitation by grandparents and other persons, and support to be provided on the children's behalf, whether the payments are to be made through the child support enforcement agency, and the tax consequences of that agreement;

(3) the spouses have agreed as to the distribution of all jointly owned real and personal property, including retirement benefits and other career assets, and the payment of spousal support, if any, and the tax consequences resulting from these distributions and payments; and

(4) the spouses have agreed as to the payment of all unpaid obligations incurred by either or both of them, and as to payment of obligations incurred jointly in the future.

* Sec. 5. AS 25.24.200(b) is amended to read:

(b) A husband or wife may separately petition for dissolution of their marriage under AS 25.24.200 - 25.24.260 if the following conditions exist at the time of filing the petition:

(1) incompatibility of temperament, as evidenced by extended absence or otherwise, has caused the irremediable breakdown of the

marriage;

(2) the petitioning spouse has been unable to ascertain the other spouse's position in regard to the dissolution of their marriage and in regard to the division of property, including retirement benefits and other career assets, payment of debts, and custody, support, and visitation because the whereabouts of the other spouse is unknown to the petitioning spouse after reasonable efforts have been made to locate the absent spouse; and

(3) the other spouse cannot be personally served with process inside or outside the state.

* Sec. 6. AS 25.24.200(c) is amended to read:

(c) Except as provided in AS 25.24.220(i), nothing [NOTHING] in AS 25.24.200 - 25.24.290 [THIS SECTION] prohibits a spouse who has been personally served with a copy of a petition made under (a) of this section from executing an appearance, waiver of time to answer, and waiver of notice of hearing. The appearance and waivers shall include an acknowledgment signed before an officer authorized to administer an oath or affirmation that the spouse being served has read the petition; assents to the terms relating to custody of the children, child support, visitation, spousal support and resultant tax consequences, division of property, including retirement benefits and other career assets, and allocation of debts; agrees that the conditions otherwise required by (a) of this section exist; agrees that the petition constitutes the entire agreement between the parties; understands fully the nature and consequences of the action; and is not signing the appearance and waivers under duress or coercion.

* Sec. 7. AS 25.24.210(d) is amended to read:

(d) The petition shall request that the marriage be dissolved and that the [PRIOR] name of a spouse be changed [RESTORED], if

desired by that spouse.

* Sec. 8. AS 25.24.210(e) is amended to read:

(e) If the petition is brought by both spouses under AS 25.24.-200(a), the petition shall state in detail the terms of agreement as between the spouses with regard to the custody of children, child support, visitation, spousal support and tax consequences, if any, division of property, <u>including retirement benefits and other career assets,</u> and allocation of debts, and, in addition, shall state

(1) the respective occupations of the spouses;

(2) the income, assets, and liabilities of the respective spouses at the time of filing the petition;

(3) the date and place of the marriage;

(4) the name, date of birth, and current custodial status of each minor child born of the marriage or adopted by the petitioners;

(5) whether the wife is pregnant;

(6) other facts and circumstances which the petitioners believe should be considered; [AND]

(7) <u>that the petition constitutes the entire agreement between the parties; and</u>

<u>(8)</u> any other relief sought by the spouses.

* Sec. 9. AS 25.24.220(b) is repealed and reenacted to read:

(b) Both spouses shall attend the hearing personally and not through counsel. However, if the petition is brought by both spouses under AS 25.24.200(a) and if the petition is not subject to (i) of this section, a spouse may comply with AS 25.24.200(c); in that case only the spouse filing the petition is required to attend. Either spouse may have counsel at the hearing.

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(d) If the petition is brought by both spouses under AS 25.24.-200(a), the court shall examine the petitioners or petitioner present and consider whether

(1) the spouses fully understand the nature and consequences of their action;

(2) the written agreements between the spouses concerning child custody, child support, and visitation are fair, just, and equitable as between the spouses and in the best interests of the children of the marriage;

(3) the written agreements between the spouses relating to the division of property, including retirement benefits and other career assets, spousal support, and the allocation of obligations are fair, just, and equitable; [AND]

(4) the written agreements constitute the entire agreement between the parties; and

(5) the conditions in AS 25.24.200(a) have been met.

* Sec. 11. AS 25.24.220(g) is amended to read:

(g) The court may amend the written agreements between the spouses relating to child custody, child support, visitation, spousal support, division of the property, including retirement benefits and other career assets, and allocation of obligations, but only if both petitioners concur in the amendment in writing or on the record.

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be awarded;

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(i) If the court finds that a higher level of scrutiny is required by (h) of this section, the court shall examine the written agreements between the spouses to determine that they are fair, just, and equitable, that they constitute the entire agreement between the parties, and that the agreements concerning child custody, child support, and visitation are in the best interest of the children of the marriage, if any. The court shall require the presence of both spouses at a hearing for this purpose unless the court finds on the record that it would constitute a significant hardship on one of the spouses to appear, and that a fair, just, and equitable agreement has been reached.

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(a) If the petition is brought by one or both spouses under AS 25.24.200(a), the court may grant the spouses a final decree of dissolution and shall <u>order</u> [PROVIDE THE] other relief as provided in this section if the court, upon consideration of the information contained in the petition and the testimony of the spouse or spouses at the hearing, finds that

(1) the spouses understand fully the nature and consequences of their action;

(2) <u>the written agreements between the spouses concerning child custody, child support, and visitation are in the best interest of the children of the marriage, constitute the entire agreement of</u>

the parties on child custody, child support, and visitation, and are not grossly unfair, unjust, or inequitable as between the spouses;

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(4) [(3)] the conditions in AS 25.24.200(a) have been met.

* Sec. 14. AS 25.24.230(e) is amended to read:

(e) If the petition is brought by both spouses under AS 25.24.-200(a), the court shall change [RESTORE] either spouse's [PRIOR] name, if the spouse seeking a change of name to a name other than a prior name complies with AS 25.24.165(b), [SO REQUESTED, AND] shall fully and specifically set out in the decree the written agreements of the spouses, [RELATING TO CHILD CUSTODY, CHILD SUPPORT, VISITATION, SPOUSAL SUPPORT, DIVISION OF PROPERTY, AND THE ALLOCATION OF THE OBLIGATIONS OF THE SPOUSES;] and [THE COURT] shall order the performance of those written agreements. The court shall also state, in the decree, whether child support payments are to be made through the child support enforcement agency. If the petition is brought by one spouse under AS 25.24.200(b), the decree shall state that it does not bar future action on the issues not resolved in the decree.

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(c) Forms or instructions prepared under (a) of this section must specify that the dissolution petition constitutes the entire agreement between the parties and provide examples of kinds of property and obligations that are subject to distribution.

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Clocksin Draft
Utermohle
2/28/86

Original sponsor: Rules/governor

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FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to divorce and dissolution."

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

* Section 1. AS 25.24.140 is repealed and reenacted to read:

Sec. 25.24.140. ORDERS DURING ACTION. (a) During the pendency of the action, upon application a spouse may, in appropriate circumstances, be awarded expenses, including

(1) attorney fees and costs that reasonably approximate the actual fees and costs required to prosecute or defend the action;

(2) reasonable spousal support, including medical expenses; and

(3) reasonable support for minor children in the care of the spouse, if there is a legal obligation of the noncustodial spouse to provide support.

(b) During the pendency of the action, upon application a spouse is entitled to necessary protective orders, which may include orders

(1) providing for the freedom of each spouse from the control of the other spouse;

(2) restraining each spouse from subjecting the other spouse or another person living in the household to domestic violence, as defined in AS 25.35.060;

(3) directing one spouse to vacate the marital residence or the home of the other spouse;

(4) restraining a spouse from communicating directly or indirectly with the other spouse;

(5) restraining a spouse from entering a propelled vehicle in the possession of or occupied by the other spouse; and

(6) prohibiting a spouse from disposing of the property of each spouse or marital property without the permission of the other spouse or a court order.

(c) After a hearing, the court may also order that the parties engage in personal or family counseling or mediation if both parties agree. The court shall provide in the order for the payment of the costs of counseling or mediation.

* Sec. 2. AS 25.24.200(a) is amended to read:

(a) A husband and wife together may petition the superior court for the dissolution of their marriage under AS 25.24.200 - 25.24.260 if the following conditions exist at the time of filing the petition:

(1) incompatibility of temperament has caused the irremediable breakdown of the marriage;

(2) if there are minor children of the marriage or the wife is pregnant, the spouses have agreed on which spouse or third party shall be awarded custody of each minor child of the marriage and the extent of visitation, including visitation by grandparents and other persons, and support to be provided on the children's behalf, whether the payments are to be made through the child support enforcement agency, and the tax consequences of that agreement;

(3) the spouses have agreed as to the distribution of all jointly owned real and personal property, including retirement benefits and other career assets, and the payment of spousal support, if any, and the tax consequences resulting from these distributions and payments; and

(4) the spouses have agreed as to the payment of all unpaid obligations incurred by either or both of them, [AND] as to payment of

obligations incurred jointly in the future, and as to the tax consequences of these payments.

* Sec. 3. AS 25.24.200(b) is amended to read:

(b) A husband or wife may separately petition for dissolution of their marriage under AS 25.24.200 - 25.24.260 if the following conditions exist at the time of filing the petition:

(1) incompatibility of temperament, as evidenced by extended absence or otherwise, has caused the irremediable breakdown of the marriage;

(2) the petitioning spouse has been unable to ascertain the other spouse's position in regard to the dissolution of their marriage and in regard to the division of property, including retirement benefits and other career assets, tax consequences, payment of debts, and custody, support, and visitation because the whereabouts of the other spouse is unknown to the petitioning spouse after reasonable efforts have been made to locate the absent spouse; and

(3) the other spouse cannot be personally served with process inside or outside the state.

* Sec. 4. AS 25.24.200(c) is amended to read:

(c) Except as provided in AS 25.24.220(i), nothing [NOTHING] in AS 25.24.200 - 25.24.290 [THIS SECTION] prohibits a spouse who has been personally served with a copy of a petition made under (a) of this section from executing an appearance, waiver of time to answer, and waiver of notice of hearing. The appearance and waivers shall include an acknowledgment signed before an officer authorized to administer an oath or affirmation that the spouse being served has read the petition; assents to the terms relating to custody of the children, child support, visitation, spousal support [AND RESULTANT TAX CONSEQUENCES], division of property, including retirement benefits

and other career assets, [AND] allocation of debts, and tax consequences; agrees that the conditions otherwise required by (a) of this section exist; agrees that the petition constitutes the entire agreement between the parties; understands fully the nature and consequences of the action; and is not signing the appearance and waivers under duress or coercion.

* Sec. 5. AS 25.24.210(e) is amended to read:

(e) If the petition is brought by both spouses under AS 25.24.200(a), the petition shall state in detail the terms of agreement as between the spouses with regard to the custody of children, child support, visitation, spousal support [AND TAX CONSEQUENCES, IF ANY], division of property, including retirement benefits and other career assets, [AND] allocation of debts, and tax consequences and, in addition, shall state

(1) the respective occupations of the spouses;

(2) the income, assets, and liabilities of the respective spouses at the time of filing the petition;

(3) the date and place of the marriage;

(4) the name, date of birth, and current custodial status of each minor child born of the marriage or adopted by the petitioners;

(5) whether the wife is pregnant;

(6) other facts and circumstances which the petitioners believe should be considered; [AND]

(7) that the petition constitutes the entire agreement between the parties; and

(8) any other relief sought by the spouses.

* Sec. 6. AS 25.24.220(b) is repealed and reenacted to read:

(b) Both spouses shall attend the hearing personally and not

through counsel. However, if the petition is brought by both spouses under AS 25.24.200(a) and if the petition is not subject to (i) of this section, a spouse may comply with AS 25.24.200(c); in that case only the spouse filing the petition is required to attend. Either spouse may have counsel at the hearing.

* Sec. 7. AS 25.24.220(d) is amended to read:

(d) If the petition is brought by both spouses under AS 25.24.-200(a), the court shall examine the petitioners or petitioner present and consider whether

(1) the spouses fully understand the nature and consequences of their action;

(2) the written agreements between the spouses concerning child custody, child support, and visitation are fair, just, and equitable as between the spouses and in the best interests of the children of the marriage;

(3) the written agreements between the spouses relating to the division of property, including retirement benefits and other career assets, spousal support, [AND] the allocation of obligations, and tax consequences are fair, just, and equitable; [AND]

(4) the written agreements constitute the entire agreement between the parties; and

(5) the conditions in AS 25.24.200(a) have been met.

* Sec. 8. AS 25.24.220(g) is amended to read:

(g) The court may amend the written agreements between the spouses relating to child custody, child support, visitation, spousal support, division of the property, including retirement benefits and other career assets, [AND] allocation of obligations, and tax consequences, but only if both petitioners concur in the amendment.

