

H B

189

STEVE COWPER
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

4/3/89

March 16, 1987

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 and marriage dissolution proceedings. The bill provides expressly for spousal support and attorney fees to be awarded during the pendency of divorce proceedings. It also requires a greater judicial scrutiny of marriage dissolution agreements in specific situations. With some of its clean-up and technical amendments, the bill seeks to simplify the dissolution statutes by removing the present inconsistency in references to the dissolution petition being "filed" or being "brought." (Normally, "actions" are "brought" and "petitions" are "filed.") A brief section-by-section description follows.

In sec. 1, the bill repeals and reenacts AS 25.24.140(a) to deal more specifically with attorney fees and costs, and to state that the court may require one spouse to provide reasonable spousal support, including medical expenses, as well as child support, during the pendency of the divorce proceedings. Existing AS 25.24.140(b) allows the court to restrain either spouse from disposing of property of either party during the pendency of the action. The bill repeals and reenacts AS 25.24.140(b) to provide that during the pendency of the proceeding, the court may issue an order restraining a spouse from disposing of the property of either spouse, or marital property, without the permission of the other spouse unless there is a court order. The court may also order that each spouse be restrained from subjecting the other spouse or another person living in the household to domestic violence, that one spouse vacate the marital residence, or that one spouse be restrained from communicating directly or indirectly with the other spouse or from entering a vehicle in the possession of or occupied by the other spouse.

Proposed AS 25.24.140(c), also in sec. 1 of the bill, goes on to provide that if both parties are in agreement, the

court may order them to participate in personal or family counseling or mediation.

The bill amends AS 25.24.160(a)(4) to include retirement benefits and career assets in the property that may be divided at the time of divorce. (Section 2 of the bill.)

AS 25.24.200(a), (b) and (c) are then amended in sec. 3 to reflect that property to be distributed in a property settlement in a dissolution proceeding includes retirement benefits and other career assets. AS 25.24.200(c) is also amended to require, through reference to AS 25.24.220(i), that if only one party is represented by an attorney, if a family member has filed a domestic violence complaint, or if there are minor children of the marriage, a spouse may not waive his or her right to answer the petition, or to receive notice of the hearing. A third amendment to AS 25.24.200(c) requires that when a party does execute a waiver he or she must acknowledge under oath that the dissolution petition constitutes the entire agreement between the parties.

Section 4 of the bill repeals and reenacts AS 25.24.210(e) to provide that, in addition to the statements currently required in a dissolution of marriage petition, the parties must also state whether either spouse requires medical care or treatment, whether a domestic violence complaint has been filed during the marriage, whether either party has received the advice of legal counsel, and whether the petition constitutes the entire agreement between the parties. A reference to retirement benefits and other career assets has also been added, to correspond to other amendments made by the bill.

Section 5 of the bill repeals and reenacts AS 25.24.220(b) to require that both parties must attend the dissolution hearing personally and not through counsel if one party is represented by counsel and the other is not, if a domestic violence complaint has been filed during the marriage, or if there are children of the marriage.

AS 25.24.220(d) is amended in sec. 6 to require that the written agreements of spouses who have filed for dissolution of their marriage under AS 25.24.220(a) constitute the entire agreement between the parties. Other conforming amendments are also made in AS 25.24.220(c). This statute currently uses the legalese triplet "fair, just, and equitable" as the standard for acceptable agreements between the spouses. The bill removes the redundancy and relies simply on the word "just."

AS 25.24.220(g) is amended in sec. 7 of the bill to require that the court's amendments to written agreements must be agreed to by both petitioners in writing and on the record. Other conforming amendments are also made in this subsection.

AS 25.24.220 is further amended by adding two new subsections that require that, for a dissolution petition filed under AS 25.24.200(a), the court will use a heightened level of scrutiny if one party is represented by counsel and the other is not, if a domestic violence complaint has been filed during the marriage by a member of the family, or if there are any minor children of the marriage. If these special conditions do not exist, the standard for the court's review will be that the agreement is not grossly unjust. (Section 8 of the bill.)

AS 25.24.230(a) is repealed and reenacted to require that if the dissolution petition is not subject to AS 25.24.220(h), the court, in granting the dissolution, must find that the written agreements regarding spousal support and tax consequences, division of property including retirement benefits and other career assets, and allocation of obligations, are not grossly unfair. In this case there would be no children of the marriage to consider. (Section 9 of the bill.)

Section 9 also repeals and reenacts AS 24.24.230(b) to require that, if there are children of the marriage, if only one party is represented by counsel, or if a complaint for domestic violence has been filed during the marriage (i.e., if the dissolution petition is subject to AS 25.24.220(h), the standard to be used by the court in review of the written agreements is that the agreements are just.

Under both AS 25.24.230(a) and (b), the court must find that the parties understand the nature and consequences of their action and that they entered into the agreements voluntarily and free from coercion.

The language of existing AS 25.24.230(b) -- (c) appears as AS 25.24.230(c) -- (h) in the attached bill, with some minor corrections and conforming language changes. (Section 9 of the bill.)

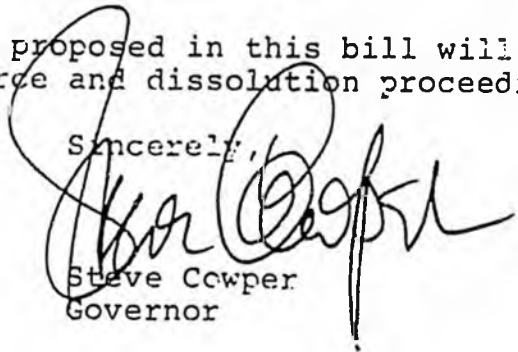
AS 25.24.250 is amended in sec. 10 by adding a new subsection that requires that the forms or instructions prepared by the Department of Law and the Alaska Court System for use by the public must specify that the dissolution petition constitutes the entire agreement between the parties, and

the forms or instructions must provide examples of the kinds of property and obligations that are subject to distribution.

Section 11 of the bill adds a new section to AS 25.24 to define "career assets." That term relates to the petitioners' property, and is added to AS 25.24 in several places by the bill, as described in this letter.

I believe that the changes proposed in this bill will result in greater justice in divorce and dissolution proceedings.

Sincerely,



Steve Cowper
Governor

BILL NO. HB 189

DATE: March 31, 1987

TITLE: An Act relating to divorce
and dissolution

CONTACT: Barbara Miklos
Executive Director
Council on Domestic Violence
and Sexual Assault

DEPARTMENT OF
PUBLIC SAFETY

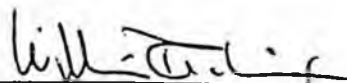
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The Council on Domestic Violence and Sexual Assault supports HB 189. The Council's endorsement and concerns focus on those provisions in Sections 1, 4, 8, which specifically impact victims of domestic violence.

