

1 \* Sec. 2. AS 25.20.060 is amended by adding new subsections to read:

2 (d) The court may award visitation to a grandparent or another  
3 person if visitation is in the best interest of the child.

4 (e) The court may award child support in an appropriate case,  
5 whether custody is sole, shared, or split.

6 (f) In awarding custody, the court shall consider only those  
7 factors that directly affect the well-being of the child.

8 \* Sec. 3. AS 25.20.100 is amended to read:

9 Sec. 25.20.100. [DENIAL OF] SHARED CHILD CUSTODY. If a parent  
10 or the guardian ad litem requests shared custody of a child and the  
11 court awards or denies the request, the reasons for the award or  
12 denial must [SHALL] be stated on the record, including the court's  
13 reasoning on each of the factors enumerated in AS 25.24.150(c).

14 \* Sec. 4. AS 25:20 is amended by adding a new section to read:

15 Sec. 25.20.140. DEFINITION. In this chapter "split custody"  
16 means a custody arrangement in which the decision as to who has custo-  
17 dy of each child is not the same for all children of the marriage.

18 \* Sec. 5. AS 18.50.160(f) is repealed.  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29

**STATE OF ALASKA 1986 LEGISLATIVE SESSION  
FISCAL NOTE**

Revision Date : 4/22/86

**REQUEST**

Bill/Resolution No. : CSHB 497 (HESS)  
 Title : An Act relating to . . .  
and child custody  
 \_\_\_\_\_  
 Sponsor : Rules  
 Requestor : Governor  
 Date of Request : \_\_\_\_\_

**FISCAL DETAIL**

Agency Affected : Alaska Court System  
 BRU : Trial Courts  
 \_\_\_\_\_  
 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						
<b>TOTAL OPERATING</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

**FUNDING : (Thousands of Dollars)**

GENERAL FUND		-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>						

**POSITIONS :**

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

**ANALYSIS :** Attach a separate page if necessary

Prepared by : Karla Forsythe Phone : 264-8228  
 Division : Alaska Court System Date : 4/22/86

Approved by Commissioner : Arthur H. Snowden, *AHS II* Date : 4/22/86  
 Agency : Alaska Court System *by K. Forsythe*

Distribution (by Agency preparing fiscal note) :

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

## Fiscal Impact

### CSHB 497

CSHB 497 deletes language contained in the original bill which would have required the courts in all custody cases, disputed or undisputed, to actively solicit information about the factors enumerated in AS 25.24.150(c). The procedures adopted in the current version of this bill will require courts to ask a few additional questions of the parties and to spend a slightly longer time explaining the reasoning for award or denial of shared custody. Because this bill does not appear to require substantial deviation from existing judicial practice and will not require lengthy custody investigations in every case, it appears that existing court resources will be adequate to carry out the intent of the bill.

# STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date: \_\_\_\_\_

**REQUEST**

Bill/Resolution No.: HB 497  
 Title: An Act relating to child's birth certificate, parental responsibilities for child's actions, and child custody  
 Sponsor: \_\_\_\_\_  
 Requestor: \_\_\_\_\_  
 Date of Request: 2/11/86

**FISCAL DETAIL**

Agency Affected: Health and 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						
<b>TOTAL OPERATING</b>		0	0	0	0	0

<b>CAPITAL</b>		0	0	0	0	0
----------------	--	---	---	---	---	---

<b>REVENUE</b>		0	0	0	0	0
----------------	--	---	---	---	---	---

**FUNDING : (Thousands of Dollars)**

GENERAL FUND		0	0	0	0	0
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>		0	0	0	0	0

**POSITIONS :**

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

**ANALYSIS :** Attach a separate page if necessary

Prepared by: Michael L. [Signature]  
 Division: Family and Youth Services

Phone: 465-3170  
 Date: 2/11/86

Approved by Commissioner: John R. Pugh [Signature]  
 Agency: Department of Health and Social Services

Date: 2/14/86

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

cc  
1/22

# STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date: 12/23/85

REQUEST NB 497 #1  
Bill/Resolution No.: 377-003-86  
Title: Birth Certificates, parental responsibilities for children's actions, and child custody  
Sponsor: \_\_\_\_\_  
Requestor: \_\_\_\_\_  
Date of Request: \_\_\_\_\_

FISCAL DETAIL  
Agency Affected: Div. of Fam. & Youth Svcs  
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	0	0	0	0

CAPITAL		0	0	0	0	0
---------	--	---	---	---	---	---

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		0	0	0	0	0

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. Burg  
Agency: Health and 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)

Attachment: This bill amends AS 09.65.110(b) to provide that.....Either parent or both parents or the legal guardian or the person having legal custody of an unemancipated minor would be liable in a civil action when the minor shoplifts merchandise....

It should be noted that AS 34.50.020(b) specifically exempts a state agency from the acts of an unemancipated minor in its charge or custody. This fiscal note is based on that exemption.