* Sec. 9. AS 25.24.220 is amended by adding new subsections to read:

(h) In its examination of the petitioner or petitioners under (d) of this section, the court shall use a heightened level of scrutiny of agreements if

(1) one party is represented by counsel and the other is not;

(2) an unusually high or low amount of child support will be awarded;

(3) a domestic violence complaint has been filed during the marriage;

(4) there are unusual child custody provisions;

(5) one party has not worked for wages for at least three years or has a limited future earning capability; or

(6) there is a patently inequitable division of the marital estate.

(i) If the court finds that a higher level of scrutiny is required by (h) of this section, the court shall examine the written agreements between the spouses to determine that they are fair, just, and equitable, that they constitute the entire agreement between the parties, and that the agreements concerning child custody, child support, and visitation are in the best interest of the children of the marriage, if any. The court shall require the presence of both spouses at a hearing for this purpose unless the court finds on the record that it would constitute an extreme hardship on one of the spouses to appear, and that a fair, just, and equitable agreement has been reached.

* Sec. 10. AS 25.24.230(a) is amended to read:

(a) If the petition is brought by one or both spouses under AS 25.24.200(a), the court may grant the spouses a final decree of dissolution and shall <u>order</u> [PROVIDE THE] other relief as provided in

this section if the court, upon consideration of the information contained in the petition and the testimony of the spouse or spouses at the hearing, finds that

(1) the spouses understand fully the nature and consequences of their action;

(2) the written agreements between the spouses concerning child custody, child support, and visitation are in the best interest of the children of the marriage, constitute the entire agreement of the parties on child custody, child support, and visitation, and are not grossly unfair, unjust, or inequitable as between the spouses;

(3) the written agreements between the spouses concerning [CHILD CUSTODY, CHILD SUPPORT, VISITATION,] spousal support [AND TAX CONSEQUENCES, IF ANY], division of property, including retirement benefits and other career assets, [AND] allocation of obligations, and tax consequences are not grossly unfair, unjust, or inequitable and constitute the entire agreement between the parties [AND ARE IN THE BEST INTERESTS OF THE CHILDREN OF THE MARRIAGE, IF ANY]; and

(4) [(3)] the conditions in AS 25.24.200(a) have been met.

* Sec. 11. AS 25.24.230(e) is amended to read:

(e) If the petition is brought by both spouses under AS 25.24.-200(a), the court shall change [RESTORE] either spouse's [PRIOR] name, if so requested, [AND] shall fully and specifically set out in the decree the written agreements of the spouses, [RELATING TO CHILD CUSTODY, CHILD SUPPORT, VISITATION, SPOUSAL SUPPORT, DIVISION OF PROPERTY, AND THE ALLOCATION OF THE OBLIGATIONS OF THE SPOUSES;] and [THE COURT] shall order the performance of those written agreements. The court shall also state, in the decree, whether child support payments are to be made through the child support enforcement agency. If the petition is brought by one spouse under AS 25.24.200(b), the

decree shall state that it does not bar future action on the issues not resolved in the decree.

* Sec. 12. AS 25.24.250 is amended by adding a new subsection to read:

(c) Forms or instructions prepared under (a) of this section must

(1) explain terms under which a dissolution may be modified;

(2) specify that the dissolution petition constitutes the entire agreement between the parties; and

(3) provide examples of kinds of property and obligations that are subject to distribution.

* Sec. 13. AS 25.24 is amended by adding a new section to article 2 to read:

Sec. 25.24.290. DEFINITION. In AS 25.24.200 - 25.24.290 "career assets" means tangible and intangible assets and obligations acquired as part of a person's education, profession, or employment.

POSITION PAPER/Department of Health & Social Services

POSITION PAPER

HOUSE BILL NO. 496

For an Act entitled: "Act relating to spousal support and attorney fees during divorce proceedings, and to judicial review of marriage dissolution agreements; and providing for an effective date."

HB 496 amends AS 25.24.140 to provide for the payment of attorney fees and costs required for proceedings to enable the other spouse to prosecute or defend a divorce action.

It also provides for maintenance payments for the other spouse during the pendency of the hearing, and it includes retirement benefits as an area of judicial review and determination that it is a fair and equitable agreement.

One of the major impacts upon the health, safety and well-being of children is the ability of a parent to support him or herself and the child. This bill would increase the likelihood of equitable distribution of family resources when a divorce or dissolution occurs.

The bill also provides for equitable distribution of retirement benefits for older individuals. It is important to note that abuse and neglect of children and of older individuals is directly correlated with inadequate financial resources. In addition, poverty itself, even if it does not result in neglect and abuse, creates a number of social problems within the community. These problems, tragic in themselves, are also costly to the community to correct. Consequently, there may be financial savings, as well as social justification to support this bill.

The Department supports this bill.

RECOMMENDED: _____
Michael L. Price, Director
Division of Family
and Youth Services

DATE: Feb 6, 1986

APPROVED: _____
John R. Pugh, Commissioner
Department of Health
and Social Services

DATE: 2/13/86

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : HB 496
Title : An Act relating to spousal support and attorney fees during divorce proceedings
Sponsor : _____
Requestor : _____
Date of Request : 2/3/86

FISCAL DETAIL

Agency Affected : Health & Social Services
BRU : Social Services
Youth Services
Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING : (Thousands of Dollars)

GENERAL FUND		0	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL		0	0	0	0	0

POSITIONS :

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

ANALYSIS : Attach a separate page if necessary

n/a

Prepared by : Michael L. Price, Director Michael L. Price Phone : 465-3170 fcc
Division : Family and Youth Services Date : _____

Approved by Commissioner : John R. Pugh, Commissioner John R. Pugh Date : 2/13/86
Agency : Health and Social Services

Distribution (by Agency preparing fiscal note) :
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

10/25/85

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST HB 496 #1

Revision Date : _____

Bill/Resolution No. : 377-002-86
Title : _____

Sponsor : _____
Requestor : _____
Date of Request : _____

FISCAL DETAIL

Agency Affected : AK Women's Commission
BRU : _____

Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-					
CAPITAL	-0-					
REVENUE	-0-					

FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-					

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

RECEIVED
DEC 23 1985
ALASKA WOMEN'S COMMISSION

Prepared by : Kathy Nienhuis
Division : AK Women's Commission
Phone : 561-5813
Date : 12/13/85

Approved by Commissioner : _____
Agency : _____
Date : _____

Distribution (by Agency preparing fiscal note) :
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

10/25/85

CP 1/22

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : 12/23/85

REQUEST HB 496 # 2

Bill/Resolution No. : 377-002-86
Title : Spousal support and attorney fees during divorce proceedings, and judicial review of dissolution agreements
Sponsor :
Requestor :
Date of Request :

FISCAL DETAIL

Agency Affected : Div. of Fam. & Youth Sv
BRU :
Components :

DMP

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		0	0	0	0	0
CAPITAL						
REVENUE		0	0	0	0	0

FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL		0	0	0	0	0

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : Pearl Johnson
Division : Family & Youth Services
Phone : 465-3227
Date : 12/23/85

Approved by Commissioner : John R. Duncan
Agency : Health & Social Services
Date : 12/23/85

Distribution (by Agency preparing fiscal note) :
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

10/25/85

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : HB496
Title : "An Act Relating to Spousal Support and Attorney's fees..."

Sponsor : Governor
Requestor : House Judiciary
Date of Request : _____

FISCAL DETAIL

Agency Affected : Public Safety
BRU : Council on Domestic Violence and Sexual Assault

Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : Barbara Miklos, Exec. Dir. Phone : 4[illegible]-4356
Division : Council on Domestic Violence & S.A. Date : 1/31/86

Approved by Commissioner : _____ Date : 2/3/86
Agency : Dept. of Public Safety

Distribution (by Agency preparing fiscal note) :
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

10/25/85

DEPARTMENT OF PUBLIC SAFETY

POSITION PAPER - HB 496

January 31, 1986

Support

HB 496 - "An Act relating to spousal support and attorney fees during divorce proceedings, and to judicial review of marriage dissolution agreements; and providing for an effective date."

The Council on Domestic Violence and Sexual Assault supports HB 496.

HB 496 amends AS 25.24, pertaining to dissolution of marriages, by (1) providing for support and maintenance while a divorce is pending and reasonable attorney fees for financially needy spouses; (2) specifying that both spouses be present at the hearing, unless good cause is provided by the court, if they both bring the petition before the court; (3) providing for a heightened level of scrutiny by the judge in instances where one marital partner might have an unfair advantage in negotiating an agreement; and (4) adding retirement benefits to the areas to be considered in dissolution agreements.

Currently, some women make these agreements without full understanding of the long range consequences of the agreements or under some coercion from their spouse. Women are not always involved in the money management of the marriage, and thus are unaware of the benefits which might rightfully be theirs. In addition, the Council is particularly concerned because domestic violence exists in many relationships. Women may have experienced long term intimidation by their spouses and may be so anxious to get free of the relationship that they will agree to a dissolution agreement on the terms the spouse dictates as the easiest way out for them. In cases of domestic violence, experience has shown that the intimidation that occurs takes the form of "brainwashing" so that the victim loses confidence in her ability to make decisions and comes to devalue her judgement and her sense of worth. Yet a woman may appear to be in agreement should she come before the judge and is not questioned about her understanding and the long-term consequences of the agreement. The increased judicial scrutiny called for in this bill will further protect victims of domestic violence.

Robert J. Sundberg

REPRESENTATIVE DON CLOCKSIN

Alaska House of Representatives

MAJORITY LEADER

1024 WEST SIXTH AVENUE
ANCHORAGE, ALASKA 99501
(907) 274-4031

WHILE IN JUNEAU:
POUCH V
JUNEAU, ALASKA 99811
(907) 465-3704

LETTER OF INTENT for CSHB 496 (Jud)

House Judiciary Committee

The Court System submitted a fiscal note on HB 496 of $406,100 for FY 87. After inquiry, it was determined that the fiscal note assumed that there would be no increase in time between the filing and hearing of each dissolution petition and that the changes in Section 9 will require as much as two hours for each petition.

It is the intent of the Judiciary Committee to avoid imposing additional costs on the Court System by acknowledging that petitioners may experience some delays in the processing of non-emergency dissolution petitions. The costs are further reduced because a judge reviewing these petitions may reject those which require a heightened level of judicial scrutiny but do not on their face meet the standards in AS 25.24.220(i). Furthermore, it is the intent of the committee that any additional screening of dissolution petitions which may become necessary be performed by existing personnel and within existing appropriations. Based upon this analysis, the Judiciary Committee believes that a zero fiscal note is most appropriate for CSHB 496 (Jud).

HB496

Utermohle

A M E N D M E N T #2

Offered in the HOUSE By Gruenberg

TO: CSHB 496 (Judiciary) Clocksin Draft 2/28/86

Page 1, line 6, following "dissolution" insert:

"; and amending Rule 84(a), Alaska Rules of Civil Procedure"

Page 2, following line 9, insert new bill sections to read:

"* Sec. 2. AS 25.24.160 is amended to read:

Sec. 25.24.160. JUDGMENT. In a judgment in an action for divorce or action declaring a marriage void or at any time after judgment, the court may provide

(1) for the payment by either or both parties of an amount of money or goods, in gross or installments that may include cost-of-living adjustments, as may be just and proper for the parties to contribute toward the nurture and education of their children, and the court may order the parties to arrange with their employers for an automatic payroll deduction each month or each pay period, if the period is other than monthly, of the amount of the installment; if the employer agrees, the installment shall be forwarded by the employer to the clerk of the superior court which entered the judgment or to the court trustee, and the amount of the installment is exempt from execution;

(2) for the recovery by one party from the other of an amount of money for maintenance, in gross or in installments, as may

be just and necessary without regard to which of the parties is in fault;

(3) for the delivery to either party of that party's personal property in the possession or control of the other party at the time of giving the judgment;

(4) for the division between the parties of their property, whether joint or separate, acquired only during coverture, in the manner as may be just, and without regard to which of the parties is in fault; however, the court, in making the division, may invade the property of either spouse acquired before marriage when the balancing of the equities between the parties requires it; and to accomplish this end the judgment may require that one or both of the parties assign, deliver, or convey any of their real or personal property to the other party [;

(5) TO CHANGE THE NAME OF ONE OF THE PARTIES].

* Sec. 3. AS 25.24 is amended by adding a new section to read:

Sec. 25.24.165. CHANGE OF NAME IN DIVORCE. (a) In a judgment in an action for divorce or action declaring a marriage void, the court may change the name of either of the parties.

(b) If a party seeks a change of name to a name other than a prior name, the court shall set a date for hearing not less than 40 days after filing of the action. Notice of the application for a change of name and the date of the hearing shall be published once each week for four consecutive calendar weeks before the hearing in a newspaper of general circulation in the judicial district. At the hearing, the court shall by judgment authorize the party to assume the

new name in not less than 30 days after issuance of the judgment, if the court is satisfied that no reasonable objection exists to assumption of the new name. Within 10 days after issuance of the judgment the party shall publish notice of the approval of the name change in a newspaper of general circulation in the judicial district."

Renumber remaining bill sections accordingly.