The Council has concerns about Section 1, Section 25.24.140(c) concerning mediation. The major concern is that the provision for mediation does not exclude cases in which there have been domestic violence. Effective mediation depends on the equality of personal, social and economic power between disputing parties. It is a self-directed, rule-free process where each party is her or his own advocate. Violence in a relationship seriously distorts the power balance. Violent men physically coerce and psychologically dominate battered women by intimidating them into silence regarding their own or their children's needs for support, custody and visitation. The safety and rights of battered women, however, are not negotiable. Therefore, the Council urges that at a minimum, an exception be inserted to prohibit mediation "if domestic violence has occurred in the marriage".

Section AS 25.24.220 8(h)(2) requires a heightened level of scrutiny in dissolution agreements if "a domestic violence complaint has been filed during the marriage by a member of the household." In relationships where domestic violence exists, victims often 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 often takes the form of "brain-washing" 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 legislation will further protect victims of domestic violence.

Although the Council supports the inclusion of domestic violence as a reason for greater scrutiny, we prefer language which states that a heightened level of scrutiny is required if "domestic violence has occurred in the marriage." With this wording, a petitioner could indicate if domestic violence has occurred. With the present language, the information would still need to come from the petitioner yet it would be very difficult to verify the information since not all domestic violence complaints are recorded by police agencies. Also, in rural and isolated areas where police protection is sporadic or nonexistent, victims of domestic violence might never have had an opportunity to file a complaint. These victims should still be entitled to heightened judicial scrutiny.



William Nix
Acting Commissioner



STATE OF ALASKA
OFFICE OF THE GOVERNOR

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

HOUSE BILL 189

There are five areas in which HB 189 differs from SCS CSHB 496 (Fin), a bill which was before the legislature during the 14th Legislative Session. The changes resulted from interim review and recommendations provided by the Alaska Court System and the Family Law Section of the Alaska Bar Association.

I. HB 189 changes the categories that trigger heightened scrutiny in dissolution cases, reducing the number of situations from five to three. The situations which will trigger heightened scrutiny are if:

- 1) one party is represented by counsel and the other is not;
- 2) a domestic violence complaint has been filed during the marriage by a member of the family; or
- 3) there are any minor children of the marriage.

These changes were arrived at after considerable dialogue with representatives of the Alaska Court System. There was general agreement that the provisions would provide increased protection of the interests of those parties who might be more vulnerable and would also be administratively "do-able."

II. HB 189 changes the provisions relating to heightened judicial scrutiny to make it clear that in the three areas mentioned in I. above, the court will examine agreements to determine that they are "just." In all other cases the court will continue to use the present criterion, that is, to ensure that they are "not grossly unfair."

III. HB 189 would make it mandatory for both parties to appear at a dissolution hearing only in the above three situations where heightened judicial scrutiny is required.

House Bill 189

Page Two

- IV. HB 189 removes provisions relating to Name Change in Divorce or Annulment which had been included in SCS CSHB 496 (Fin). The Alaska Court System indicated that current procedures work well for all parties and that the changes suggested would be more cumbersome for parties seeking the change as well as for the courts. At their suggestion, the section was removed.
- V. "Career assets" pertain to both the divorce and dissolution statutes in HB 189. In last session's bill only dissolution statutes were affected. Members of the Alaska Bar Association suggested that this was a more consistent approach.

Submitted by:

Alaska Women's Commission
April 27, 1987

FAMILY EQUITY AT ISSUE: A Study of the Economic Consequences of Divorce on Women and Children

During the 1970's social reformers sought to ease the acrimony of divorce and create more fairness and equity for the families involved. "No fault" divorce reform was introduced in many states including Alaska. In addition, Alaska developed a dissolution procedure that allows people to file without the expense of an attorney. Unfortunately, many of these changes have had unintended economic results for women. It now appears that women and children are suffering major financial inequities as a direct result of some of the changes in divorce law and procedure.

The most striking documentation of the "downward mobility" of women and children created by "no fault" divorce was in the state of California. Because of the seriousness of the findings there, in 1986 the Alaska

Women's Commission undertook a study to determine if Alaskan women and children were suffering the same effects.

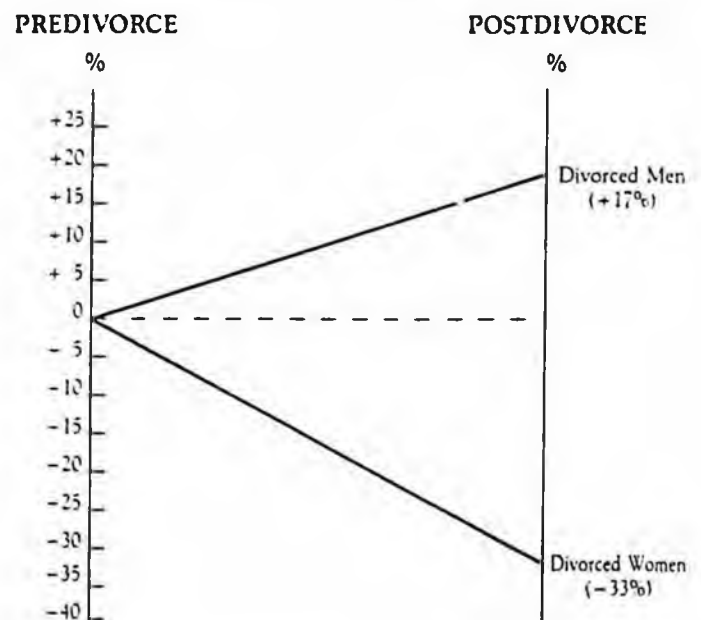
The study of divorce is important because so many people are affected by it. The divorce rate in Alaska is 63 percent compared to 46 percent nationally. More than 11,000 people are affected each year, 3,000 of them children. Even though the two-decade increase in the divorce rate seems to have peaked, each year thousands of Alaskan families are affected by divorce.

The study site chosen was Anchorage, where more than half of the state's divorces occur. A statistically valid sample drawn from all divorce and dissolution cases occurring in a one-year period was analyzed.