The proposed changes to AS 25.20.600 would require the court to solicit information regarding the best interests of the child in custody situations. A previous court opinion, Granato V. Occhipinti, File no 3756, holds that the Division of Family and Youth Services is not responsible to perform these studies except in specific circumstances. The Division has no objections to the changes with the understanding that the home studies do not become a responsibility of the Division. The court system may have a financial impact in providing the personnel to perform these studies. The court should be contacted and informed that the Division of Family and Youth Services, in meeting its mandated child protection responsibilities, does not have the resources to perform these home studies.

PK  
1/22

# STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

REQUEST NB 497 #2  
 Bill/Resolution No. : 377-CO 4-86  
 Title : \_\_\_\_\_  
 \_\_\_\_\_  
 Sponsor : \_\_\_\_\_  
 Requestor : \_\_\_\_\_  
 Date of Request : \_\_\_\_\_

Revision Date : \_\_\_\_\_  
 FISCAL DETAIL  
 Agency Affected : AWC  
 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	<u>-0-</u>					

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

### FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	<u>-0-</u>					

### POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

RECEIVED  
DEC 23 1985

Prepared by : Kate Marshall  
 Division : Alaska Women's Commission

ALASKA WOMEN'S  
 561-4227 COMMISSION  
 Phone : \_\_\_\_\_  
 Date : 12/22/85

Approved by Commissioner : \_\_\_\_\_ Date : \_\_\_\_\_  
 Agency : \_\_\_\_\_

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



ALASKA COURT SYSTEM  
HB 497 - CUSTODY

FISCAL IMPACT

	TOTAL COST
PERSONAL SERVICES:	
Juneau, serving First District:	
1 - Custody Investigator I (PFT, 6 months, range 20A)	\$27,879
Anchorage, serving Third and Second Districts:	
2 - Custody Investigator I (PFT, range 20A)	111,514
1 - Secretary (PFT, range 12B)	34,604
Fairbanks, serving Fourth District:	
1 - Custody Investigator I (PFT, range 20A)	63,097
	-----
Total Personal Services	237,094
TRAVEL:	
Travel from base locations to other courts in service area.	12,000
EQUIPMENT: (one-time item)	
Standard office equipment and reference materials	17,499
	-----
TOTAL FY 87 COST	\$266,593
	*****

Subsequent fiscal years adjusted to reflect 6% inflation.

FISCAL IMPACT

HOUSE BILL 497

It is assumed for purposes of this fiscal note that information about factors relevant to a child custody award will be solicited through a custody investigator. This is the current procedure in Anchorage and Fairbanks when the court is faced with a custody dispute. This information is factual and often involves sensitive areas. Trained professionals can obtain relevant and accurate details and make appropriate recommendations, which frees judicial resources to determine any legal issues.

At present, information is solicited only in contested custody matters. This bill will require an active solicitation effort in every divorce in which there are minor children of the marriage, even if there is no dispute about custody.

In FY 85, approximately 1,200 divorces were filed in the third judicial district. It is estimated that there were minor children in 75% of these cases, resulting in 900 cases which would be subject to the provisions of this bill. Under current law, 507 cases were referred to the custody investigator (of which 82% arise from divorces or dissolutions), which are investigated by a professional staff of three. Under this bill, using FY 85 figures, 480 additional cases would be referred for custody investigation, which would require a minimum of two additional custody investigators (assuming that the chief custody investigator is expending a substantial portion of her time in supervisory and administrative work).

Filings in other portions of the state accounted for 574 divorce matters. Using Anchorage as a work standard, and assuming that 30% of cases are investigated or receive additional attention under current law, the bill would affect 260 additional cases, which would require one and one-half new investigator positions.

MAR 12 '86 13:53 ACR END JUD DIST FAX276-6342



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 12, 1986

Rep. Max Gruenberg  
House HESS Committee  
P. O. Box V  
Juneau AK 99811

Dear Rep. Gruenberg:

It is my understanding that you will be proposing an amendment to HB 497 which would provide for expedited calendaring of matters involving child custody upon the request of a party, to the extent allowed by law and court rule.

It is the position of the court system that case calendaring is within the rules of practice and procedure established by the supreme court under Article IV, section 15 of the Alaska Constitution. The court system opposes the adoption of legislation which sets calendaring priorities for the court. However, in recognition of your concern, the chief justice has asked the presiding judges to discuss the desirability of expedited calendaring in custody matters at their next meeting, scheduled for March 24, 1986.

If you have any questions about the court system's position, please let me know.

Sincerely,

Karla L. Forsythe  
Staff Counsel

KF/k1

cc: Chief Justice Rabinowitz  
Arthur H. Snowden, II

# ALASKA WOMEN'S LOBBY

POST OFFICE BOX 10-1571. ANCHORAGE, ALASKA 99510

---

April 22, 1986

Honorable Mike M. Miller  
House Judiciary Committee

Mr. Chairman and members of the Committee:

The Alaska Women's Lobby would like to express its support for the legislation before you today.