Page 7, line 22, delete "so requested, [AND]" and insert:

"the spouse seeking a change of name to a name other than a prior name complies with AS 25.24.165(b), [SO REQUESTED, AND]"

Page 8, following line 16, insert a new bill section to read:

"* Sec. 14. AS 25.24.165 as added by sec. 3 of this Act and AS 25.24.-230(e) as amended by sec. 13 of this Act have the effect of amending Rule 84(a), Alaska Rules of Civil Procedure, to allow a change of name to a name other than a prior name to be commenced in a complaint for divorce or a petition for dissolution of marriage."

Utermohle ✓

A M E N D M E N T

Offered in the HOUSE

TO: CSHB 496(Jud)

Page 1, line 6, following "dissolution" insert:

"; and amending Rule 84(d), Alaska Rules of Civil Procedure"

Page 8, following line 15, insert:

"* Sec. 14. Rule 84(d), Alaska Rules of Civil Procedure is amended to read:

(d) APPLICABILITY. This rule does [SHALL] not apply to a change of [RESTORATION OF A PRIOR] name sought in a complaint for divorce or in a petition for dissolution of marriage."

A M E N D M E N T

Offered in the HOUSE: by Gruenberg

To: CS HB 496

Page 6 line 23:

Change to read as follows:

"ext.eme" to "significant"

A M E N D M E N T #1

Offered in the HOUSE By Gruenberg

TO: CSHB 496 (Jud) Clocksin draft (2/28/86)

Page 2, line 4, delete "each" and insert "either"

Page 5, line 28, after "amendment" insert "in writing or on the record"

A M E N D M E N T

Offered in the HOUSE: by Gruenberg

To CS HB 496 (Jud) Clocksin draft 2/28/86

Page 6, line 11, following "party" insert:

", as a result of an agreement or allocation of marital responsibilities between the spouses,"

BILL SHEFFIELD
GOVERNOR

1/22

HB 496

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 22, 1986

The Honorable Ben Grussendorf
Speaker of the House
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Representative Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill to amend Alaska statutes regarding divorce proceedings, to provide expressly for spousal support and attorney fees to be awarded during the pendency of divorce proceedings. The bill also requires a "heightened level" of judicial review of marriage dissolution agreements in specific situations.

The bill amends AS 25.24.140(a) to deal more specifically with attorney fees and costs and to state that one spouse may be required by the court to provide for the care and maintenance of the other spouse during the pendency of their divorce action.

Also, AS 25.24.220 is amended by adding new subsections to require that the agreements of petitioners in dissolution proceedings be carefully scrutinized if one of the parties is not represented by counsel when the other one is; or if an unusually high or low amount of spousal support will be awarded; or if one or more of three other circumstances suggesting the possibility of an unfair agreement are present. It is believed that this heightened scrutiny would prevent one marital partner from exercising an unequal bargaining power over the other partner.

The bill also amends AS 25.24.230(a), on judgments in marriage dissolution proceedings, to add a specific reference to retirement benefits (which include pensions, etc.) and to remove the redundancy from the phrase "unfair, unjust, or inequitable." This latter change is also made in

AS 25.24.220(d) and is consistent with the wording of the proposed AS 25.24.220(i) in sec. 4 of the bill (as well as with existing AS 25.24.160(4) [as renumbered in 1985], pertaining to divorce).

The bill repeals AS 25.24.200(c), and makes a corresponding amendment to AS 25.24.220(b), because requiring both parties to appear at the dissolution hearing will enable the court to question them in depth. The subsection being repealed currently permits a waiver for appearance at the hearing.

It is believed that the changes proposed in this bill will result in more equitable divorce and dissolution arrangements.

Sincerely,

Bill Sheffield
Governor

ALASKA COURT SYSTEM
ADMINISTRATIVE OFFICE
TELEFACSIMILE TRANSMITTAL SHEET

TO: Rep. Mike M. Miller DATE: 3/6/86

FROM: Karla Forsythe, Staff Counsel

TOTAL NUMBER OF PAGES: 4
(Not including the cover sheet)

MESSAGE: cc to Rep Cloksin

(If you do not receive the above document(s) please call 264-8232)
Telecopier number is 276-6342

Alaska Court System
State of Alaska

OFFICE OF ADMINISTRATIVE DIRECTOR

KARLA L. FORSYTHE
STAFF COUNSEL

303 K Street
Anchorage, Alaska 99501

(907) 264-8228

March 5, 1986

Rep. Mike Miller
Chair, House Judiciary Committee
P. O. Box V
Juneau AK 99811

Dear Representative Miller:

It is my understanding that HB 496 has been scheduled again for hearing on Friday, March 7. I have reviewed a copy of a work draft of Rep. Clocksin's proposed committee substitute dated February 28, 1986. I would appreciate it if the following comments from the Alaska Court System could be brought to the committee's attention.

1. Proposed Section 25.24.140(b)(6) (page 2, line 4) would prohibit a spouse from disposing of "marital property". The term "marital property" should be defined in order to clarify legislative intent.

2. Section 5 of the proposed substitute (page 4) would require petitioners to state in detail the terms of their agreement with regard to tax consequences. Under current law, only the tax consequences of spousal support must be addressed. The proposed changes would require petitioners to also state their agreement about tax consequences of property division, retirement benefits, career assets, and debts. Although the court system could add space to the dissolution forms for parties to explain their agreement about tax consequences, it would be inappropriate for the court to provide detailed instructions about how to determine tax consequences.

3. Section 7 (page 5) and Section 9 (page 6) provide that the court shall examine petitioners to determine whether their agreements are fair, just and equitable. However, under Section 10 (page 7), the court may grant a degree of dissolution upon finding that the agreements are not grossly unfair, unjust or inequitable. The proposed committee substitute should be revised to provide consistent review standards.

4. Section 9 (page 6) lists criteria which would be used to determine when the court would use heightened scrutiny. Several of the criteria are open to broad and potentially inconsistent interpretation: whether a proposed amount of child support is "unusually high or low", whether a child custody provision is "unusual", whether a party has a "limited future earning capability" and whether a division of property is "patently inequitable".

   The proposed letter of intent indicates the committee's desire to avoid imposing additional costs on the court system, and states that a zero fiscal note would be appropriate. Several sections of the original version of the bill have been changed in an apparent attempt to minimize any increase in work for the courts. Proposed section 4 (page 3) permits an appearance and waiver if the petition is not subject to heightened scrutiny. Additionally, the revised criteria for heightened scrutiny reflect an intent to limit the circumstances in which both spouses must attend the dissolution hearing. However, there will still be a fiscal impact on the courts.

   Some petitions will clearly fall within the criteria for heightened scrutiny, and petitioners can be made aware from the initial instructions that both spouses must come to the hearing (those dissolutions in which one party is represented by counsel, those in which a domestic violence complaint has been filed, or those in which a party has not worked for wages for at least three years).* However, there is no easy or accurate way to inform petitioners in advance that their custody agreement will be considered unusual, or that their property division will be considered patently inequitable.

   One possible scenario is that although only one spouse might appear at the hearing in the belief that the proposed agreement is fair, the court would find a need for heightened scrutiny requiring the presence of both spouses. At this point the appearing spouse would have to make arrangements for the other spouse to attend. Although the level of additional work would probably not warrant additional standing masters as specified in the court system's current fiscal note, judicial resources must be increased because the court would be holding two hearings rather than one: a first hearing at which the court might determine that both spouses must appear, and a second hearing to review the petition using heightened scrutiny.

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* A minor concern with Section 9, paragraph (h)(5) relates to the three year time period. This language should be revised to clarify whether the three year period must have occurred immediately prior to filing the petition, or can have occurred at any time during the marriage.

In an alternative scenario, after a petition is filed a law clerk or legal technician would attempt to determine from the face of the petition whether the court must use heightened scrutiny. If so, a clerk would notify the petitioners that both spouses must attend. The notification would include a procedure for one spouse to allege extreme hardship. This procedure would create additional work for paralegal and clerical positions and would therefore have a fiscal impact.

The most efficient procedure would be one which petitioners could determine at the time of filing whether both spouses or only one spouse would be required to appear. If the criteria for heightened scrutiny were more narrowly defined, it might be possible to revise the instructions so that the need for additional scrutiny would be clear to peritioners and the court from the face of the petition. However, fiscal resources would still be required to fund special meetings of the statewide court system forms committee to revise current forms and instructions.

5. Proposed Section 12 (page 8) requires that forms must explain the terms under which a dissolution may be modified. Since there is limited caselaw regarding the standard for modification of dissolution decrees, it would be difficult for the forms committee to draft an appropriate explanation.

6. A similar concern arises with regard to career assets, which are defined in proposed Section 13 (page 8). It would be preferable for the legislature to substantively create the right to career assets instead of simply defining these assets and requiring parties to address them in their petitions.

7. The proposed letter of intent indicates that some delays in the processing of non-emergency dissolution petitions may be acceptable. Emergency and non-emergency petitions are not distinguished statutorily, and it would be difficult to make such distinctions for scheduling purposes.

* * *

I have discussed the current status of this measure with Hayden Kaden. Mr. Kaden and I agreed that unless the committee specifically requests a fiscal note at this time, the court system will not prepare a revised note until the bill reports out of committee so that the court system may respond to the most current and formalized thinking of the committee.

I hope these comments are helpful. If these comments raise any questions or if you need additional information, please do not hesitate to contact me.

Sincerely,

Karla L. Forsythe
Staff Counsel

KF/kl

cc: Rep. Clocksin
Rep. Gruenberg
Arthur H. Snowden, II
Presiding Judges
Area Court Administrators
Judge Carlson
Master Brown
Master McBurney
Susan Miller
Jeneane Moore
Carole Frost

Valerie M. Therrien
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775 8th Avenue
Fairbanks, Alaska 99701
907 452-6194 *907 452-6195*

February 28, 1986

Chairman M.W. Miller
Rules Committee
P.O. Box 55094
North Pole, AK 99705

Re: House Bill 496

Dear Representative Miller:

I am writing on behalf of an informally organized discussion group of family law practitioners located in the Fairbanks area. At a meeting held on February 11, 1986, we discussed House Bill No. 496 relating to marriage dissolution proceedings.

With regard to the issue of whether or not both spouses should attend the dissolution hearing, our group opposes this provision or addition to the law. We do not believe that having both husband and wife attend the hearing personally, will resolve what we believe to be the reason for this change. We feel that possibly the reason that the legislature believes that both spouses should attend the hearing is to provide that nothing unjust takes place or that no overreaching has taken place between the husband and wife.

However we believe that counsel for the parties should be able to attend in their place and not have to go through a hearing in which the court for good cause provides that counsel can appear in place of the client. We believe that going through this extra proceeding would only complicate the matter and provide for further problems in the future. Dissolutions were established to provide for an easy way for parties to resolve their difficulties. There are a many occasions here in Fairbanks in which spouses are in the military or have moved away and use the dissolution method in order that they need not be present. We believe that the court should look more carefully into the visitation, custody and child support proceedings. We have unanimously agreed that a lot of cur work deals with modifying dissolution agreements, with regard to visitation rights because they are not specific enough, which causes further problems in the future.

With regard to adding Section H, it is our position that the court should use the heightened level of scrutiny on all dissolution agreements in order to ensure that the amount of child support and visitation rights in child custody agreements are fair. We have no specific comments with regard to Section H, other than the issue of spousal support, appears to indicate that the Legislature thinks that it is awarded on a regular basis. Usually there are no spousal support awards ordered unless the parties have been together for a considerable period of time.

We note that the Bill would add retirement benefits as part of the division of property. We have no position for or against this; however, it might help someone who is not a practicing attorney to realize that retirement benefits are considered as marital property. With regard to the change to Section 1, providing for the care and maintenance of the other spouse during the pendency of the hearing, we support this addition and believe that it takes care of a need that was not addressed in the law but ordered by the Court without statutory authority.

We will be glad to continue to comment on this Bill. If there are further amendments to it, we would be glad to review them at your request.

Sincerely yours,

Valerie M. Therrien, on behalf of
Fairbanks Family Law Practitioners

VMT:klm

cc: Interior Delegation:

Don Bennett
John B. "Jack" Coghill
Bettye Fahrenkamp
Mike Davis
M.M. Miller
Niilo E. Kopenen
John Ringstad
Steve Frank

Alaska Women's Commission

TESTIMONY
Kathy Marshall

HB 496 - Dissolution & Divorce
House Judiciary Committee
February 7, 1986

The Alaska Women's Commission requested the Governor introduce HB 496 in an effort to improve the economic status of women. A recent study on the economic consequences of no-fault divorce indicates that women with children experience a 73% drop in their standard of living during the first year after divorce. This is due in large measure to several factors:

1) Prior to no-fault divorce, property divisions tended to be along lines of family need. More recently, rigid 50/50 divisions have become the norm, with the man retaining a full half while the woman and an average of two children must share the remaining half.

2) Child support awards are frequently inadequate, and less than one-half of the mothers receive any support at all.

3) Alimony is now all but unknown. Eighty-five percent of women receive no alimony.

4) Women often don't have access to retirement benefits and health insurance.