GENERAL FINDINGS:

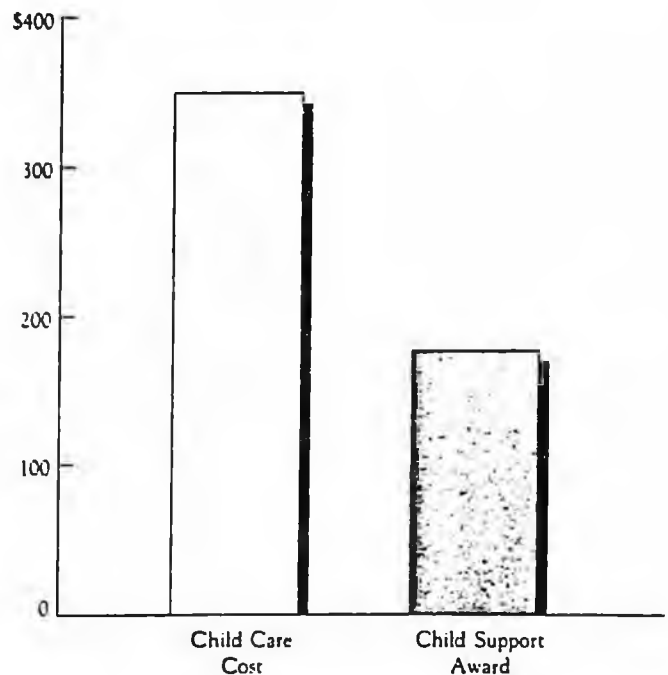
- In Alaska, divorce has substantially different economic consequences for women and men.
- Divorced women and their children experienced a 33 percent decline in per capita income resulting in a radical downward shift of their standard of living (see Figure 1). The greatest relative deprivation was experienced by women and children of middle and upper middle class families.
- Divorced men, however, experienced an improvement in their standard of living as a result of a 17 percent rise in their per capita incomes (see Figure 1).
- In many marriages the couple's major investments were in the education and career of the primary wage earner. Yet the division of marital property often excluded career assets. Disregarding this property allows the major wage earner, usually the husband, to keep what are often the most valuable assets of the marriage.

FIGURE 1: PERCENTAGE CHANGE IN PER CAPITA INCOME OF DIVORCED MEN AND WOMEN



- Fifty-four percent of divorcing men had pensions compared to 33 percent of divorcing women. The median value of the husband's pension was worth more than 3 times that of the wife's (\$27,500 and \$7,500 respectively). Yet, only 20 percent of the couples in the study divided pensions.
- Other types of career assets such as life insurance, paid leave, professional licenses, medical and dental insurance were rarely included in the division of property, even though they were acquired during the marriage.
- Award of the family home was influenced by the presence of children. In 74 percent of the cases, the home was given to the parent having physical custody. Fathers with physical custody almost always got the home (93 percent) while mothers with custody were awarded the family home only 68 percent of the time.
- Among the families who moved following divorce were accounts of children traumatized by the dislocation. New schools and neighborhoods increased the disruption already generated from economic and emotional distress.
- In the absence of children, husbands were awarded the family home and mortgage more frequently (60 percent) than wives (40 percent).
- Alimony was awarded in only 10 percent of the divorces surveyed. For the few who receive it, this "safety net" appears to be an illusion. Awards usually lasted for only one year and provided an average of only \$500 a month, despite the fact that most who received it had no job, no other income or were of an age which makes it difficult to find paid work.
- Divorced mothers are the primary caretakers of children. Sole custody was awarded to mothers in 58 percent of the cases, while fathers received it in 18 percent of the cases. Joint custody was awarded 19 percent of the time.
- Child support was awarded in 80 percent of the divorces where minor children were present. However, the average amount per child was \$191. This barely meets half the monthly cost of child care in Anchorage today (see Figure 2). This figure also falls below the standard used to determine eligibility for welfare.
- Cost of living increments were included in only 23 percent of the child support awards. Without these adjustments, the purchasing power of the support award continually declines because of inflation and the increased costs associated with older children.
- Only 22 percent of child support awards were written beyond the age of majority although financial burdens such as education continue for several years beyond this point.

FIGURE 2: AVERAGE MONTHLY COST OF CHILD CARE COMPARED TO AVERAGE MONTHLY CHILD SUPPORT AWARD



- Only 58 percent of the people in the survey received the full amount of child support awarded. This is consistent with statewide data from the Child Support Enforcement Agency.
- Divorced men are rarely required to pay more than 15 percent of their predivorce income to support their children.

IMPACT OF DISSOLUTION:

In Alaska people can end their marriage in two ways. Both are considered "no-fault." One, a divorce, usually involves attorneys' fees and court hearings, with the judge making a final decision in areas where the two parties cannot agree. The other, a dissolution, can be done without attorneys, with minimal expense, and requires that both parties agree about every issue. About two-thirds of all Alaskan couples who end their marriages choose a dissolution.

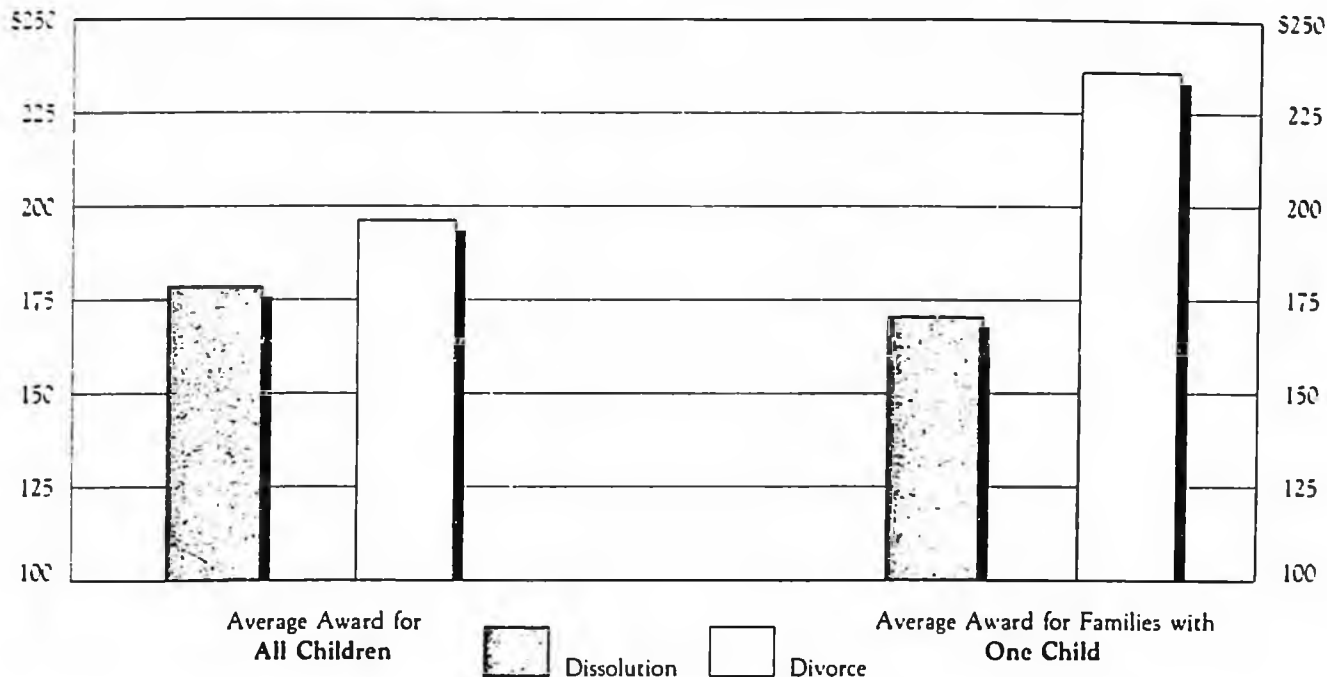
Alaska is one of only 8 states that permit dissolutions. It is also one of the most liberal in its provisions. Most

other states do not permit dissolutions if there are minor children, if the marriage is one of long duration, or if the couple has property. Alaska law places no limitations on the use of dissolutions.