HB 497 puts emphasis on the best interests of the child in all cases of child custody. It would require the court to actively solicit information regarding those interests where the court finds the custody agreement not in the child's best interests.

The bill also makes clear that the financial status of each parent is a distinct issue from the custody arrangement by separating the custody agreement, determined in the best interests of the child from the matter of child support.

Directing the court to consider only those factors which directly affect the child avoids custody decisions being based upon parental lifestyle or conduct unrelated to the parent's relationship with the child.

We also approve of requiring the court to report more explicitly its findings in cases of shared custody and of the repeal of AS 18.50.160 (f), an unused provision which allows the state registrar to require a different procedure for filing a birth certificate depending upon the marital relationship of the parents.

We believe that these amendments to present law will benefit children faced with living in non-traditional families.

Thank you for your consideration.

*Sherrie Goll*

Sherrie Goll  
Alaska Women's Lobby

FOOTNOTES

- 1/ Sandra's counsel omitted "slow in responding", Order at 13, in submitted written findings and added Sandra "was not negligent." Findings of Fact at 5. The rule that oral decisions control written findings should here apply; Concerned Citizens of S. Kenai Peninsula v. Kenai Peninsula Borough, 527 P.2d 447, 456-7 (Alaska 1974) (n.19).
- 2/ Marilyn watched the children while Sandra crewed on Alan's boat between May - , 1984. Marilyn's denial in deposition of Susan complaining is preceded by a long dash, (also R. [argument.]) She does not have immunity from a negligent tort.
- 3/ Marilyn Jones' deposition was stipulated into evidence. She did not testify at trial.
- 4/ Anna Freud is the primary source of the idea that the experience of disruption is as intense in children whose custody changes between parents as the separation trauma she observed in institutionalized children in England during World War II. Because the evolution of this idea in Alaska case law from its proper application in parent-non parent cases to parent-parent cases has occurred perhaps without judicial awareness, and because Freud's idea as a basis of judicial policy has come under considerable criticism from psychologists and commentators alike, considering the application of Freud's idea to Alaska cases may change a policy which is as unchallenged as maternal preference was before Margert Mead's works were quoted in a brief submitted in Johnson. See infra Karkin and Villinova LR.

In Turner v. Pannick 540 P.2d 1051, 1056 (Alaska 1975), Justice Rabinowitz quoted an article in which extensive interviews of Anna Freud were conducted in 1963 about her research in 1942 at a war nursery where children suffered institutionalized separation trauma. Yale Law Journal 73:135, 159, n.36. Freud's psychological conclusions were appropriately applied to the parent-non parent facts in Turner. In Hootch v. Alaska, 536 P.2d 793, 813 (Alaska 1975), Justice Rabinowitz noted again the separation of Natives from their homes may be vis a vis Freud (Beyond the Best Interests of the Child, 1973) psychologically harmful. The final correct application of Freud in Alaska family law is a note in UCLA AK L R 12:141, 150 n.69 (1982-3) which analyzes the disruption of adoption against the conflicting needs of continuous, stable relationships and natural rights of parents. Id. at 151. The article glosses over Rutter's 1980 dispute with ~~Rutter's~~ Freud's view of separation Trauma at N.69.

A divergent separation trauma evolutionary line appears in Alaska custody modification cases. The missing link in the evolutionary chain <sup>to custody</sup> to the Alaska <sup>cases</sup> is Max Gruenberg's ~~article~~ <sup>article</sup> ~~concepts of disruption and the need for continuous, stable relationships~~ (UCLA AK LR, 34, 39 (1976)) <sup>are</sup> extracted from the dependency or adoption context in which Freud made her observations. The disruption and stability arguments of Freud are then transferred to a modification context in SNE v. RLB, 699 P.2d 879 (Alaska 1985); Gratrix v. Gratrix, 652 P.2d 76, 81 (Alaska 1982); Morel v. Morel, 647 P.2d 605, 608 (Alaska 1982); Starkweather v. Curritt, 636 P.2d 1181, 1183 n.1 (Alaska 1981); Veazy v. Veazy, 560 P.2d 382, 386 (Alaska

In AK custody cases disruption + the need for continuous stable relationships

1977); DeHart v. Layman, 536 P.2d 789 (Alaska 1975); and Nichols v. Nichols, 516 P.2d 732 (Alaska 1973). In at least half these cases, serious parental unfitness accompanied the idea that harm results from a shuffling or shuttling back and forth between relatively fit parents as intense as or damaging as their placement in wartime institutions, shipments from Akiachak to Oklahoma, or ultimate severance from a parent. Commentators indicate both current psychological research and contemporary social practice confound the research conducted by Freud and her colleagues 30 and 40 years ago. See Daniel Katkin et.al., "Above and Beyond the Best Interests of the Child: An Inquiry Into the Relationship Between Social Science and Social Action" Law and Society Review, 669, 674-5, 678-53, 683 nn.5,8,9,14,20,28 (Summer 1974) (attached) and "Stability in Custody Modifications", Villanova Law Review 29:1109, 1110, 1112, 1114, 1118 (1983-84).