5) Women have a limited future earning capability. Because of child-care responsibilities, women have more frequently been out of the job market or have worked part-time. Those who work full-time earn only 2/3 of the wage earned by men.

The Women's Commission believes the dissolution procedure is an excellent method of obtaining a divorce for certain individuals -- it is a faster, less expensive, and less traumatic means -- but for many women it spells economic disaster. Here in Alaska, over 25% of divorced women with children who are heads of households, live in poverty.

The Commission believes that greater judicial scrutiny of dissolution agreements will help alleviate poverty for these women. HB 496 would require the court to take a more in-depth look at dissolution agreements, if:

1) one party has an attorney and the other does not;

2) an unusually high or low amount of spousal support is awarded;

3) domestic violence has occurred;

4) there are minor children in the marriage;

5) one party has not worked for a lengthy period of time, or has a limited future earning capability.

In order for this heightened scrutiny to take place, the bill also requires both parties to attend the hearing. A waiver is available for good cause if, for example, both parties are out of state. In addition, the Commission requested retirement benefits be added as a marital asset. While retirement benefits are often considered as such now,it is done so on a case-by-case basis and many people are unaware that retirement benefits can be considered in their agreements.

This bill also specifies that actual attorney fees and costs required for divorce proceedings, as well as financial support while the divorce is pending, be awarded to the needy spouse. Currently, this support is not routinely ordered and seldom are sufficient attorney's fees awarded.

The Commission believes these provisions will help prevent one marital partner from exercising unequal bargaining power over a financially-needy spouse.

As you know, the court system has submitted a fiscal note of $406,000 for FY 87. The fiscal note deals primarily with the additional personnel to conduct greater scrutiny of the dissolutions.

While the Commission agrees more time will be required to conduct the hearings, we believe that this added cost will be more than offset by raising the economic status of women. Right now there are 6,204 women receiving assistance from the State's AFDC program. The average AFDC award to a woman with two children in an urban area is $8,900 a year. The $406,000 would be totally offset if the standard of living of only 46 women is raised sufficiently to get them off AFDC.

ALASKA NETWORK ON DOMESTIC VIOLENCE AND SEXUAL ASSAULT

130 Seward, No. 501 • Juneau, Alaska 99801 • (907) 586-3650

POSITION PAPER HB 496

The Alaska Network on Domestic Violence and Sexual Assault is a non-profit organization with a membership of twenty domestic violence and sexual assault programs throughout the state. The Network offers trainings and technical assistance to its member programs as well as advocates on issues that affect victims and their families.

The Network supports HB 496. In particular, we favor the proposed amendments in Section 4. AS 25.24.220 instructing the court to use a heightened level of scrutiny of dissolution agreements if domestic violence has occurred in the marriage.

In the day to day operation of Network programs we see a destructive dynamic that occurs when couples go through the process of a dissolution of their marriage where domestic violence has occurred. One of the best short written descriptions of this that has come to our attention is By Mildred Daley Pagelow, Chair Elect of the California Council on Family Relations. She states:

> Victims of domestic violence, despite appearances of functioning adequately in other arenas of their lives, cannot be assumed to be competent to safeguard their own self-interests in person-to-person negotiations with their abusers. The fear, humiliation, and pattern of deference often is so ingrained in their relationships with their abusers that they automatically yield decision-making to the more powerful person... Once free from their violent relationships, these victims often establish psychologically healthy lifestyles that give appearances of recovery which are complete in all respects: except when they must interact with their former abusers... A former wife-abuser and a formerly battered wife are on no more equal footing than a rapist and a rape victim--no one would expect them to negotiate future behavior together.

A seperate but related issue involves the implementation of this legislation. We realize that many judges and masters have little or no training in the recognition of domestic violence. However, at least this legislation will serve to screen out those people who self-identify as having had domestic violence occur within their marriage. Also, Network programs currently and will continue to support these types of training needs to the degree that our resources permit.

Older Alaskans Commission

Pouch C, Mail Stop 0209
Juneau, Alaska 99811
907/465-3250

HOUSE BILL NO. 496

"An Act relating to spousal support and attorney fees during divorce proceedings, and to judicial review of marriage dissolution agreements; and providing for an effective date."

Testimony of the Older Alaskans Commission before the House Judiciary Committee February 7, 1986

Chairman Miller and members of the House Judiciary Committee, my name is Dove Kull. I am a member of the Older Alaskans Commission and the Commission's Legislative Advocacy Committee. I am here representing the Commission to state our support for House Bill 496. The Commission supports the entire Bill but I wish to focus my testimony on Section 4 (h) (5) and Section 5 (a) (2). These sections will be of special benefit to older persons and especially to older women who represent slightly more than half of Alaska's older population.

It is a sad fact that being old and a woman is a sure ticket to poverty. According to a recent survey conducted by the Older Alaskans Commission, 70 percent of older Alaskans with an annual income of less than $5,000 are women. 9 percent of Alaska's older women are divorced and an additional 45 percent are widowed. Only 3 percent were never married. Consequently, we can conclude that older women who are now poor were once married. But they do not enjoy an adequate level of retirement pensions and incomes - and many of their male peers do. Policy makers should note that the impoverishment of older women leads to the expenditure of public funds in Medicaid, Old Age Assistance, Supplemental Security Income, and other poverty programs. If we have the opportunity to establish public policy which can lessen the impoverishment of its older citizens we must do so. We have just such an opportunity in HB 496.

Section 4 of this Bill will require greater scrutiny by the courts over divorce agreements when, "one party has not worked for wages for a long time or has a limited future earning capacity". This is precisely the situation which applies to many older women who face divorce late in life. This section would assure persons in this situation - both men and women - do not finalize their divorce lacking full knowledge of the consequences of the agreement. Section 5 subsection (a) (2) will add retirement benefits to assets which must be considered by the courts in granting dissolutions. This addition will form important protections for Alaska's retirees - especially those who under current law find themselves suddenly impoverished and unable, late in life, to change their situation through employment.

I urge the Committee on behalf of the Older Alaskans Commission and Alaska's 26,000 older citizens to give this bill your firm "DO PASS".

Thank you Mr. Chairman. If you or members of the Committee have any questions of me I would be happy to try to answer them.

OLDER ALASKANS COMMISSION

FACT SHEET

THE OLDER ALASKAN WOMAN

Over half of older Alaskans are female.

- 51.5% of Alaskans sixty-five years of age and older are women. There are 107 women for every 100 men. Nationally, there are 149 women for every 100 men.

Elderly women are almost twice as likely as elderly men to be poor.

- 70.1% of older Alaskans with an annual income of less than $5,000 are women.

- 23.5% of older women have an income under $5,000; 10.6% of older men have an income under $5,000.

- 60% of older women have an income under $10,000; 37.4% of older men have an income under $10,000.

- 19.5% of older women have an income of $15,000 or more compared to 38% of older men.

- These figures are consistent with the national trend. Nationally, the median income of men is 74% greater than the median income of women.

Minority older women and those living alone are especially poor.

- 76.1% of Native Alaskans have an income under $10,000; 40.4% of White/Caucasian Alaskans have an income under $10,000. This trend follows for women and other minorities.

Nationally:

- Half of widowed black women live in poverty.

- Elderly men are most likely to be married; older women are most likely to be widowed.

- The number of elderly women living alone has doubled in the past 15 years.

- 48% of the older Alaskan population living alone are women.

- Housing costs for older Alaskan women and men are nearly equal.

- The primary source of income for older Alaskans is social security which is also the case nationally.

OLDER ALASKANS COMMISSION

FACT SHEET

- Close to 25% of older Alaskans receive public assistance.

- Approximately 1,480 older Alaskan women receive Medicaid.

- Approximately 75% of the State's recipients of supplemental security income (SSI) are women. Nationally, 72% of aged SSI recipients are women.

- It is estimated that the majority of the 1,000 older food stamp recipients are women.

- The 1980 census indicates that one in every five Alaskans age 65 and older is involved in the civilian labor force. In 1981, over 7% of the female labor force in Alaska was 55 years of age and older.

- Nationally, 12% of older Americans were in the labor force in 1983. Approximately half are employed part-time and of those 61% were women.

SOURCES:

Older Alaskans Survey, October 1984

A New Beginning for Older Alaskans: A Three Year Statewide Plan, Older Alaskans Commission, July 1983

The Status of Older Alaskans, 1980 Data Base, ISER, June 1983

Profile of Older Americans: 1984, AARP, AoA, USDHSS

Age and Gender: Older Women in Alaska, AARP

National Organization of Women

Testimony
HB 496 - Dissolution & Divorce

House Judiciary Committee
February 7, 1986

My name is Lillian Ruedrich and I am testifying on behalf Jan Erickson, State Chair of the National Organization of Women. The National Organization for Women has over 800 members around the state. We participated in the State Legislative Alliance this fall which developed the initial legislative proposals submitted by the Alaska Women's Commission to the Governor for introduction.

NOW is strongly committed to HB 496, the Divorce and Dissolution bill. We are particularly concerned about the economic consequence of no fault divorce and dissolution. Thousands of single women and their children in our state are living in poverty. We believe this bill is the first step toward raising their standard of living by insuring more equitable treatment under the law. It should, however, be looked upon as a first step only.

NOW recommends the Alaska legislature undertake a total review of Family Law in Alaska with the goal of bringing women into the economic mainstream as equal partners.

Thank you for the opportunity to testify before your committee.

LR/dn

PHIL N. NASH
ATTORNEY AT LAW
P.O. BOX 4084
KENAI, ALASKA 99611

February 6, 1986

Hayden Kaden, Esq.
House Judiciary Committee
Pouch V, State Capitol
Juneau, Alaska 99811

Dear Mr. Kaden:

As an attorney with eight years of family law practice here and two 'outside', and as a former (and first) director of the Alaska Child Support Enforcement Agency, I have personal knowledge of the extensive use of financial coercion used by the working spouse, generally the father, against the other spouse in divorce. HB 496 is a good start, however, because most judges did not handle many family law cases in their practice, and don't realize the current costs involved in those cases, this act would accomplish more if Section 1 were further amended after the word "proceeding" to read: ", but not less than the amount paid or promised by that party for his or her own fees and costs,".

I also suggest that gross unfairness in child support issues would be reduced, and the number of good faith stipulations for reasonable cost of living increases would be increased, by adding a new section to the bill amending AS 25.24.170 to add a new sentence as follows: The custodian of minor children awarded an increase in child support shall also be awarded attorney's fees and costs that reasonably approximate the actual fees and costs incurred in the proceeding but not less than the amount paid or promised by the other party for his or her fees and costs.

Sections 2 through 5 of the bill are generally good but my concern with Section 2 and 6 is with spouses who work on oil platforms, the North Slope, the bush or are students, military or reside outside and have tried to make a good faith settlement. (There are some!) If they can't sign a waiver they should be permitted to appear through informed counsel.

Even with 'court examination', the new 'just' standard and 'heightened level of scrutiny' we all recognize that sheer volume will result in many cursory proceedings. Another viable safeguard to reduce inequities in dissolutions would be to add a new Subpart C to AS 25.24.240 or a new AS 25.24.245 to read: Upon granting a motion brought pursuant to Rule 60(b), Rules of Civil Procedure, the court may award attorney's fees and costs that reasonably approximate the actual fees and costs incurred by the successful party. The court may inquire into the fees and costs paid or promised by the other party to determine reasonable value.

Thank you for the opportunity to comment on this legislation.

Sincerely,

Phil N. Nash

AWPC
Alaska Women's Political Caucus

The Alaska Women's Political Caucus wishes to go on record in support of HB496. The Caucus participated in the meetings and discussions of the State Legislative Alliance of Women throughout the Fall and early Winter months of 1985, conducted full discussion of the issues involved in Caucus meetings, and passed a resolution of support with no dissenting votes.

Of particular concern to Caucus members are sections 2 and 4 of the bill, requiring the presence in court of both parties to the action and requiring an increased level of judicial examination of them to determine if the agreements entered into are just, that the long-term consequences of these agreements are understood by both parties, that the settlements were not entered into under duress (physical or financial), that the children of the marriage will be adequately provided for, and that the party accepting custody of the children has the means to support them.

Too often, studies have shown, women enter into dissolution agreements because they cannot afford an attorney for a divorce action or because it is the quickest way out of a violent marriage.

By now, you are all familiar with the plight of displaced homemakers, women who have been out of the job market for a number of years who, because of loss of the financial support of their wage-earning partner must re-enter that market with few, if any, job skills.

You, as a legislative body, are also familiar with and sympathetic to the issues surrounding the physically and/or psychologically abused spouse.

All court appearances are intimidating for most of us. Divorce and dissolution procedures are especially so because they involve deep emotions of insecurity, inadequacy, failure, anger, and helplessness.

The Caucus believes that by enacting this bill into law the legislature will assist in restoring psychological and financial balance to the dissolution statute.

Thank you for the opportunity to present the position of the Alaska Women's Political Caucus on this bill. If you would like additional information, please feel free to contact me.