In addition to the study's general findings, it appears that women who choose dissolution suffer even more financial hardship than women who go through a divorce.

- Women who used the dissolution procedure received far less than half of the couple's property. Wives received only 29 percent of the property in dissolutions. Women who used divorce received 50 percent of the marital property.
- Child support awards were lower when the dissolution procedure was used. Particularly hard hit were families with one child where average awards were 27 percent lower than in divorce (see Figure 3).

FIGURE 3: AVERAGE MONTHLY CHILD SUPPORT AWARD FOR ALL CHILDREN AND ONE CHILD FAMILIES BY LEGAL PROCEDURE



SUMMARY:

The findings of this study together with a growing body of research suggest that the current legal system of divorce creates economic hardships for women and children instead of providing greater family equity. Inadequate and poorly enforced child support awards, the near absence of spousal support, and unequal division of marital property are creating a new class of poor.

Divorced women and their children face a precipitous drop in family income. Some face certain impoverishment. Women who choose the dissolution procedure suffer even more financial hardship than those who go through a divorce.

The Alaska Women's Commission was created to ensure equity for women in Alaska. The Commission's current legislative platform attempts to correct many of the inequities that occur under existing divorce laws. The findings of the Commission's study support these efforts.

The report was written by Barbara Baker, research analyst for the Alaska Women's Commission. For a copy of the full report or for more information about the Commission's legislative advocacy, research efforts and educational services, please contact the Commission office at 3601 "C" Street, Suite 742, Anchorage, Alaska 99501 or call 561-4227.

RESOURCES:

Community resources exist to assist people who are considering divorce. The following is a list of some of the agencies who provide legal assistance or counseling.

Legal Assistance:

Alaska Legal Services — Provides legal assistance to low income people. It also screens applicants for the Pro Bono Program which provides free legal assistance to low income people. "Do It Yourself" (Pro Se) Divorce Clinics are also conducted by Alaska Legal Services in some communities. Legal Services is located in Anchorage, Barrow, Bethel, Dillingham, Fairbanks, Juneau, Ketchikan, Kodiak, Kotzebue, Nome, Unalaska.

Dispute Resolution Services, Fairbanks

Counseling and Support:

Women's Resource Centers are located in Anchorage, Barrow, Bethel, Cordova, Fairbanks, Homer, Kenai/Soldotna, Kodiak, Kotzebue, Nome and Wasilla.

Men's Support Network, Anchorage

Father's Rights Group, Fairbanks

RELATED RESEARCH ON DIVORCE:

Lenore Weitzman, *The Divorce Revolution: The Unexpected Social and Economic Consequences for Women and Children in America* (New York: The Free Press, 1986).

Heather Wishik, "Economics of Divorce: An Exploratory Study," *Family Law Quarterly*, Vol. 20, No. 1, Spring 1986.

California Senate Task Force on Family Equity: (Sacramento, State of California, 1987).

S. Hoffman and T. Holmes, "Husbands, Wives, and Divorce," *Five Thousand American Families — Patterns of Economic Progress* (Ann Arbor, Michigan: Institute for Social Research, 1976).

William Goods, *After Divorce* (New York: The Free Press, 1956).



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

Members of Commission:

Kris Chatfield, chair
Anchorage
Joy Green-Arnstrong, vice chair
Anchorage
Loretta Bullard
Nome
Elizabeth (Pat) Kennedy, Anchorage
Mary Pete, Bethel
Betty Ramage, Anchorage
Wendy Redman, Fairbanks
Paula Ziegler, Juneau

Executive Director

Christine Callahan

Research Analyst

Barbara Baker

State of Alaska

Steve Cowper, Governor
Stephen McAlpine, Lt. Governor

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ADDRESS CORRECTION REQUESTED

Survey says divorce hurts women and children most

The Associated Press

Women and children suffer the most financially after a family splits up, while men usually gain, a recently completed study by the Alaska Women's Commission concludes.

The study, based on more than 100 interviews of divorced Alaskans, shows women and children involved in divorces experience a 33 percent decline in per capita income, while men involved see a 17 percent increase.

Several factors contribute to the difference, researchers said. Those include inadequate court awards for child support and alimony, and an inclination by women to settle for less than an equal share of marital property.

This study offers eye-opening

evidence that women and children in Alaska are on the verge of becoming the state's new poor," Gov. Steve Cowper said in a prepared statement announcing the study's results.

The study, entitled, "Family Equity at Issue," also found:

- That 54 percent of the men in divorces had pensions compared to 33 percent of the women. The median value of a husband's pension was worth more than three times that of a wife's — \$27,500 and \$7,500 respectively. Only 20 percent of the couples in the study divided pensions.

- Other types of career assets such as life insurance, paid leave, professional licenses, medical and dental insurance rarely were included in the division of property.

TESTIMONY - HE 189

Honorable Committee Members

April 27, 1987

Subject: Amendment to Statute 25.24.150 Ref. H.B. 189

The State of Alaska (Governor Steve Cowper) categorically states that its' Courts award custody governed by the Best Interests of the child. For this to be true, the following amendment must be implemented without delay. This amendment will allow and ensure the best interest of children are, in fact, represented and upheld by our Courts.

Amendments to Alaska Statute 25.24.150

Addition's: Underscored

Add item number (7) to 25.24.150

(7) If child custody is not in agreement with each parent, then in the child's best interest, the Court shall request an investigation by Ad Litum. The Court will award custody per Ad Litum's recommendations.

This necessary amendment will support the people's (including childrens) and Legislatures intent of 1982. It will also be beneficial in curtailing degenerating disolutionment litigation and in turn support constructive mediation.

We must remember that to date, the children's best interest's are seldom represented to the Court.

The Ad Litum will investigate the child to determine need and preference and investigate parent's to determine desire, fitness and ability to provide for the child's well-being and report to the Court, custody arrangement that will solely be in the child's best interest!