Contrary to Freud's view, these commentators see modification as an affirmation of the bond with the other parent which can ameliorate ~~any~~ disruption and that respect for the child's wishes is itself a countervailing force. Day care, joint custody shifts, and yearly changes in summer long visitation are contemporary experiences rarely practiced in the 1940's or 50's, which provide opportunity to observe how children in the 80's have been able to adapt to conditions seen as disrupting 30 years ago.

IN short ~~the research~~ <sup>since</sup> current research indicates flaws in Freud's theory, commentators suggest ~~basin~~ <sup>the social policy of essential harm</sup> ~~requiring change only if there is a major change in circumstances~~ <sup>+ stability</sup>

IT IS wrong or NOT justified to base the policy of ~~stability~~ <sup>which Freud theory</sup> ~~protection~~ children from disruption upon a ~~psychological theory~~ <sup>psychological theory</sup> whose premisses have been severely weakened by current research.



# ASAEYC

ALASKA STATE ASSOCIATION  
FOR THE EDUCATION  
OF YOUNG CHILDREN

February 24, 1986

The Honorable Niilo Koponen  
The Honorable Max Gruenberg  
Alaska House of Representatives  
Pouch V  
State Capitol  
Juneau, Alaska 99811

Dear Representatives Koponen and Gruenberg:

The Alaska State Association for the Education of Young Children urges you and the other members of the Health, Education and Social Services Committee to support passage of House Bill 497 - the Children's Bill. We are especially concerned with the section regarding the determination of child custody. We believe that it is important that questions be asked of the parents regarding how they came to agreement about custody of the child. Financial support should not be a criteria for determining who is given custody of the child. Children deserve maintenance of their standard of living, regardless of which parent they are living with.

Thank you for the opportunity to speak in support of this legislation.

Sincerely,

Lynn McKinnon  
Vice-President for Advocacy  
502 West 10th  
Juneau, Alaska 99801

BILL SHEFFIELD  
GOVERNOR



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

HB 497

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 pertaining to several aspects of parent/child relationships. It amends Alaska statutes regarding parental responsibility for children's actions and regarding child custody decisions, and repeals a statute that inappropriately distinguishes between the birth certificates of children born to married parents and children born to unmarried ones.

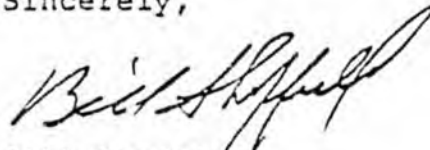
The bill amends AS 09.65.110(b) to provide that either or both parents, or the legal guardian, or the person having legal custody of an unemancipated minor, would be liable in a civil action when the minor shoplifts merchandise. The Alaska Women's Commission recommends the change to prevent the situation in which the parent having legal custody, but not physical custody, of the child would necessarily be solely responsible for acts that took place when the child was not under that parent's control.

The bill also amends AS 25.20.060 to require the court to solicit information regarding the best interests of a child in disputed and undisputed custody situations. The Alaska Women's Commission believes that this information should be actively solicited by the court to determine that the best interests of the child are represented and that the agreement reached by the parents and presented to the court is

not a result of unequal bargaining power. The amendment would also make clear that the court may award child support even when shared custody is ordered. The court would also be instructed in child custody matters to consider only those factors that directly affect the well-being of the child. Such a procedure would avoid decisions being made about custody based upon lifestyle judgments when the parent's behavior would have no adverse effect upon the well-being of the child.

Finally, the bill repeals AS 18.50.160(f), which expressly authorizes the state registrar to direct a procedure for filing the birth certificate of a child born out of wedlock that is different from that provided for a child born to married parents. It is difficult to imagine a need to make this distinction, and I understand that this statutory authority is not exercised. Whatever social stigma may attach to the "illegitimate" child should not be condoned or formalized by a statute such as this.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bill Sheffield".

Bill Sheffield  
Governor

Run 112

# STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : \_\_\_\_\_

**REQUEST**

Bill/Resolution No. : HB 497  
 Title : An Act relating to ... and  
Child Custody

Sponsor : Rules Committee by Request  
 Requestor : Governor  
 Date of Request : 1/22/86

**FISCAL DETAIL**

Agency Affected : Alaska Court System  
 BRU : Trial Courts

Components : \_\_\_\_\_

**EXPENDITURES/REVENUES : (Thousands of Dollars)**

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		237.1	251.3	266.4	282.4	299.3
TRAVEL		12.0	12.7	13.5	14.3	15.2
CONTRACTUAL						
SUPPLIES						
EQUIPMENT		17.5				
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>		<b>266.6</b>	<b>264.0</b>	<b>279.9</b>	<b>296.7</b>	<b>314.5</b>
<b>CAPITAL</b>						
<b>REVENUE</b>						