Signed,

Jana Varrati

Jana Varrati
Chair
Alaska Women's Political Caucus

P.O. Box 1571
Anchorage, Alaska
99510

ALASKA WOMENS COMMISSION

POSITION PAPER

DISSOLUTION & DIVORCE REFORM BILL

HB 496

No-fault divorce was hailed initially as a revolutionary step that would remove anger and emotional turmoil from the divorce process and allow people to remain actively involved in parenting their children. In reality, the result has been that while the new divorce process is emotionally less traumatic, women and children are suffering economically. According to Weitzman's recent book The Divorce Revolution: the Unexpected Social and Economic Consequences for Women and Children in America, women experience a 73% drop in their standard of living during the first year after the divorce, while their former husbands enjoy a 42% rise in theirs.

Hardest hit have been middle and upper-middle class women, groups formerly protected by alimony and child support. Nationally, 85% of divorced women are awarded no alimony at all and less than one-half of all divorced mothers receive the full amount of child support due. When judges divide family income, they frequently do not take into consideration the parties future earning capability, pensions, health insurance, education, or professional licenses.

Recent innovations in divorce reform, such as Alaska's dissolution procedure, have created the potential for even greater inequities to occur in no-fault divorces. Alaska's dissolution law allows the parties to come to any agreement as long as it is not "grossly unfair." Yet, limited information is available to the parties on their rights and obligations, and they are not required to seek legal counsel. Consequently, the economic settlements are not always fair and equitable, nor are the long-term consequences of their spousal agreements always understood.

The unequal bargaining power that exists in many marriages leaves many women especially vulnerable during the dissolution process. According to current law, the court is required to take an active role inquiring into the basis of the parties' agreements.

3601 C Street, Suite 742, Anchorage, AK 99503 (907) 561-4227

Yet, as a practical matter, this ten-minute inquiry is often no more than a series of leading questions that are unlikely to expose inequities.

Further compounding the situation, both parties are not required to attend the dissolution hearing, and thus the court's ability to determine whether any inequities exist is severely inhibited.

The Dissolution and Divorce Reform Bill addresses these concerns. It will require greater judicial review of dissolution agreements concerning child custody, child support, visitation, spousal support, and division of property (including retirement benefits) under the following circumstances:

1. one party is represented by counsel and the other is not;
2. an unusually high or low amount of spousal support is awarded;
3. domestic violence has occurred in the marriage;
4. there are minor children in the marriage; or,
5. one party has not worked for wages for a long time, or has limited future earning capability.

It is believed that this heightened scrutiny will prevent one marital partner from exercising an unequal bargaining position over the other. The bill also requires both parties to appear at the dissolution hearing so that the court may question them in depth.

While heightened scrutiny will greatly improve the equity of dissolution settlements, there are other components of Alaska divorce law which fail to protect a financially needy spouse. Current law does not authorize spousal support while a divorce is pending. Because this support is not routinely ordered, economically needy spouses often have difficulty obtaining adequate support during the turbulent period of a divorce.

In addition, the court often awards insufficient attorney's fees to a spouse already in financial need. Such an award can in turn become bargaining material to be used by a more affluent spouse to influence divorce negotiations and secure other compromises.

The Dissolution and Divorce Reform Bill also addresses these problems by directing the court to provide spousal support while a divorce is pending, and full attorney's fees and court costs to financially needy spouses. Again, these provisions will help prevent one marital partner from exercising unequal bargaining power over a financially needy spouse.

Divorce: Who Gets the Blame in "No Fault"?

Four years ago, when I got divorced, my husband and I quickly agreed on financial arrangements. He was angry and seemed to want to punish me. I felt guilty that the marriage had failed, and wanted to soothe his anger. With such closely matched goals, it was easy enough to agree on terms.

Technically, of course, we merely did the modern thing: we split everything down the middle. Everything, that is, except what could be the single most lucrative asset of our marriage—his newly earned postprofessional degree. I'd put him through school, yet he would keep an earning power that had doubled while my own stood still.

I realize I was one of the very lucky ones. I was young, healthy, and educated. I was also—and this is crucial—childless. I was even a lawyer by profession, so I knew my chances of winning a fairer settlement in court were slim. For a man to leave a marriage far wealthier than his wife is, quite simply, the norm.

In the months that followed, though, a thought haunted me: suppose I hadn't been white, educated, and financially advantaged? Suppose, more simply, I'd had a child? How much more dangerous the inequities would have been.

BY MARIANNE TAKAS

"Motherhood," says Lillian Kozak, chair of New York State NOW's Domestic Relations Law Task Force, "puts a woman behind the eight ball. Child-raising can be a wonderful thing, but in our society it has no monetary value and accumulates no economic rights. If at any time the wage-earning father decides to leave, the mother and children can be financially devastated."

The facts support Kozak's claim. There are now more than eight million women raising children under 21 whose fathers are not living in the household, the U.S. Bureau of Census reports. Fully one third of them live below the poverty level. Nearly two thirds of families entitled to child support collect no child support at all. And among the "lucky few" who do get some support, the average amount received is about $115 per child per month. According to Wayne Dixon, author of *Child Support Enforcement: Unequal Protection Under the Law* (Forum Foundation), white families average about $121 per child per month and black families about $71.

Alimony, once an important means of avoiding postdivorce poverty (particularly for older women or the mothers of young children), is now all but unknown. Fewer than 5 percent of all divorced, nonremarried women are entitled to receive alimony in a given year—and fewer still actually collect.

All women, married or unmarried, employed within and/or outside the home are at risk. With the corporate world still largely insensitive to the needs of workers with family responsibilities, even professional couples face hard choices if they want to have children. Commonly, one parent—nearly always the woman—finds that she must interrupt or scale down her career in order to meet the family's needs at home. Coupled with the prevailing wage discrimination against women, the result is a serious disparity in earning power. The family becomes dependent upon the support of the male wage earner—and ripe for economic disaster if that support is withdrawn.

Until recently, the legal system's increasing role in impoverishing women and children was not fully recognized. We knew about the growing "feminization of poverty" but were largely unaware of how changes in divorce policy and practice had contributed to the crisis. We had anecdotal reports, occasional data, and a growing sense of misgiving, but little solid statistical analysis. Those of us still married or not yet married could reassure ourselves that the problem was an isolated one of a few stingy or irresponsible men. My husband (or lover or future husband), we could tell ourselves, would never do that to me. And I would never be so vulnerable.

Enter Lenore Weitzman, bearer of the bad news. Weitzman, associate professor of

Nearly two thirds of families entitled to child support collect no support at all.

sociology at Stanford University in California, was the major researcher on a 10-year study of the effects of California's widely hailed—and widely imitated—no-fault divorce law. In her shocking and important new book, *The Divorce Revolution: The Unexpected Social and Economic Consequences for Women and Children in America* (The Free Press), Weitzman documents and explains how new divorce policies in California have resulted in severe financial losses to women and children. Her major finding: the effect of the average divorce decree is to decrease the standard of living of the woman and any minor children in her household by 73 percent, while actually *increasing* that of the man by 42 percent. [See page 67.]

"The framers of the no-fault divorce laws," explains Weitzman, "were totally preoccupied with the negative aspects of the traditional adversarial system. In the past, to get a divorce, people were required to prove fault—that a spouse had done something improper like adultery or physical cruelty. That could bring out the worst in people in terms of anger and recriminations, and the legislators hoped that no-fault laws would reduce acrimony and restore dignity to the parties.

"What they didn't consider, however, was that requiring proof of fault had long provided the one protection for economically dependent homemakers and women raising children. If a woman hadn't given her husband grounds for divorce—hadn't committed adultery or other forbidden behavior—she had some leverage. She could agree to ask for the divorce herself on the grounds of the husband's behavior, but only if he first provided adequate support for her and the children."

As support levels declined under no-fault, property divisions also became less fair. California is a community property state, but the law has never dictated an exact formula for division if the spouses divorce. Before no-fault was instituted, reports Weitzman, property divisions tended to be along lines of family need, with a custodial mother and children retaining the family home and enough other property to avoid sudden poverty. More recently, rigid 50/50 divisions have become the norm.

The result, says Weitzman: an *illusion* of equality, with the man retaining a full half of the property, while the woman and an average two children must share the remaining half. Frequently, to accomplish the split, the family home is sold, so that the mother must find new living arrangements for herself and the children.

Ironically, Weitzman's disturbing statistics come from a state that many analysts believe is actually less unfair to women than most. For if California's community property law now results in a 50/50 split between unequal family units, women and children may fare even worse under the more common equitable division laws, which theoretically provide for a fair—but not necessarily equal—split of family assets. Thus, for example, a special study by Harriet N. Cohen and Adria S. Hillman for the New York Task Force on Women in the Courts showed that in the average property division, the man actually received substantially *more* than the woman and children combined.

Those who criticize the growing inequities under no-fault divorce laws do not, however, generally advocate a return to fault requirements. At best, explains NOW's Lillian Kozak, the old fault requirements provided only a crude bargaining tool that helped some women to escape the effects of the underlying problem: the failure of both law and society to recognize and reward the essential services offered by most women in the home.

"What we really need," says Kozak, "are laws and policies that recognize the family as a cooperative unit. If the facts show that a man within a family has been free to pursue his career fully while the woman has taken on most of the child-care responsibility—whether she's also held an outside job or not—his greater earning power is a family asset.

"That means that not only property, but also in the years after the divorce that income should continue to be shared. Otherwise, it's like dividing up a business partnership by giving half the capital and inventory to each partner—but letting one of them keep the entire income-producing business."

Despite isolated advances, however, the dominant trend seems to be in precisely the opposite direction. The practical problem of negotiating alimony, for example, has been eclipsed by arguments that the concept itself is outdated. It's best for everyone if the parties get a fresh start, runs the modern theory. Isn't that what women's liberation is all about?

That upbeat view totally overlooks the role of alimony in sharing family earning power and compensating for past and present services within the family. Yet it has no doubt contributed to the declining levels and poor enforcement of alimony awards. In real-dollar terms, child-support awards have declined in recent years; a casualty, perhaps, of the growing resistance to *any* postdivorce income transfers.

The growing trend toward these harsh interpretations of "equality" in divorce is not limited to finances. Indeed, perhaps the most disturbing example of ignoring family realities occurs in the custody area. Parents should have equal custodial *rights* to a child, some policymakers argue—even if the mother has always taken the major *responsibility* for the child's care and continues to do so.

Could all these changes reflect an ex-

One in three men used the threat of a custody battle in financial bargaining during divorce.

cess of innocence, a naive belief that women and men are indeed equal both in financial status and family responsibilities? Perhaps, but around the divorce drama these days there seems to be an ominous and growing hostility toward "uppity" women: women who have careers. Women who want out of marriages. Women who think they don't need men any more, and need a lesson they won't forget.

"Women file for divorce in most cases because they are 'pissed-off,'" writes Ken Pangborn, president of Men International, Inc., in the February, 1985, issue of "Legal Beagle: A Family Law Reform Newsletter." "Greed is a powerful motive.... The feminist agenda, when examined closely, is *not* a cry for a fair share of the pie.... It is an angry demand for the pie and the kitchen it was cooked in, along with everything else."

The solution, according to Pangborn? Since women cannot be trusted, men should strike back—by aggressively seeking sole custody of their children.

It would be comforting to believe that such extremes are limited to a few extremists—and indeed there *are* numerous calm, fair-minded male voices in the storm. Yet a glance at the steady stream of divorce advocacy books for men, written by male lawyers and published by prestigious houses, is indeed deeply disturbing.

The Lion's Share: A Combat Manual for the Divorcing Male, by J. Alan Ornstein, for example, is dedicated in part to divorcing women, the "Bitches of Buchenwald [with their] female chauvinistic greed." Leonard Kerpelman, author of *Divorce: A Guide for Men*, advises men to use "primitive democratic means" to reach their goals, explaining, "If [judges] see one person hollering and the other submitting, they'll rule for the one hollering." That same angry, competitive mentality pervades two books by Maurice Franks: *How To Avoid Paying Alimony* and the more recent *Winning Custody*.

Perhaps the most chilling of all is *How To Win Custody*, by Louis Kiefer. Kiefer, a lawyer who won sole custody of his own children, offers helpful advice on using accusations of lesbianism as a bargaining technique, and on how to kidnap a child from the custodial mother.

I am talking with an old college friend. It's a local call, for by happy coincidence we again live in the same town. The call, however, like many of our recent conversations, is not a happy one.

"I'm sorry, Marianne," she says, her voice straining to hide pain and panic, "I can't make it today. I know it's your birthday, and I feel just terrible."

I'm disappointed, too, but mostly I'm concerned. Gradually at first, then in a rush of tears, she explains. Her husband (who refuses to meet me) doesn't approve of me because I'm a lawyer and divorced and live in a co-op house in Cambridge. She never dares to visit me unless he's out of town, but this time she thought she'd slip off quietly between loads at the Laundromat. He guessed her plan somehow, smashed two glasses against the wall, and raced off in the car with their three-year-old daughter.

Days later, when the crisis is past, she calls me from work. "I want to leave him," she says, "but I'm afraid. He says he'll get custody of Jennifer, and I'll never see her any more. You know about these things, Marianne. Can he do that?"