Opposing Councils represent their clients best interests only. They do not represent the child! This situation leaves the Court to render a decision based on disputes of divorcing parents and councils, which does not address the well-being of the child. It forces the Court to render a decision based on unsubstantiated and non-relevant facts.



Daryl Methvin

465-2086

P.O. Box 964

Douglas, Alaska 99824

Honorable Committee Members

April 24, 1987

Subject: Amendment to Statute 25.24.150 Ref. H.B. 189

In reference to H.B. 189 directly, or if Bill is split. Said vehicle must be used to ammend statute custody language to ensure award of joint physical custody by Court, when minor(s) has stated this preference and is also recommended, after investigation of case, by Ad Litum. Necessary statute language follows. We hope, for this States childrens well-being, you will use it! It is the right thing to do.

It was the intent of the people and Legislature, in 1982, after in-depth study, to adopt this basis of fair equality in behalf of minor's well-being. It would also save the State millions of dollars in administration, litigation and policing of support, movement of children to other states and/or countries, delinquency and crimes of all varieties by minors, seven years old and up. Unfortunately, this has yet to occur, due to inadequate and non-specific statute language.

A decision for custody award, during initial dispute or modification, if truely addressing minor(s) well-being, is an easy one to make when adhering to specific law and not allowing the entrance of bias, selfishness and facts not directly related to minor(s) well-being. We must remember that custody disputes are the root issue of most disolutions. However, reality is quite different from rhetoric. Council may use the argument that they follow the adversary process to inform Court of relevent facts. Over ninety percent of the time their alledged facts have no nexus between law, minor's well-being and truth. Children do not get benefit of Jury to decide. They get an individual who may or may not be biased, whom may or may not consider proper facts and the child's well-being only.

For Example, I will quote just two of many attorney's who have similarly stated, "Facts presented in Court have nothing to do with right, wrong, truth or honesty, in winning a case. It has to do with who's the best liar!" Quote-unquote, Phil Wiedner and Ron Drathman.

We must have, at least, the reality of care and equality for minor's, otherwise the State is guilty of abuse of minor's, via mental cruelty. This causes not only grievous despair and anguish of our minor's, but creates disrespect of laws by minor's. As the State has, in no uncertain terms, let minor's know that no one really cares and that our laws are meaningless, through unrealistic custody decisions. Children don't get divorced, parents do!

Please review and utilize the following amendment, as it is, 1. In the best interests for the well-being of the children of this State, and 2. Will assist in curtailing disputes of divorcing parties and help avoid mental and possible physical abuse of one another, and 3. Will assist in curtailing the workloads

of our Departments of Revenue, child support enforcement division, Health and Social Services, family and youth service division, Public Safety, State Trooper Division, law's, Court System, as well as all other related political subdivision services, dealing with domestic relations and violence. This equals millions of dollars saved on administrative and personnel costs by making children happy by addressing their well-being, instead of bias, selfishness and or vengence which has absolutely nothing to do with facts directly related to children(s) well-being.

AMENDMENTS TO ALASKA STATUTE 25.24.150

Addition's underscored:

Deletion's [bracketed]:

Add last sentence to 25.24.150(a)

Equal physical custody of minor(s) shall be awarded when it is the minor(s) preference and recommended by Ad Litum, as it is considered to be in the minor(s) best interests for well-being:

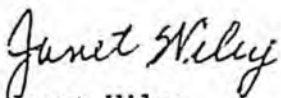
Add the work only to 24.24.150(c)

(c) The court shall determine custody in accordance with the best interests of the child under AS 25.20.060 - 25.20.130. In determining the best interest of the child the court shall only consider

Add/Delete to 25.24.150 (3)

(3) The child's stated preference if the child is [of sufficient age and capacity to form a preference] age seven (7) years or older and the investigating Ad Litum concurs. Ad Litum's recommendation if child is uner age seven (7).

Sincerely,



Janet Wiley
P.O. Box 964
Douglas, Ak. 998 +

1987 LEGISLATIVE PROPOSAL REQUEST

Requested By: Janet L. Wiley

DATE: January 12, 1987

Address: P.O. Box 964

Phone #: 364-3641

SUBJECT OF PROPOSED BILL:

Necessary amendments to Alaska Statute 25.24.150 to clarify Legislative intent.
Reference: Chapter 88 SIA 1982.

SUMMARY/EXPLANATION OF INTENT: (Why is legislation requested? Explain need. Attach additional sheet if necessary.)

To direct the court system in no uncertain terms To award custody based on minor(s) preference, Ad Litum's recommendations and parents ability and desire to care for and meet the best interests of minor(s) well-being.

See attachment 1-3

ESTIMATED FISCAL IMPACT:

Capital: -0-

Operating: -0-

Savings: Would be gained by the Court System, Dept. of Revenue and Dept. of Health and Social Services. Both would be spending much less time in dealing with Domestic Relations and Delinquency cases.
Has this or a similar bill been introduced, but not passed, in the Legislature in previous session? NO

Has it been drafted but not introduced? NO

If so, please attach copy of approved draft, and list the Department of Law file number.

377 - _____ - _____

Why wasn't it passed?

Rate the bill's importance to the State.

It's importance is number one (1) in priority just as dealing with revenue short falls. The children of this State must be allowed well-being by the State, as intended by existing law, as the children of the State are it's future.

Signature: Janet L. Wiley

Title: Loan/Branch Secretary, Alaska Federal Savings &

Governor's Office recommendation:

STEVE COWPER
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 16, 1987

Ms. Janet L. Wiley
P.O. Box 964
Douglas, AK 99824

Dear Ms. Wiley:

Your request for legislative revision regarding divorce and child custody proceedings was referred to my office by Governor Cowper.

Legislation has been prepared for introduction under the Governor's sponsorship dealing with divorce and dissolution proceedings. This will open areas of the law dealing with child custody, creating an opportunity for discussion of your concerns during the legislative process. Parties interested in "mediation" in child custody proceedings have also expressed an interest in new legislation, and we have likewise directed their interest toward this legislative vehicle.

The legislation in question will undoubtedly be a subject of hearings by the House or Senate Judiciary committee. You may wish to watch for introduction of this measure and notify the committee of first referral of your interest.

Sincerely,

A handwritten signature in black ink, appearing to read "Mike Bradner", with a long horizontal flourish extending to the right.

Mike Bradner
Legislative Liaison
for the Governor

Alaska Court System - Proposed Amendment to HB 189

AS 25.24.200 is amended by adding a new subsection to read:

- (e) A person serving in the military who has not established residency may use these procedures if he or she has been continuously stationed in a military base or installation in the state for one year or more.