**FUNDING : (Thousands of Dollars)**

GENERAL FUND		266.6	264.0	279.9	296.7	314.5
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>						

**POSITIONS :**

FULL-TIME		4	4	4	4	4
PART-TIME		1	1	1	1	1
TEMPORARY						

**ANALYSIS :** Attach a separate page if necessary

Prepared by : Robert G. Fisher  
 Division : Alaska Court System

Approved by Commissioner : Arthur H. Anderson, II  
 Agency : Alaska Court System

Phone : 264-8215  
 Date : 1/28/86

Date : 1/28/86

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

ALASKA COURT SYSTEM  
 HB 497 - CUSTODY

FISCAL IMPACT

	TOTAL COST
PERSONAL SERVICES:	
Juneau, serving First District:	
1 - Custody Investigator I (PFT, 6 months, range 20A)	\$27,879
Anchorage, serving Third and Second Districts:	
2 - Custody Investigator I (PFT, range 20A)	111,514
1 - Secretary (PFT, range 12B)	34,604
Fairbanks, serving Fourth District:	
1 - Custody Investigator I (PFT, range 20A)	63,097
	-----
Total Personal Services	237,094
TRAVEL:	
Travel from base locations to other courts in service area.	12,000
EQUIPMENT: (one-time item)	
Standard office equipment and reference materials	17,499
	-----
TOTAL FY 87 COST	\$266,593
	*****

Subsequent fiscal years adjusted to reflect 6% inflation.

FISCAL IMPACT

HOUSE BILL 497

It is assumed for purposes of this fiscal note that information about factors relevant to a child custody award will be solicited through a custody investigator. This is the current procedure in Anchorage and Fairbanks when the court is faced with a custody dispute. This information is factual and often involves sensitive areas. Trained professionals can obtain relevant and accurate details and make appropriate recommendations, which frees judicial resources to determine any legal issues.

At present, information is solicited only in contested custody matters. This bill will require an active solicitation effort in every divorce in which there are minor children of the marriage, even if there is no dispute about custody.

In FY 85, approximately 1,200 divorces were filed in the third judicial district. It is estimated that there were minor children in 75% of these cases, resulting in 900 cases which would be subject to the provisions of this bill. Under current law, 507 cases were referred to the custody investigator (of which 82% arise from divorces or dissolutions), which are investigated by a professional staff of three. Under this bill, using FY 85 figures, 480 additional cases would be referred for custody investigation, which would require a minimum of two additional custody investigators (assuming that the chief custody investigator is expending a substantial portion of her time in supervisory and administrative work).

Filings in other portions of the state accounted for 574 divorce matters. Using Anchorage as a work standard, and assuming that 30% of cases are investigated or receive additional attention under current law, the bill would affect 260 additional cases, which would require one and one-half new investigator positions.



# NATIONAL ORGANIZATION FOR WOMEN

STATE OF ALASKA  
STATE PRESIDENT  
200 W. 34TH AVENUE, SUITE 844  
ANCHORAGE, ALASKA 99503  
(907) 562-3081, Ext. 844

## TESTIMONY

Lillian Ruedrich

HB 497 - Child Custody

HESS Committee

February 24, 1966

My name is Lillian Ruedrich. I am a member of the National Organization for Women. I am here today to present testimony for the statewide NOW organization.

Alaska NOW, with almost 1,000 members, is the largest membership organization working for women in this state.

As members of the State Legislative Alliance for Women, we participated in developing this bill on child custody. Much thought and research has gone into the writing of this bill, and we want you to know of our support for it and our commitment to seeing it passed.

Thank you for the opportunity to testify.

Alaska Women's Commission

TESTIMONY

Kathy Marshall

HB 497 - Child Custody

Health, Education, Social Services Committee

February 24, 1986

The Alaska Women's Commission is concerned about issues involving parents and children. The traditional family, as we know it, has changed dramatically. Only 11% of all families are headed by one wage earner, with a non working spouse who cares for the children. More and more children are faced with the emotional crisis of living in non-traditional families. Women comprise  $\frac{1}{2}$  of the work force in Alaska and those with children must leave them in the care of others. Over half the marriages in Alaska end in divorce and 25% of all families headed by women live in poverty. These facts have led to new challenges in determining custody arrangements and financial survival of families.

HB 497 addresses several of these issues. Section 1. of the bill amends the shoplifting law to provide the court the same option of assigning joint responsibility for the child's actions it currently does for acts of vandalism caused by minors. Under the shoplifting law the custodial parent has total legal responsibility for the child's actions even if they do not have physical custody of the child. For example, assume the mother has legal custody, but the father has the child for the summer months. Under present law, the mother must bear the financial responsibility for the summer acts of shoplifting even though the child was living with the father at the time. Since the child is influenced by both parents, both should be held accountable for the child's acts.