My heart breaks for her, because I know the risk is serious. I cannot honestly tell her, no, your child is safe if only you will leave this dangerous man.

"In recent years, when women began to get 'uppity'—began seeking economic independence and reproductive rights," says psychologist Phyllis Chesler, author of *Mothers on Trial: The Battle for Children and Custody* (McGraw-Hill 1986), "the deepest patriarchal response was to go for the kids. Because when you go for the children, that keeps women in marriages that are bad, keeps them at home afraid to pursue careers. They're afraid to 'break the rules' that have traditionally defined good mothers. In fact, however, they're at risk even if they *don't* break the rules."

Chesler's book, based upon hundreds of interviews with mothers, fathers, children, and professionals working with divorcing families, focuses in part upon an in-depth study of 60 mothers challenged for custody of their children between 1960 and 1981. The mothers studied had been married an average of nine years, had an average of two children, and had completed an average of three years of college. All the mothers had been primary caretakers of the children prior to the custody fight. Among the children's fathers, 87 percent had not been directly involved in child care before seeking custody, and 67 percent had not paid child support upon separations. Permanent custody was nonetheless awarded to 70 percent of the fathers [see page 69].

In a legal climate in which male custody victories appear not to require actual prior involvement in child-raising, the potential for abuse is rife. While some men may in fact be involved in child-raising during marriage, the law does not require or even encourage them to do so. Worse yet, children can be used as pawns for bargaining or expressing anger. Thus, in Weitzman's study, fewer than one man in 10 actually sought physical custody of the children—but fully one third used custody threats to gain leverage in financial bargaining.

(continued on page 82)

At 31, he also grew up in a country that was questioning old values, with new groups who were insisting on becoming part of the main story line, not just a subplot. Sometimes he seems conscious of this context. Sometimes he just assumes it. But the difference is always there.

As we rejoin Sylvia who has been working in a different part of the loft, Richard says he is researching a future film on the life of a painter. Perhaps that's the influence of Sylvia, an artist with a confident, intense, down-to-earth quality; a younger, Brazilian version of Yoko Ono. She also has enough faith in the irrational to insist that I borrow a red, not a green, umbrella as we go down to the rainy, deserted streets to search for a taxi.

"Red is the color of a Brazilian goddess," Richard explains as we ride down in the elevator. "That's why she thinks it's more magical."

Sure enough, a taxi appears in the rain.

Gloria Steinem is an editor and a cofounder of "Ms."

Divorce: No Fault?

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According to Nancy Polikoff, staff attorney of the Women's Legal Defense Fund, the recent advance in male custody rights at first seemed reasonable even to feminist advocates. "In the early 1970s," explains Polikoff, "we saw a trend away from assuming that the mother was always the caretaker of the children and should therefore be their custodian. That seemed fine. We assumed that courts would then make a gender-neutral inquiry into who had actually been caring for the children, and whoever it was, the mother or the father, would be more likely to get custody.

"Well, it hasn't turned out that way. Instead of replacing an assumption that the mother was caring for the children with a gender-neutral inquiry, we've instead seen the work of the child-raiser gradually devalued or ignored. Today the use of other factors to determine custody is flourishing. Courts look at financial status, the nicer home, even the new spouse the man is statistically more likely to have. Then, too, money generally buys the ability to litigate more effectively. In the end, the relationship between mother and child, the work that she's done raising the children, and the importance of continuity of care to the children is all but forgotten."

Why would judges and legislators, presumably concerned about child welfare, so easily disregard an involved mother's role in child raising, favoring instead a financially dominant father? Why, for that matter, would millions of ordinary men turn their backs on their own children, allowing them to live in relative poverty? And why does our society overlook or even condone the inequities, almost as if we believed that women who leave (or fail to satisfy) men deserve to suffer?

In recent months, while speaking publicly about the child-support crisis, I have been besieged by the voices of angry men.

"I'm one of those Deadbeat Dads you keep talking about," says one man belligerently. (In fact, I never use that term.) "And I'll tell you why. She turns the kids against me. She uses this snide tone when I call on the phone, 'Oh, it's your dad again.' I figure I can't compete, so I just don't call *or* support."

"These women, they leave a guy and run off with another," argues another man, "and they think we'll pay for their kids?"

A middle-aged judge speaks to me scoldingly, like a father admonishing his errant child. "I've always taken care of my wife, but you ladies wanted to be liberated. Well, I guess you'll just have to live with the consequences."

It is easy to see viciousness in these comments, the hostile backlash of men losing control. And yet, I have to say honestly that I hear real pain in their voices, see real anguish in their eyes. Even their anger is understandable—it is just grossly misdirected.

Everyone—men and women—feels hurt and anger when a relationship ends. But men have the social permission to act out their anger, and social encouragement to substitute expressions of control for true expressions of emotion. Undoubtedly, many men do feel cheated out of fatherhood and, more than that, out of the ability to be intimate. Yet that painful sense of isolation begins long before a divorce, and even long before the marriage. "What's all this talk about absent fathers?" asks a friend of mine, worrying about his own ability to father effectively. "I never knew my dad, and he lived with us my whole life."

The traditional social contract offered to men in our society is not much better than that traditionally offered to women. Be controlled and effective and a good breadwinner, men are told, and in return we'll let you rule the family. It's not emotionally sustaining even when it "works," because power and control are substituted for—and prevent—real intimacy and sharing.

Typically, as in Chesler's study, the men who fight the hardest and most cruelly tend to be those who lacked a

Resources

Children's Defense Fund (122 C Street, N.W., Suite 400, Washington, D.C. 20001). A leading advocate for children's legal rights, CDF is also active in lobbying for improved child-support laws. Attorney Nancy Ebb heads the support project.

The Children's Foundation (815 15th St., N.W., Suite 928, Washington, D.C. 20005). Spurred by NOW surveys showing that women today are concerned by the "bread and butter issues of parenting," NOW/LDEF and the Children's Foundation have joined forces to publicize recent improvements in support enforcement and to advocate further advances. Write to Barbara Bode, president of the Children's Foundation, for more information.

National Center on Women and Family Law (799 Broadway, Room 402, New York, N.Y. 10003). Long a leader in divorce equity, NCWFL litigates cases affecting the rights of lower-income women, is a resource for local legal service offices and advocacy groups, and offers a newsletter and an extensive list of information packets on family law topics. Laurie Woods is director and Joanne Schulman the staff attorney.

National Women's Law Center (1616 P St., N.W., Suite 100, Washington, D.C. 20036). Active in obtaining passage of the federal Child Support Enforcement Amendments of 1984, NWLC is now engaged in monitoring compliance at the state level. Policy analyst Ann Kolker and attorney Nancy Duff Campbell direct the monitoring project.

NOW Legal Defense and Education Fund (99 Hudson St., New York, N.Y. 10013).

Parents Without Partners (7910 Woodmont Ave., Suite 1000, Bethesda, Md. 20814). Over the past two years, PWP has organized the Child Support Network of more than 70 local grass-roots parents' groups working to improve support enforcement. To learn about local grass-roots in your area, call public affairs director Virginia Nuta at (800) 638-8078.

Women's Equal Rights Legal Defense and Education Fund (6380 Wilshire Blvd., Suite 1404, Los Angeles, Calif. 9004 Headed by activist attorney Gloria Allred, WERLDEF has won precedent-setting cases in divorce equity. Recently, when an employer illegally terminated an employee whose wages were assigned to pay child support, WERLDEF won a judgment from the employer to pay the support lost.

Women's Legal Defense Fund (2000 P St., N.W., Suite 400, Washington, D.C. 20036). WLDF is particularly known for its Child Support and Lesbian and Gay Child Custody Projects. Attorney Nancy Polikoff directs the projects.

—*M.T.*

positive emotional connection to the family *during* the marriage. Their rage is not so much because they fear losing important intimate relationships, but because they suspect they never truly had them, and may lack the capacity to develop them.

But if the anger is understandable, the destructive response cannot be justified. To understand the reasons is like understanding the reasons a batterer batters or a molester molests. At the bottom line, the violent behavior must stop.

There are available remedies—proposed policies that would promote equity and fairness while recognizing individual family differences. In custody disputes, WLDF's Polikoff and other commentators point to case law in West Virginia, Pennsylvania, and Oregon that offers a gender-neutral standard based on continuity of care to the children. If, in West Virginia, a mother has been the child's primary caregiver prior to divorce and is not unfit, there is a presumption in favor of retaining her as the custodian. If a fit father has fulfilled that role, he receives the presumption in his favor. In Pennsylvania and Oregon, while presumption is not the standard, positive consideration is given to the role of the primary caregiver.

(If child-raising responsibilities have truly been shared, of course, the parents may agree on joint custody. Studies show that parents who have shared child-raising during the marriage are the most likely to choose joint custody, and the most likely to make it work. Court-imposed joint custody, however, is the least likely to be successful, often creating conflict and inequity.)

Once custody is determined based on continuity of care and the best interests of the children, advocates note, financial arrangements should ensure that each new family unit achieves a standard of living equal to the other. This means first that property is divided to reflect the needs of all family members, so that, for example, a three-person family of mother and two children would receive a three-person share—not an amount equal to or less than the father alone.

Similarly, alimony and child-support levels should be set to allow the children and their caretaker to enjoy the same standard of living as the noncustodial parent. One excellent method of doing this is known as income equalization. Simply stated, standardized government cost-of-living charts are used to determine comparable incomes for a family of one, two, or more at any given standard of living. Total family income is then divided so that each family unit is at the same level. Yet despite the ready availability of the charts (and law review articles explaining their use), no state presently uses the income equalization method.

Finally, since a court order is only a piece of paper until enforced, aggressive enforcement of support orders is needed. Recent federal legislation, the Child Support Enforcement Amendments of 1984 (see "Gazette," June, 1985), requires states to improve their mechanisms for child-support collection. Yet organized political pressure is needed on the state level—first, to ensure that the laws really are implemented; second, to see that these much-needed reforms are extended to alimony collection as well; finally, to urge the adoption of reasonable guidelines offering adequate support levels.

As the need for reform becomes ever more clear, women's activism on divorce equity is increasing. (See "News Focus," page 67.) Just as we struggle for the freedom to choose or not choose men as partners, to marry or not to marry, and to have or not have children, we must also struggle to make those choices meaningful and safe. By insisting that our partings with men be free of oppression and coercion, we open the door to equality between women and men *within* relationships. Ms.

Marianne Takas is a lawyer who writes extensively about the legal rights of women and children. Her new book, "Child Support: A Complete, Up-to-Date, Authoritative Guide To Collecting Child Support," is published by Harper & Row.

Star Wars

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Promise: Star Wars research won't by itself violate the ABM Treaty.

Reality: This is a tricky point. The treaty states: "Each party undertakes not to develop, test, or deploy ABM systems or components which are sea-based, air-based, space-based, or mobile land-based." Mere scientific research might be exempt, but at what point do we begin to "develop" and "test" a system?

There is another treaty at risk too. We have an agreement to ban "weapons of mass destruction" in space. It would be jeopardized by bomb-pumped lasers. Also at risk may be the offensive arms limitation of SALT II, since a standard counter to any defense is to build up the offense. So instead of some 10,000 warheads aimed at us, we could easily face 50,000 or more; thus, the apparently stubborn insistence by the Soviets that there be no offensive arms reduction until and unless the United States gives up Star Wars.

Lately the Administration has seized upon "Agreed Statement D" in the ABM Treaty that suggests that systems using "other physical principles," such as lasers or particle beams, may not be limited by the treaty. Maybe so. But the 1972 ABM Treaty is easily the most significant of our Arms Control agreements with the Soviet Union. It was the only time we've forgone a weapon that was under active development, and it saved us up to $50 billion. Unlike SALT I that expired years ago and SALT II that's never been ratified, it has no expiration date. We know there are high officials in the Administration who have little faith in arms control and would like to scrap this treaty. Star Wars research might just accomplish this dubious goal.

Promise: Once we've developed space-based ballistic missile defense, we will share it with the Russians.

Reality: The President made this offer during the March, 1983, speech, and repeated it before journeying to Geneva last November to meet with Mikhail Gorbachev. The idea has some logic: the Russians will *have* to have comparable defenses if we are to maintain the mutuality that prevents catastrophe. But if we were really serious, wouldn't we be undertaking joint research, even in these early stages?

It is worth reflecting on the fact that if a level of trust actually existed such that we could give the Russians our most advanced and secret of weapons, then we wouldn't need the weapons in the first place.

CONCLUSION

The very best we can expect from the Administration's version of Star Wars is that, 30 years from now, the national debt will be $1 trillion higher than it would have been. Some will have made nice careers in the Space Commands, the defense industries, and academia; and maybe public opinion polls will show that some people feel "stronger" for the expenditure. But *we will be no more secure.*

Meanwhile, the interest on the $1 trillion debt will approach $100 billion per year (more if interest rates go up), money that might have prevented brain damage in newborns, helped job-training for the unemployed, filled potholes in streets, or simply been retained in citizens' pockets.