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
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May, 1988

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

Mary Van Nimwegen

H. JUD.	3-21-88	1:30 p.m.
H. JUD.	3-14-88	1:30 p.m.

HOUSE COMMITTEE REPORT

(7)

2/15/88

Date referred: 2/26/88

FURTHER REFERRALS:

DATE: March 21, 1988

The Judiciary Committee has considered HB 189

"An Act relating to divorce and dissolution."

RECOMMENDS:

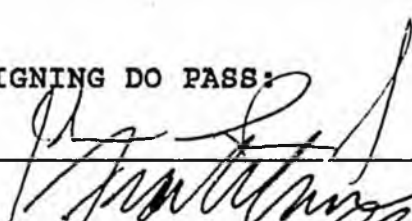
- replace with CS HB 189 (HESS) the same title
- attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the Finance Committee

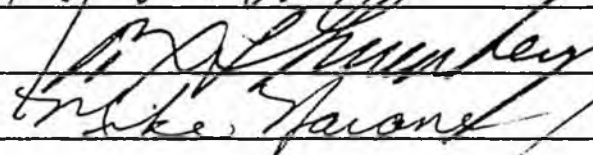
ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):

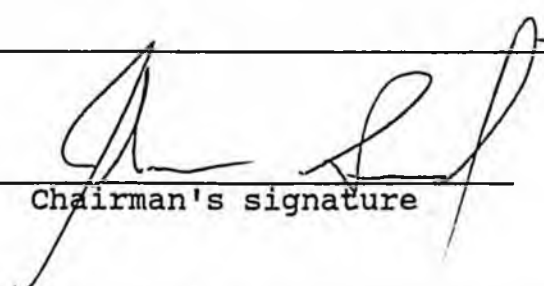
- fiscal impact same as previous fiscal note published 2/26/88
- zero fiscal note same as previous zero fiscal note published _____
- zero with analysis

SIGNING DO PASS:





SIGNING OTHER RECOMMENDATIONS:



 Chairman's signature

RSN: 961

ALASKA HOUSE OF REPRESENTATIVES
CSHB 189(HESS) AM1

4/12/88 9:49 AM

2ND SESSION 15TH LEG

		15 YEAS	24 NAYS	1 EXC	0 ABS		
(Y)	ADAMS	N	DONLEY	(N)	HUDSON	N	POURCHOT
Y	BARNES	N	ELLIS	N	KOPONEN	Y	RIEGER
N	BOUCHER	(N)	FRANK	N	LARSON	Y	SHULTZ
N	BOYER	Y	FURNACE	Y	MARTIN	(Y)	SPRINGER
N	BROWN	N	GOLL	Y	MENARD	N	SUND
(Y)	CATO	N	GRUENBERG	Y	MILLER	N	SWACKHAMMER
Y	COLLINS	N	GRUSSENDORF	(N)	NAVARRE	E	TAYLOR
N	COTTEN	Y	HANLEY	(N)	PEARCE	N	ULMER
N	DAVIDSON	N	HERRMANN	Y	FETTYJOHN	N	WALLIS
N	DAVIS	N	HOFFMAN	Y	PHILLIPS	Y	ZAWACKI

+ VOTED FOR
* CHANGED VOTE

Original sponsor: Rules/Governor

1 IN THE HOUSE

BY THE HEALTH, EDUCATION AND
SOCIAL SERVICES COMMITTEE

2

CS FOR HOUSE BILL NO. 189 (HESS)

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6

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

7

8

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

10

* Section 1. AS 25.24.100 is amended to read:

11

Sec. 25.24.100. RESIDENCY OF MILITARY PERSONNEL. A person
serving in a military branch of the United States government who is
assigned to a duty station at [HAS BEEN CONTINUOUSLY STATIONED IN] a
military base or installation in the state [FOR A PERIOD OF ONE YEAR]
shall be considered [DEEMED] a resident [IN GOOD FAITH] of the state
for the purposes of this chapter [AS 25.24.010 - 25.24.180].

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* Sec. 2. AS 25.24.140 is repealed and reenacted to read:

18

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

19

20

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

22

23

(2) reasonable spousal support, including medical expenses;

24

and

25

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

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27

28

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

29

Attorney fees

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

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

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

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

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

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

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

19 * Sec. 3. AS 25.24.160(a)(4) is amended to read:

20 (4) for the division between the parties of their property,
21 including retirement benefits and career assets, whether joint or
22 separate, acquired only during marriage [COVERTURE], in a just [THE]
23 manner [AS MAY BE JUST,] and without regard to which of the parties is
24 in fault; however, the court, in making the division, may invade the
25 property, including retirement benefits and career assets, of either
26 spouse acquired before marriage when the balancing of the equities
27 between the parties requires it; and to accomplish this end the judg-
28 ment may require that one or both of the parties assign, deliver, or
29 convey any of their real or personal property, including retirement

1 benefits and career assets, to the other party; a division of career
2 assets must take into consideration the extent to which each spouse
3 contributed to the acquisition of the career assets, including consid-
4 eration of the value of homemaking and child rearing services provided
5 by each spouse;

6 * Sec. 4. AS 25.24 is amended by adding a new section to read:

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

10 (b) If a party seeks a change of name to a name other than a
11 prior name, the court shall set a date for hearing not less than 40
12 days after filing of the action. Notice of the application for a
13 change of name to a name other than a prior name and the date of the
14 hearing shall be published once each week for four consecutive calen-
15 dar weeks before the hearing in a newspaper of general circulation in
16 the judicial district. The court may also require posting of the
17 notice at locations it considers appropriate. The court shall by
18 judgment authorize the party to assume the new name in not less than
19 30 days after issuance of the judgment, if the court is satisfied that
20 no reasonable objection exists to assumption of the new name. Within
21 10 days after issuance of the judgment the party shall publish notice
22 of the approval of the name change in a newspaper of general circula-
23 tion in the judicial district. The court may also require the posting
24 of a copy of the judgment.