Section 2. of the bill addresses the issue of custody determinations. The Women's Commission is committed to the concept of custody arrangements being made in the best interest of the children as opposed to those of the parents. In order to insure this, we are requesting that the court solicit information about any understanding regarding custody reached between the parents as well as having the court document the reasons for the custody award. There are six factors listed in the law which are to be considered in disputed custody determinations:

- 1) the physical, emotional, mental, religious, and social needs of the child;
- 2) the capability and desire of each parent to meet these needs;
- 3) the child's preference if the child is of age and capacity to form a preference;
- 4) the love and affection existing between the child and each parent;
- 5) the length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity;
- 6) the desire and ability of each parent to allow an open and loving frequent relationship between the child and the other parent;

Currently these factors are only looked at in disputed cases. We believe that parents often agree to custody arrangements without the best interest of the child having been considered. One party, for example, may coerce the other into an agreement by refusing to agree to a divorce unless certain custody arrangements are accepted. This bill would require the court to investigate the custody agreement even if it is not being contested.

Section 2. also separates custody arrangements from child support obligations. The purpose of the provision is to insure that children are guaranteed both financial support and access to both parents.

Our concern is to avoid the situation where access to a parent is dependent on the amount of child support paid. In other words, if a parent were to pay x amount of child support, the child would receive x amount of the time with that parent. The other side of the same issue is that the amount of time spent with the child might determine the amount of financial support received. In shared custody, for example, financial support might be denied because both parents have equal access to the child. The more needy spouse would then be unable to sufficiently provide for the child's financial needs. The end result is that the child is deprived economically.

Section 3. of the bill would require the court to place in the record the reasons shared custody has either been denied or awarded. Under the current law the reasons are only stated when shared custody is denied. Here again the purpose of the amendment is to insure the custody arrangement has been made with the best interest of the child in mind.

While this requirement for fuller judicial participation would require additional time and expense by the judiciary to be spent on cases, the high societal importance of protecting children's interests in custody determinations would certainly appear to make such expenditures highly justifiable.

Section 4. of the bill repeals the ability of the state registrar to require a different procedure be followed for the filing of a birth for a child born to unmarried parents than for a child born to married parents. The state registrar assured us that in the past nine years separate procedures have never been used nor was there a reason not to repeal the law.

# ALASKA WOMEN'S LOBBY

POST OFFICE BOX 10-1571, ANCHORAGE, ALASKA 99510

---

February 24, 1986

Honorable Max Gruenberg  
Honorable Niilo Koponen  
House Health, Education and Social Services Committee

Mr. Chairman and Members of the Committee:

The Alaska Women's Lobby appreciates this opportunity to express its support for HB 497, a bill which recognizes and addresses the fact that the traditional family is in transition.

In Alaska, over one half of all marriages end in divorce. These changes affect the lives of many children. We support this legislation because it puts emphasis on the best interests of the child by requiring the court to actively solicit information regarding those interests in all custody situations.

The bill also requires the court to report more explicitly its findings in custody cases, and assures that when a joint custody agreement is awarded, the child will have frequent and continuing contact with each parent. It also makes clear that the financial status of each parent is a distinct issue from the custody arrangement by separating the custody agreement, determined in the best interests of the child, from the matter of child support.

Directing the court to consider only those factors which directly affect the child avoids custody decisions being based upon parental lifestyle or conduct unrelated to the parents relationship with the child.

We believe that these amendments to present law will benefit children faced with living in non-traditional families.

We also approve of the repeal of AS18.50.160 (f), an unused provision which allows the state registrar to require a different procedure for filing of a birth certificate depending upon the marital relationship of the parents. We support Section 1 of the bill which amends the shoplifting law to provide the same option of assigning joint parental responsibility for the child's actions, as it currently does for acts of vandalism caused by minors.

Thank you for your consideration.

Sherrie Goll, Lobbyist  
Alaska Womens Lobby

MEMORANDUM

TO: HOUSE HESS COMMITTEE MEMBERS  
FROM: NANCY BENNETT, COMMITTEE STAFF  
RE: TODAY'S AGENDA  
DATE: MARCH 12, 1986

WE HAVE TWO BILLS SCHEDULED FOR TODAY

HB 497 - RELATING TO CHILD CUSTODY, BIRTH CERTIFICATES

We have a draft committee substitute for this bill which makes the following changes:

1. deletes section 1 relating to minor shoplifting
2. Expands current section 1 (25.20.060) to specify how the court will review child custody arrangements.
3. Adds a new section 2 which allows the court to order visitation by grandparents and others and specifies that child support may be ordered under any custody arrangement.

There are also two Grueneberg amendments in your file. One relates to priority of calendaring for child custody cases and the other would allow the court to order home studies by Health and Social Services and other agencies.