At worst, some future space traveler might find a blackened earth continuing its familiar orbit around the sun, on into the millions of years that were to have been available to us; sur-

Beneath The Surface

The Truth about Divorce, Custody, and Support

NADIA PIGNATONE

A New Look at Career Assets

BY LENORE J. WEITZMAN

Janne Hayes raised four children during her 25-year marriage to an ambitious lawyer and state legislator. While she was a full-time homemaker and mother, he gained education and experience in the world of business and politics. But upon their divorce, her investment in his political career was ignored. When her severe arthritis and asthma prevented her from supporting herself, she ended up on welfare and food stamps.

In modern industrial societies like the United States, our major form of wealth comes from investment in ourselves—our "human capital"—and in our careers. This is true in marriage too. Husbands and wives typically invest in careers—most particularly in the husband's education and career—and the products of such investments are often a family's major asset.

But despite the ideology of marriage as a partnership in which both partners share equally in the fruits of the their joint enterprise, the reality of divorce is quite different. When it comes to dividing family assets, the courts often ignore the husband's "career assets"—a term I coined for the array of tangible and intangible assets acquired as part of a spouse's career.

Consider the findings of my 10-year study of divorce: 60 percent of divorcing couples in California have less than $20,000 in fixed assets. Yet the average divorcing couple can earn more than $20,000—more than the value of all their fixed assets—in just one year. This means that the value of career assets, indeed the value of earning capacity alone, is much greater than the physical assets of the marriage.

These facts have important policy implications, for they reveal that courts cannot, in fact, divide marital property equally or equitably if they omit the major assets of the marriage from the pool of property to be divided at divorce. If one partner builds his or her earning capacity during marriage while the other is a homemaker and parent, the partner with that enhanced capacity has acquired the major asset of the marriage. If the earning power—or the income it produces—is not divided upon divorce, the two spouses are left with unequal shares of the family's assets.

In the traditional family in which the husband is the sole wage earner, the wife often performs services that help build the husband's career—whether she types his papers, entertains his clients, writes payroll checks for his employees, or keeps the children from disturbing him. The wife may abandon or postpone her own education to put him through school or help him get established; she may quit her job to move with him, or she may use her own job skills—skills that would command a salary if she were working for someone else—to help advance his career.

The issue of career assets is no less significant to two-income families. When both spouses have worked during the marriage, my research shows that most couples have chosen to give priority to one spouse's career, with the expectation that both will share in the benefits of that decision.

In recent years courts have moved, although slowly, to recognize some career assets as marital property. Only 10 years ago, for example, most states refused to recognize pensions as marital assets. When wives asserted their claims to share pension benefits they helped to build, the courts said that pensions were "mere expectancies" and not truly property. Today, however, pensions are increasingly recognized as part of the joint property acquired during marriage—and as part of the assets to be divided upon divorce. Practically all community property states and a majority of separate property states now allow courts to divide pensions at divorce.

While the horizon looks bright for pensions, there is still a long way to go on other issues. One such important career asset is the marital partnership's interest in one spouse's professional degree and license. If one spouse, typically the wife, supports the other's professional education and training, she expects to share in the fruits of her investment through her husband's advanced earning power. If they divorce soon after the student spouse graduates, the couple often have few tangible assets; most of their capital has been used to finance the student's education.

Equity requires that the supporting spouse be compensated for her contributions—either with an award of spousal support, or by reimbursing her for the "cost" of her husband's education. Another remedy would be to provide the supporting spouse with an equivalent educational opportunity. Yet a majority of the attorneys and judges I interviewed thought such awards were "inappropriate" or "unnecessary" (even though the spouses in relationships saw the quid pro quo as part of "their contract." As one man said: "She's entitled to it—she earned it").

Benefits received by workers in the form of health, accident, and life insurance are a third type of career asset being reconsidered. Upon divorce, the worker's spouse (typically female) and minor children generally lose insurance coverage because of the traditional assumption that the rights to insurance belong only to the worker.

Since women are often covered as dependents of employees, they are especially vulnerable at divorce, when they may lose their dependency status and their insurance coverage. Women between the ages of 45 and 65 are most severely affected,

because they are often unable to secure individual coverage if they lose their group coverage. They are too young for Medicare and too old to be "good risks" for private coverage.

As of January, 1985, about half the states had statutes providing for conversion of insurance upon divorce. Some state statutes provide that accident and health insurance policies that terminate upon divorce *must* contain a conversion privilege for divorced spouses without proof of insurability, and must bypass the physical examination and doctor's report normally required to obtain coverage.

Even these laws may not go far enough in providing divorced wives with adequate medical and hospital insurance. Many conversion policies afford far less coverage than the original policy and require the beneficiary to pay costly premiums to maintain them.

I believe the key to real equality in divorce lies in legislative changes that require, rather than allow, judges to recognize and divide all these career assets equally upon divorce.

Lenore J. Weitzman, a professor of sociology at Stanford, is the author of "The Divorce Revolution: The Unexpected Social and Economic Consequences for Women and Children in America" (The Free Press).

Struggling for Support

BY CATHERINE BATES

My son was five years old and my daughter was two when my husband and I were divorced in 1974. Visitation rights were liberal, but their father failed to take advantage of them much of the time. I had lost my father at the age of five and remembered well the pain of growing up without him, so I felt very strongly that my children should maintain a relationship with their dad. In spite of my efforts, there were periods of as long as 12 months when they had no contact with him unless they initiated it. Financial support was sporadic at best, and I was forced to ask the court to enforce the support order of $40 a week for the two children.

My first experience with a juvenile and domestic relations court judge was one I'll never forget. My ex-husband told the judge that he had "forgotten" his receipts for the support payments and left them on the table at his home. The judge, a confirmed bachelor, said, "If I had to leave home early enough to drive more than three hundred miles to be in court at nine A.M., I would have forgotten my receipts too." The judge told me that I was to bear the burden of proof that my ex-husband had *not* paid support and that the judge was making my ex-husband pay through the court for his protection in the future. My lawyer told me that he saw little possibility of my being able to prove anything to that particular judge's satisfaction, and since money was a problem, that I should take the payments through the court and forget the arrearage.

By 1980, I was finally able to establish that I was due back payments. The court ordered him to pay $60 a week, with $20 of that amount applied to the arrearage.

It was during this time that the children's father began to use emotional blackmail. He refused to have anything to do with the children for some time after the case was heard. He then began to tell them how broke he was all the time because of the amount of support he had to send me. He told them that I was threatening to have him put in jail. Their emotions altered between hostility and understanding, but they were always caught in the middle. It was an extremely difficult time, and my mother helped me financially so that I did not have to pursue the matter in court while the children were being pulled and tugged.

Later that year, I fell down icy steps and broke my ankle. The injury required surgery and casting and ultimately forced me to give up my nursing career. While I was in the hospital, I received an offer to act as resident manager of a small apartment complex. A two-bedroom apartment was part of the compensation, and I took the job to put a roof over our heads; my children and I survived with my mother's help. Meanwhile, my home became a place of strife and turmoil much of the time. There were no extras for school activities, and as the children grew older, expenses increased proportionately.

In 1984, I approached a local lawyer about going to court to collect the arrearage, which had grown to thousands of dollars by this time. He agreed to handle the case on a contingency basis, receiving one third of any monies collected. My ex-husband did not appear in court for the initial proceedings, and a warrant was issued for his arrest, though it was never served. We finally went to court on March 30, and after a lengthy examination of my claims and his receipts, an arrearage of $14,700 was established. He was told by the judge that to appeal this decision he would need to post bond in that amount. He was ordered to pay me $1,000 within one month and $100 a week, with $60 being applied to current support. He also received an apology from the judge for imposing a "hardship" upon him.

By August, 1984, he was again in arrears, and another summons was issued. We got a court date for September 21, and he was allowed to purge himself of contempt charges by paying the $300.

On October 10, my ex-husband was ordered to liquidate the sum of $12,540 within 18 months and was given a suspended jail sentence of 12 months on the condition that he remain current in his payments.

During this time, my daughter began to hate school and expressed the feeling that she was losing her father because of what I was doing to him. I tried to talk with her about the anger that is generated on both sides of an issue like child support; I hoped she could come to understand that such anger has nothing to do with anything the children do or don't do. My daughter went to visit her father in December. On the day she was to return home, she telephoned to let me know she had decided to live with her father. I considered dropping the support case at that time, but I needed the money.

In February, 1985, I agreed to sign papers giving custody of our daughter to her father. My lawyer and I advised his lawyer of my willingness to do so, but stated that we did not intend to stop pursuing the collection of what we saw as a just debt. The next communication I received from my ex-husband was in the form of a summons to answer charges of willful neglect and also, unbelievably, to ask why her father should not be given custody.

My lawyer advised me that he was unable to go to court to answer the summons, and I was not to go because he could handle it from his office. He wrote to the judge and explained that he saw the filing of such papers as spurious in intent in light of my agreement to voluntarily give the custody to the father. On June 17, 1985, custody of our daughter was awarded to her father, and I was ordered to pay $30 a week for her support. (Since that time our daughter has returned to live with me due to her father's negligence of her medical problems.)

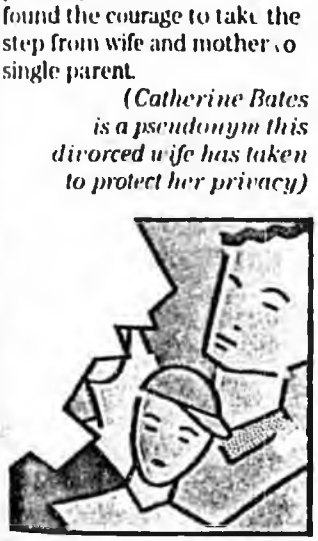
My son was 18 on June 2, 1985; the court determined that he was legally an adult,

and his father was no longer responsible for him. My son is estranged from his father because he interprets the lack of financial support as a lack of love. I am no longer able to help him resolve this conflict.

On September 18, 1985, the March 30, 1984, ruling that required my ex-husband to post bond in the amount of the arrearage was reversed by the court. He is now appealing the case. I have been unable to pay my lawyer the one third of the support collected as I have had to live on it. There was no money to pay the $30 per week for the support of my daughter. My ex-husband is being defended by the Legal Aid Society in his area, even though he is fully employed as a truck driver and his wife works part time. I am unable to obtain such services in my area, as the Legal Aid Society here is not funded to handle child support cases.

It appears that I am being slowly boxed into a corner: I feel as though I have come full circle—except that the circle has closed, leaving my daughter on the outside and my son not knowing which side he belongs on. If I had known what I would have had to face for the last 11 years, I probably would not have found the courage to take the step from wife and mother to single parent.

(Catherine Bates is a pseudonym this divorced wife has taken to protect her privacy)



Phyllis Chesler on Custody

On October 28, 1975, New York Judge Guy Ribaudo awarded sole custody of two children to their father, Lee Salk. The judge used an "affirmative standard" to decide which parent was "'better fit' to guide the development of the children and their future." Kerstin Salk's full-time mothering and homemaking were discounted in favor of Dr. Salk's psychological expertise and "intellectually exciting" lifestyle.

The *Salk* v. *Salk* decision swept through public consciousness: an ominous warning, a reminder that children are only on loan to "good enough" and stay-at-home mothers. They could be recalled by their more intellectually or economically solvent fathers.

On June 27, 1983, Louisiana Judge Melvin Duran awarded sole custody of a four-year-old girl with cystic fibrosis to her physician-father—because, among other reasons, her mother, Margaret Gaines Bezou, was a lawyer who would not be "a traditional housewife available to her child at all hours of the day."

Although mothers still received no wages for their work at home and far less than equal pay outside the home, although most fathers had yet to assume an equal share of home and child care, divorced fathers began a highly successful media and legislative campaign for "equal rights" to sole custody, alimony, and child support, and for mandatory joint custody and mediation.

Now in the name of "feminism" and "fathers' rights," a climate of terror has been created. In the last decade, millions of divorcing American mothers have been threatened at some point with a custody battle if they didn't give up their demands for alimony, child support, the family home, a health or pension plan, and so on. Most of these mothers (the 85 to 90 percent who have custody) chose their children rather than money. Their maternal love has been rewarded by isolation, invisibility, and poverty.

During this same decade, more than three million fathers *obtained* sole custody of their children by kidnapping and brainwashing them in systematic and cult-like ways, and by judicially "winning" them in court battles. Often such fathers have been hailed as custodial heroes by judges, filmmakers, mental health professionals, and the media.

According to my own studies (300 interviews over seven years with mothers, fathers, children, and experts), most custodially triumphant fathers are not Dustin Hoffman. When my interviews were thematically coded, a statistical analysis showed that 30 to 60 percent of such fathers were wife-batterers. Only 13 percent were involved in any primary child care. Many were psychologically authoritarian and emotionally distant (60 percent) or were "smother" fathers (23 percent). Upon separation, and prior to winning custody, 77 percent refused to pay any child support, and 90 percent refused to pay alimony—even when they could afford it. Thirty-seven percent kidnapped, and 57 percent engaged in virulent antimother brainwashing campaigns. All custodially challenging fathers earned three to seven times more money than custodially embattled mothers did.