25 * Sec. 5. AS 25.24.200 is amended to read:

26 Sec. 25.24.200. DISSOLUTION OF MARRIAGE. (a) A husband and
27 wife together may petition the superior court for the dissolution of
28 their marriage under AS 25.24.200 - 25.24.260 if the following condi-
29 tions exist at the time of filing the petition:

1 (1) incompatibility of temperament has caused the irremedi-
2 able breakdown of the marriage;

3 (2) if there are minor children of the marriage or the wife
4 is pregnant, and the spouses have agreed on which spouse or third
5 party is to [SHALL] be awarded custody of each minor child of the
6 marriage and the extent of visitation, including visitation by grand-
7 parents and other persons, and support to be provided on the chil-
8 dren's behalf, whether the payments are to be made through the child
9 support enforcement agency and the tax consequences of that agreement;

10 (3) the spouses have agreed as to the distribution of all
11 jointly owned real and personal property, including retirement bene-
12 fits and career assets, and the payment of spousal support, if any,
13 and the tax consequences resulting from these payments; and

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

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

20 (1) incompatibility of temperament, as evidenced by ex-
21 tended absence or otherwise, has caused the irremediable breakdown of
22 the marriage;

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

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

3 (c) Except as provided in AS 25.24.220(i), [NOTHING IN THIS
4 SECTION PROHIBITS] a spouse who has been personally served with a copy
5 of a petition filed [MADE] under (a) of this section may execute [FROM
6 EXECUTING] an appearance, waiver of time to answer, and waiver of
7 notice of hearing. The appearance and waivers must [SHALL] include an
8 acknowledgment signed before an officer authorized to administer an
oath or affirmation that the spouse being served has read the peti-
10 tion; assents to the terms relating to custody of the children, child
11 support, visitation, spousal support and resultant tax consequences,
12 division of property, including retirement benefits and career assets,
13 and allocation of debts; agrees that the conditions otherwise required
14 by (a) of this section exist; agrees that the petition constitutes the
15 entire agreement between the parties; understands fully the nature and
16 consequences of the action; and is not signing the appearance and
17 waivers under duress or coercion.

18 (d) The action created under this section is separate from the
19 action created by AS 25.24.010. The procedures prescribed by AS 25.-
20 24.200 - 25.24.260 do not apply to an action brought under AS 25.24.-
21 010, nor do procedures prescribed under AS 25.24.010 - 25.24.180 apply
22 to an action filed [BROUGHT] under this section, except as specifical-
23 ly provided.

24 * Sec. 6. AS 25.24.200 is amended by adding a new subsection to read:

25 (e) A division of career assets must take into consideration the
26 extent to which each spouse contributed to the acquisition of the
27 career assets, including consideration of the value of homemaking and
28 child rearing services provided by each spouse.

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

1 (d) The petition shall request that the marriage be dissolved
2 and that the [PRIOR] name of a spouse be changed [RESTORED], if de-
3 sired by that spouse.

4 * Sec. 8. AS 25.24.210(e) is repealed and reenacted to read:

5 (e) If the petition is filed by both spouses under AS 25.24.-
6 200(a), the petition must state in detail the terms of the agreement
7 between the spouses concerning the custody of children, child support,
8 visitation, spousal support and tax consequences, if any, division of
9 property, including retirement benefits and career assets, and allo-
10 cation of debts. In addition, the petition must state

11 (1) the respective occupations of the petitioners;

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

14 (3) the date and place of the marriage;

15 (4) the name, date of birth, and current custodial status
16 of each minor child born of the marriage or adopted by the petition-
17 ers;

18 (5) whether the wife is pregnant;

19 (6) whether either petitioner requires medical care or
20 treatment;

21 (7) whether a domestic violence complaint has been filed
22 during the marriage by a member of the household;

23 (8) whether either petitioner has received the advice of
24 legal counsel regarding a divorce or dissolution;

25 (9) other facts and circumstances that the petitioners
26 believe should be considered;

27 (10) that the petition constitutes the entire agreement
28 between the petitioners; and

29 (11) any other relief sought by the petitioners.

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

2 (b) Except as provided in (i) of this section, if the petition
3 is filed by both spouses under AS 25.24.200(a) both spouses shall
4 attend the hearing personally and not through counsel. However, if
5 the petition is not subject to (i) of this section, one spouse may
6 comply with AS 25.24.200(c). Either spouse may have counsel at the
7 hearing.

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

9 (c) If the petition is filed [BROUGHT] by one spouse under
10 AS 25.24.200(b), that spouse shall submit proof of diligent inquiry as
11 to the whereabouts of the absent spouse and provide notice by publica-
12 tion, posting, or other means as ordered by the court under [IN ACCOR-
13 DANCE WITH] the Alaska Rules of Civil Procedure.

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

15 (d) If the petition is filed [BROUGHT] by both spouses under
16 AS 25.24.200(a), the court shall examine the petitioners or petitioner
17 present and consider whether

18 (1) the spouses fully understand the nature and conse-
19 quences of their action;

20 (2) the agreements between the spouses concerning child
21 custody, child support, and visitation are [FAIR,] just [, AND EQUIT-
22 ABLE] as between the spouses and in the best interests of the children
23 of the marriage;

24 (3) the written agreements between the spouses relating to
25 the division of property, including retirement benefits and career
26 assets, spousal support, and the allocation of obligations are [FAIR,]
27 just [, AND EQUITABLE]; [AND]

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

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

2 * Sec. 12. AS 25.24.220(e) is amended to read:

3 (e) If the petition is filed [BROUGHT] by one spouse under
4 AS 25.24.200(b), the court shall examine the petitioner and consider
5 whether the petitioner fully understands the nature and consequences
6 of the action and whether the conditions in AS 25.24.200(b) have been
7 met.

8 * Sec. 13. AS 25.24.220(g) is amended to read:

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

14 * Sec. 14. AS 25.24.220 is amended by adding new subsections to read:

15 (h) In its examination of ~~a petitioner~~ under (d) of this sec-
16 tion, the court shall use a heightened level of scrutiny of agreements
17 if

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

20 (2) a domestic violence ^{complaint} complaint has been filed during the
21 marriage by a member of the family ^{or} there is evidence of significant
22 domestic violence during the marriage;

23 (3) there are minor children of the marriage; or

24 (4) there is a patently inequitable division of the marital
25 estate.

26 (i) If the court finds that a higher level of scrutiny is re-
27 quired by (h) of this section, the court shall examine the written
28 agreements between the spouses to determine that they are just, that
29 they constitute the entire agreement between the parties, and that the

heightened level of scrutiny
any time limit

1 agreements concerning child custody, child support, and visitation are
2 in the best interests of the children of the marriage, if any. The
3 court shall require the presence of both spouses at a hearing for this
4 purpose unless the court finds that it would constitute a significant
5 hardship on one of the spouses to appear, and that a just agreement
6 has been reached. If one of the spouses cannot attend the hearing
7 because it would constitute a significant hardship, the court may
8 require that spouse to be available by telephone to answer questions,
9 at that spouse's expense.