HB 641 - RELATING TO THE BOARD OF PHARMACY

This is our sunset review hearing. The audit recommends:

1. State registration of professionals with access to controlled substances duplicates DEA requirements and should be repealed.
2. The board should allow Occupational Licensing to perform administrative duties required by statute to improve documentation and file management.
3. AS 08.80.030(3), assigning the board authority to conduct investigations, is in conflict with statutory provisions requiring Occupational Licensing to perform these functions.
4. The Marijuana Therapeutic Research Program should be repealed because the board did not respond in a timely fashion.

HB 641 continues the board of Pharmacy, repeals the Marijuana Therapeutic Research Program and 08.80.030(3) and contains the generic drug language passed by this committee last year in HB 209.

We also have the following proposed amendments:

POSITION PAPER

HOUSE BILL NO. 497

For an Act entitled: "An Act relating to child's birth certificate, parental responsibilities for child's actions, and child custody; and providing for an effective date."

This bill amends AS 09.65.110(b) to provide that....Either parents or both parents or the legal guardian or the person having legal custody of an unemancipated minor would be liable in a civil action when the minor shoplifts merchandise....

It should be noted that AS 34.50.020(b) specifically exempts a state agency from the acts of an unemancipated minor in its charge or custody. The department's fiscal note is based on that exemption and the following conditions.

The proposed changes to AS 25.20.600 would require the court to solicit information regarding the best interests of the child in custody situations. A previous court opinion, Granato V. Occhipinti, File no 3756, holds that the Division of Family and Youth Services is not responsible to perform these studies except in specific circumstances. The Division has no objection to the changes proposed in AS 25.20.600 with the understanding that the home studies are a responsibility of the court and not a responsibility of the Division of Family and Youth Services. The division in meeting its mandated child protection responsibilities, does not have the resources to perform these home studies.

Court officials have stated that these investigations will be a responsibility of the court system and are preparing a fiscal note to reflect the costs of these additional duties.

The Division supports repeal of AS 18.50.160(f).

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

DATE: Feb 11, 1986

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

DATE: 2/14/86



STATE OF ALASKA

OFFICE OF THE GOVERNOR

ALASKA WOMEN'S COMMISSION  
3601 C STREET - SUITE 742  
ANCHORAGE, ALASKA 99503

March 4, 1986

Representative Max F. Gruenberg, Jr.  
Alaska State Legislature  
Pouch V (MS 3100)  
Juneau, AK 99811

Dear Representative Gruenberg:

House HESS Committee heard HB 497, the Child Custody bill, on Monday, February 24th. The Women's Commission requested the Governor to introduce the bill because of our concern about the plight of Alaska's children following divorce. Nationally, the Census Bureau projects 2/3 of the children born in wedlock in 1980 will experience divorce by the time they are 17. Here in Alaska 50 percent of all marriages end in divorce. Child custody arrangements have, therefore, become increasingly important.

Following the identification of several issues during the HESS hearing on HB 497, the Commission completed some additional research about these issues. We have found that there has been a major shift in child custody laws during the last ten years from the concept of maternal preference to the gender neutral standard of the "best interests of the child".

Although legal rules now give fathers equal right to custody, mothers continue to be awarded physical custody of the children 90 percent of the time. The reason appears to be that maternal custody is preferred by the parents themselves. There has been no change in the percentage of fathers who request custody. While judges appear to maintain their preference for maternal custody, only 10 percent of the contested cases actually go to trial. Most cases are negotiated out of court.

96 percent of mothers want custody. While 57 percent of fathers want custody, only 13 percent of them actually request it. When fathers do request custody in negotiated settlements, they succeed 66 percent of the time. This high success rate is due to the fact that women are less secure than they used to be under maternal preference about

potential custody threats because the "best interests of the child" standard is often interpreted in favor of the father. Under the "best interest" standard, the focus shifts from unfitness to a consideration of each persons relationship with the child and to which parent is best able to care for the child. Women are perceived often as less able for following reasons:

- 1) Courts regard women's employment, as opposed to men's, as a "diminished capacity" to care for children.
- 2) Judges assume that when both parents have worked outside the home they have been equal in the amount of care given to the child. Research indicates, however, that men provide even less care of the children when both parents work because they are less willing to relieve a mother who has not spent the day with the child.
- 3) "Quality of care" is equated with financial resources and women earn only 2/3 of that earned by men.
- 4) Courts favor two parent living situations for children and men are most likely to remarry in the first year following divorce.

As a result, when custody is negotiated women feel compelled to give up or compromise financial interests (child support, alimony, property) in order to gain custody. So, although women are receiving custody in 90 percent of the cases, it is because they have bargained for it.

The Women's Commission is committed to custody arrangements being made in "the best interest of the child". It is the standard used to determine "best interests" that is in question. We believe the standard should be based on whoever has had the primary responsibility of the care and nurtrance of the child during the marriage. This standard has the dual advantage of valuing primary caretaking and decreasing ambiguity about the criterion used for custody awards, so that custody can less easily be used as a bargaining tool. This "establishment of certainty" prevents the use of custody as a coercive weapon.