As for the mothers in my study, I only interviewed those who were their children's "good enough" and only primary caretakers—not Medea, not even "Mommie Dearest." *Seventy percent* of these mothers lost custody. Stay-at-home mothers or mothers working outside the home lost because they earned too little money—compared to their ex-husbands. "Career" mothers lost because they earned too much money.

Mothers also lost custody for daring to desert their "whipping girl" posts in abusive marriages and for trying to "interfere" with a violent and incestuous father's visitation rights. Mothers lost custody for committing heterosexual or lesbian "adultery"—even after divorce, and for needing to move away. (Despite the fiction of "Kramer vs. Kramer," fathers—not mothers—are allowed to move away with their children.) "Good enough" mothers also lost custody for having religious or political opinions their ex-husbands and judges disliked.

How could this happen? Our culture overvalues men, fathers, and money and undervalues women, mothers, and maternal-child bonding. We also have a double standard for "good enough" mothering and fathering.

An ideal father is expected to legally acknowledge and economically support his children. Fathers who do *anything* (more) for their children are often seen as "better" than mothers—who are, after all, supposed to do everything.

The ideal of fatherhood is sacred. As such, it protects each father from the consequences of his actions. The ideal of motherhood is sacred too. It exposes all mothers as imperfect. No human mother can embody the maternal ideal perfectly enough.

Therefore, *all* mothers are custodially vulnerable because they are women; *all* fathers, including incestuous, violent, absent, passive, or "helper" fathers, can win custody, not because mothers are "unfit" or because fathers are truly "equal" parents but because fathers are men; just as all custodial mothers and children are impoverished against their will, both by individual fathers and by state legislators.

Gender-neutral legislation and the concept of equal rights have consistently been used against mothers in divorce and custody actions. Feminists are not to blame for what judges do. However, many feminists have confused their *desire* for male coparenting with the male *right* to custody.

Fathers have always been *entitled* to custody; mothers

have always been *obliged* to bear and rear children with no reciprocal rights. The maternal preference was never a maternal right but functioned as an obligation in the best interests of the child—an obligation that fathers and judges "allowed" mothers to undertake if they were moral enough (*i.e.*, chaste, obedient, and willing to live in poverty).

Many feminists also fought for the elimination of alimony and "fault" divorce and for mandatory joint custody and mandatory mediation—without understanding how such practices impoverish and psychologically devastate mothers and children. Feminists also fought for women's right to legal, high quality, low-cost abortion—but not for women's right to legal, high quality, low-cost motherhood, both within and *outside* of patriarchal marriage.

In a sense, custody battles are the abortion controversy—after birth. Who controls a woman's right to have or not to have a child and to have custody of that child? Each woman herself—or each woman's husband? Who determines the conditions under which all women are obliged to mother? Each woman for herself, each family for itself—or each family's priest, physician, Congressman, and Senator?

The equal treatment of economic and social "unequals" is unjust. The paternal demand for "equal" custodial rights; the law that values legal paternity or male economic superiority over biological motherhood and/or over maternal primary child care degrades and violates both mothers and children.

Author's Note: Public hearings and a national educational campaign on custody are urgently needed. "The Politics of Child Custody: Mothers on Trial," a feminist speakout on custody, is being sponsored by New York State NOW, the National Center on Women and Family Law, the Children's Foundation, the Lambda Legal Defense and Education Fund, and others. It will take place on March 1, 1986, in New York City, at the John Jay College of Criminal Justice, 445 West 59 Street, New York, New York 10019. Please write the Women's Center Counseling Department at this address if you wish to participate in this historic event.

Phyllis Chesler, Ph.D., is the author of the just published "Mothers on Trial: The Battle for Children and Custody," (McGraw-Hill). Her major works include the best-selling "Women and Madness (Avon)," also "Women, Money, and Power" (Morrow), "About Men" (Bantam), and "With Child" (Berkley). She lives in Brooklyn, New York.

Forgotten Women: Noncustodial Mothers

BY DONNA MUNGEN

As painful as a divorce can be, the plight of noncustodial mothers—those women who voluntarily relinquish custody of their children—is particularly difficult. More than 11 years ago, I gave up custody of my daughter, then five years old, to her father. Even though my child is happy and well, and our relationship is good, I still feel torn about my decision.

Meghan, a Los Angeles-based mental health counselor who works with noncustodial mothers, thinks that "women who . . . are without their children often experience the prejudice of those who believe that to be apart from one's children violates one of the most basic beliefs of our society, which is that the mother belongs with the child. To [relinquish custody] no matter how tough you are inside, requires a lot of self-esteem and external support."

Current estimates reveal that between 500,000 and one million women have given up custody of their children, according to Dr. Catalina Herrerias, a professor of social work at the University of Michigan. Herrerias, herself a noncustodial mother, recently did a controlled study of 130 such women, and found that the women had a variety of reasons for awarding custody to their former husbands: severe financial difficulties, involvement in destructive relationships with their former mates, the threat of a costly legal fight, or emotional inability to handle the kids.

Ellen Kimball of Sudbury, Massachusetts, sent her children to her ex-husband after being burdened with medical problems. "I found my ex-husband wanted to share the kids," she said. "It was a very just thing to do."

Though she recognized the soundness of her decision, she was still haunted by her choice; that unease resulted in the founding of Mothers Without Custody. The group, with a paying membership of about 420, has aided thousands of women who need practical advice, understanding, and moral support.

The support is crucial; feelings of guilt and confusion are common, and in many instances can be triggered by the attitudes of friends and family members—in particular, parents. One woman, K.C. Kuyper, left her three children with their father in Illinois to relocate to Los Angeles. "My mother doesn't understand it at all," she says, "though she loves me a great deal. Many of her friends are about her same age and they talk about their grandchildren. . . . I think she tells the neighbors I don't bring the children by because they're in school."

All of us who've been through the experience agree that good legal advice is a key factor in shaping the kind of relationship a noncustodial mother will have with her children. Los Angeles-based activist attorney Gloria Allred says that though a custody arrangement can be changed, "it is not easily modifiable. The courts are concerned with the best interests of the child. They usually don't feel that uprooting children or transferring them without good cause is in their interest."

A battle to establish custody could easily cost between $5,000 and $30,000—prohibitive for most women. To minimize some of the expense, Allred recommends investigating whether a local women's lawyers association has low-cost family law attorneys. "I always advise a woman to have an attorney," Allred says. "It is dangerous to walk through the legal system without one." Cathy Knapp, current president of Mothers Without Custody of Houston, Texas, concurs, and points out that her group plans to reach women "before divorce. Sometimes a woman will use the same attorney as her husband—the worst thing you can do."

Despite the immediate mental anguish and strained relationships, many noncustodial mothers believe their choice helped contribute to the long-term well-being of their children, and to the improvement of their own lives. Meghan found "an alternative way of mothering and sharing the children with their father." Today, her children are grown, and she is particularly pleased with the effect her decision has had on her daughters.

"I see this level of independence and resourcefulness in both of them. I like to think part of that comes from seeing me carve out an entirely new life for myself." Ms.

Contact Mothers Without Custody, P.O. Box 56762, Houston, Texas 77027. If requesting information, please enclose a self-addressed, stamped, business-size envelope.

Official Business

COMMITTEE: House Judiciary

DATE: 3/16/6

SIGN-IN

Subject of meeting:

HB 44

NAME PRINT	ADDRESS	PHONE	REPRESENTING	DO YOU WANT TO TESTIFY?
Susan Ness	P.O. Box 1961 Valdez AK 99686	835 2627		
LILLIAN RUEDRICH	217 FIFTH ST. DOUGLAS, AK	364-2291	National Org. for Women	Yes
Alan Stein	Box 241 Juneau	WRC 3259 Maine		Yes
Janet Kowalski	100 W. 13th Ave Anch 99501	279-9581	NWAHC Shelter	
Betty Rumbaugh	Box 863, Juneau	5861638	AWC	no comment/ questions
Charlene Harelle	2214 Radcliffe D.	789 9835	self	yes
Marcia McKenzie	Box 2076, Juneau AK 99803	752-2362	Am. Assoc of Univ Women	yes
Kathy Marshall	1850 Fritz Cove Rd 99801	789-4424	AK Women's Commission	yes
Carla Forsythe	303 K St.	344 7728	AK. Court System	YES
Dave M. Kull	PO. Box C M.S. 0209	465-3250	OAC	YES
Jon Wolf	"	"	"	NO

Official Business

COMMITTEE:

DATE:

SIGN-IN

Subject of meeting:

NAME	ADDRESS	PHONE	REPRESENTING	DO YOU WANT TO TESTIFY?
Wright Dick	130 Seward St. #501 Juneau, AK	586-3650	AK Network on Domestic Violence & Sexual Assault	~~No~~ HB496
Sherri Shell	419 Kennedy St. Juneau, AK. 99811	586-4788	AK. WOMEN'S LOBBY	YES
Gramt Denson	1547 Old Glacier Hwy	586-6623	Awaic	yes

SUPERIOR COURTS
DOMESTIC RELATIONS CASES
FILINGS

FY 82 - FY 85

COURT	FY 82	FY 83	FY 84	FY 85	% INCREASE FY 82 - FY 85	% INCREASE FY 84 - FY 85
Anchorage	5180	4917	5074	5013	- 3	- 1
Barrow	90	65	91	92	+ 2	+ 1
Bethel	117	160	136	147	+ 26	+ 8
Fairbanks	1295	1333	1489	1565	+ 21	+ 5
Juneau	416	465	490	629	+ 51	+ 28
Kenai	341	354	425	484	+ 42	+ 14
Ketchikan	355	321	332	340	- 4	+ 2
Kodiak	158	217	196	189	+ 20	- 4
Kotzebue	87	82	108	64	- 26	- 41
Nome	81	93	81	98	+ 21	+ 21
Palmer	*	314	442	578	-	+ 31
Sitka	137	145	152	107	- 22	- 30
Valdez	*	*	*	53	-	-
Wrangell/ Petersburg	*	80	86	49	-	- 43
TOTAL	8257	8546	9102	9408	+ 14	+ 3

* NOT YET A SUPERIOR COURT

BY JUDICIAL DISTRICT

First	908	1011	1060	1125	+ 24	+ 6
Second	258	240	280	254	- 2	- 9
Third	5679	5802	6137	6317	+ 11	+ 3
Fourth	1412	1493	1625	1712	+ 21	+ 5

FISCAL YEAR JULY 1 — JUNE 30

SUPERIOR COURTS
DOMESTIC RELATIONS CASES
COMPOSITION OF FILINGS

FY 85

COURT	CASE TYPE					TOTAL
	DIVORCE	DISSOLUTION OF MARRIAGE	RECIPROCAL SUPPORT	DOMESTIC VIOLENCE	OTHER	
Anchorage	991	1694	1170	1082	76	5013
Barrow	7	13	15	54	3	92
Bethel	9	45	22	66	3	147
Fairbanks	331	629	193	351	61	1565
Juneau	108	253	87	137	44	629
Kenai	45	224	83	131	1	484
Ketchikan	71	131	60	73	5	340
Kodiak	50	63	20	50	6	189
Kotzebue	5	20	12	27	0	64
Nome	15	23	23	35	2	98
Palmer	77	228	85	164	24	578
Sitka	17	43	14	26	7	107
Valdez	8	14	8	22	1	53
Wrangell/ Petersburg	11	20	4	10	4	49
TOTAL	1745	3400	1796	2230	237	9408

BY JUDICIAL DISTRICT

First	207	447	165	246	60	1125
Second	27	56	50	116	5	254
Third	1171	2223	1366	1449	108	6317
Fourth	340	674	215	419	64	1712

FISCAL YEAR JULY 1 — JUNE 30

SUPERIOR COURTS
DOMESTIC RELATIONS CASES
FILINGS

FY 82 - FY 85

COURT	FY 82	FY 83	FY 84	FY 85	% INCREASE FY 82 - FY 85	% INCREASE FY 84 - FY 85
Anchorage	5180	4917	5074	5013	- 3	- 1
Barrow	90	65	91	92	+ 2	+ 1
Bethel	117	160	136	147	+ 26	+ 8
Fairbanks	1295	1333	1489	1565	+ 21	+ 5
Juneau	416	465	490	629	+ 51	+ 28
Kenai	341	354	425	484	+ 42	+ 14
Ketchikan	355	321	332	340	- 4	+ 2
Kodiak	158	217	196	189	+ 20	- 4
Kotzebue	87	82	108	64	- 26	- 41
Nome	81	93	81	98	+ 21	+ 21
Palmer	*	314	442	578	-	+ 31
Sitka	137	145	152	107	- 22	- 30
Valdez	*	*	*	53	-	-
Wrangell/ Petersburg	*	80	86	49	-	- 43
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FISCAL YEAR JULY 1 — JUNE 30

SUPERIOR COURTS
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FISCAL YEAR JULY 1 — JUNE 30