Alaska's law has six factors which are to be considered in disputed custody determinations:

- 1) the physical, emotional, mental, religious, and social

- needs of the child;
- 2) the capability and desire of each parent to meet these needs;
  - 3) the child's preference if the child is of age and capacity to form a preference;
  - 4) the love and affection existing between the child and parent;
  - 5) the length of time the child has lived in a stable satisfactory environment and the desirability of maintaining continuity;
  - 6) the desire and ability of each parent to allow an open and loving frequent relationship between the child and the other parent;

The last factor, referred to as "the friendly parent rule" has been opposed by several bar associations because of its potential for coercion. Assume, for example, that one person does not want joint custody but is afraid of losing sole custody if a judge learns that she or he was uncooperative and refused joint custody. They will agree to joint custody in order to keep from losing custody altogether. The Women's Commission would like the HESS committee to eliminate this factor from Alaska's law by amending HB 497.

Secondly, the Commission believes that all custody arrangements should undergo at least minimal scrutiny by the court system to ensure coercion has not taken place (compromises of financial resources). If it appears from the initial scrutiny that coercion may have occurred, the Commission would like to have the court system perform a more in depth examination of the custody arrangement. As in disputed cases, we would like the six factors listed above considered. We assume that this is occurring to a certain extent right now since nationally, only 10 percent of cases are contested but according to the court system's fiscal note, over 50 percent of all custody cases are referred to a custody investigator. Although we do not know how many of these were contested cases, it is safe to assume, not all were. We therefore assert that our proposal, would reduce the current fiscal note.

The third objective of the Commission in this legislation is to request the reasons joint custody is awarded or denied be included in the record. Under current law this only occurs when joint custody is denied. Joint custody is an important means of ensuring children get access to both parents. A five year study of the impact of divorce on children concluded children adjust best when they maintain a continuing relationship with both parents. However, the single most

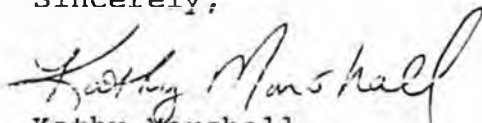
dangerous consequence to children from divorce is hostility between parents. If the joint custody arrangement is voluntary and both parties truly want it, it is the preferred custody choice. If, however, coercion has occurred, there is a high likelihood of hostility. In fact, a number of studies have indicated higher rates of conflict and relitigation among couples with joint custody. Careful investigation of these cases is essential. The Commission believes this proposal would have limited fiscal impact. We assume that these cases are among the over 50 percent of the cases currently being investigated.

The fourth and last proposal included in HB 497 is to make a clear distinction between child support and child custody. The Commission would like to have these two issues considered separately because we believe children should be guaranteed both access to their parents and economic security following a divorce. If a monetary value is placed on the amount of time spent with a child, that child may be deprived of access to one parent if that parent has limited financial resources. On the other hand, the amount of time spent with a child should not relate to the economic security of the child when with one of the parents. If one spouse cannot meet the financial needs of the child, the other parent should provide the necessary child support regardless of the amount of time spent with the child.

There has been extensive research which indicates that the amount of visitation has no relationship to the amount of child support paid. For example, fathers with joint custody are no more likely to pay more child support than fathers who are the noncustodial parent. There does appear to be a relationship between the amount of time spent with children and parent's educational level, race, proximity to the child and marital status. Less educated, black, and remarried fathers have less contact with their children. Overall, 52 percent of the children surveyed had not seen their fathers in the past year.

The Commission hopes you will give careful consideration to our three proposals on HB 497 and to amending the bill to eliminate the "friendly parent rule". If you have any questions or would like additional information, please don't hesitate to contact me.

Sincerely,



Kathy Marshall  
Executive Director

KM/dn

HOUSE  
COMMITTEE REPORT

(7)

Date referred: 1/22/86

FURTHER REFERRALS: JUDICIARY

DATE: March 12, 1986

The HEALTH, EDUCATION AND SOCIAL SERVICES Committee has considered HB 497

"An Act relating to a child's birth certificate, parental responsibilities for a child's actions, and child custody; and providing for an effective date."

and recommends:

- do pass
- do not pass
- do pass with attached amendment(s)
- no recommendation
- replace with CS HB 497 (HSS)  same title
- new title

and recommends do pass

further referral to the \_\_\_\_\_ Committee

- and attaches:
- letter of intent
  - first fiscal note
  - new fiscal note
  - zero fiscal note

SIGNING DO PASS:

[Signature]

Neil E. Koponen

Katie Hurley

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

SIGNING OTHER RECOMMENDATIONS:

[Signature] no rec

David W. Thompson NO REC

Clyde Hurley NO REC

Alvin L. Taylor NO REC

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Neil E. Koponen Co-Chair

[Signature] Co-Chair