10 * Sec. 15. AS 25.24.230 is repealed and reenacted to read:

11 Sec. 25.24.230. JUDGMENT (a) If the petition is filed under
12 AS 25.24.200(a), and is not subject to AS 25.24.220(h), the court may
13 grant the spouses a final decree of dissolution and shall order other
14 relief as provided in this section if the court, upon consideration of
15 the information contained in the petition and the testimony of the
16 spouse or spouses at the hearing, finds that

17 (1) the spouses understand fully the nature and conse-
18 quences of their action;

19 (2) the written agreements between the spouses concerning
20 child custody, child support, and visitation are in the best interests
21 of the children of the marriage and constitute the entire agreement of
22 the parties on child custody, child support, and visitation;

23 (3) the written agreements between the spouses concerning
24 spousal support and tax consequences, if any, division of property,
25 including retirement benefits and career assets, and allocation of
26 obligations are not grossly unjust and constitute the entire agreement
27 between the parties;

28 (4) each spouse entered into the agreement voluntarily and
29 free from the coercion of another person; and

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

2 (b) If the petition is filed under AS 25.24.200(a) and is sub-
3 ject to AS 25.24.220(h), the court may grant the spouses a final
4 decree of dissolution and shall order other relief as provided in this
5 section if the court, upon consideration of the information contained
6 in the petition and the testimony of the spouse or spouses at the
7 hearing, finds that

8 (1) the spouses understand fully the nature and conse-
9 quences of their action;

10 (2) the written agreements between the spouses concerning
11 child custody, child support, and visitation are in the best interests
12 of the children of the marriage, constitute the entire agreement of
13 the parties on child custody, child support, and visitation, and, as
14 between the spouses, are just;

15 (3) the written agreements between the spouses concerning
16 spousal support and tax consequences, if any, division of property,
17 including retirement benefits and career assets, and allocation of
18 obligations are just and constitute the entire agreement between the
19 parties;

20 (4) each spouse entered the agreement voluntarily and free
21 from the coercion of another person; and

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

23 (c) If the petition is filed by one spouse under AS 25.24.-
24 200(b), the court may grant the spouse a final decree of dissolution
25 and change the petitioner's name, if so requested, if the court, upon
26 consideration of affidavits supplied by the spouse and the testimony
27 of the spouse at the hearing, finds that

28 (1) the spouse present at the hearing understands fully the
29 nature and consequences of the action;

1 (2) the conditions in AS 25.24.200(b) have been met; and
2 (3) the requirements of AS 25.24.165(b) have been sat-
3 isfied, if a change of name is requested.

4 (d) The court shall dismiss a petition or continue action on a
5 petition filed under AS 25.24.200 - 25.24.260 before findings are made
6 if

7 (1) a representative of the minor children objects to a
8 term of an agreement between the spouses;

9 (2) either of the spouses withdraws from an agreement
10 required under AS 25.24.200(a); or

11 (3) the petition alleges that the conditions in AS 25.24.-
12 200(b) exist, but the whereabouts of the absent spouse becomes known
13 to the other spouse or the court before findings are made.

14 (e) The court shall deny the relief sought in a petition filed
15 under AS 25.24.200 - 25.24.260 if the court does not make the findings
16 required under (a) - (c) of this section.

17 (f) If the petition is filed by both spouses under AS 25.24.-
18 200(a), the court shall change either spouse's name, if the spouse
19 seeking a change of name to a name other than a prior name complies
20 with AS 25.24.165(b), and shall fully and specifically set out in the
21 decree the written agreements of the spouses and shall order the
22 performance of those written agreements. The court shall also state,
23 in the decree, whether child support payments are to be made through
24 the child support enforcement agency. If the petition is filed by one
25 spouse under AS 25.24.200(b), the decree must state that it does not
26 bar future action on the issues not resolved in the decree.

27 (g) Notwithstanding other provisions of AS 25.24.200 - 25.24.-
28 260, the court may not award as between the spouses real or personal
29 property acquired by either spouse before the date of the marriage,

1 unless the spouses expressly agree otherwise or the court determines
2 that the property should be made available, by sale or other convey-
3 ance, to ensure that the best interests of the children are provided
4 for. If the court determines that the best interests of the children
5 require an award of premarital property, but the spouses do not agree,
6 the court shall dismiss or continue the action.

7 (h) If a judgment under this section distributes benefits to an
8 alternate payee under AS 14.25, AS 22.25, AS 26.05.222 - 26.05.226, or
9 AS 39.35, the judgment must meet the requirements of a qualified
10 domestic relations order under the definition of that phrase that is
11 applicable to those provisions.

12 * Sec. 16. AS 25.24.250 is amended by adding a new subsection to read:

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

17 * Sec. 17. AS 25.24 is amended by adding a new section to read:

18 ARTICLE 4. GENERAL PROVISIONS.

19 Sec. 25.24.350. DEFINITION. In this chapter, "career assets"
20 means tangible and intangible assets resulting from a spouse's educa-
21 tion, profession, or employment that were acquired at least in part as
22 a result of direct or indirect contributions made by the other spouse;
23 "career assets" includes professional education, licenses, increased
24 earnings, and good will.

25 * Sec. 18. AS 25.24.165, as added by sec. 4 of this Act, AS 25.24.-
26 210(d) as amended by sec. 7 of this Act, and AS 25.24.230(c) and 25.24.-
27 230(f) as amended by sec. 15 of this Act, have the effect of amending Rule
28 84(a), Alaska Rules of Civil Procedure, to allow a change of name to a name
29 other than a prior name to be commenced in a complaint for divorce or

*Includes
good will*

1 annulment or a petition for dissolution of marriage.

2 * Sec. 19. AS 25.24.160(a)(5) is repealed.

Original sponsor: Rules/Governor

1 IN THE HOUSE

BY THE HEALTH, EDUCATION AND
SOCIAL SERVICES COMMITTEE

2 CS FOR HOUSE BILL NO. 189 (HESS)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to divorce, dissolution, and annul-
7 ment, and amending Rule 84(a), Alaska Rules of Civil
8 Procedure."

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

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13 been continuously stationed in a military base or installation in the
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15 in good faith of the state for the purposes of this chapter [AS 25.-
16 24.010 - 25.24.180].

17 * Sec. 2. AS 25.24.140 is repealed and reenacted to read:

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

24 and

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

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29 spouse is entitled to necessary protective orders, including orders

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2 control of the other spouse;

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4 spouse or another person living in the household to domestic violence,
5 as defined in AS 25.35.060;

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

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9 indirectly with the other spouse;

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11 in the possession of or occupied by the other spouse; and

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

15 (c) After a hearing, the court may also order that the parties
16 engage in personal or family counseling or mediation if both parties
17 agree. The court shall provide in the order for the payment of the
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24 in fault; however, the court, in making the division, may invade the
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26 spouse acquired before marriage when the balancing of the equities
27 between the parties requires it; and to accomplish this end the judg-
28 ment may require that one or both of the parties assign, deliver, or
29 convey any of their real or personal property, including retirement

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11 prior name, the court shall set a date for hearing not less than 40
12 days after filing of the action. Notice of the application for a
13 change of name to a name other than a prior name and the date of the
14 hearing shall be published once each week for four consecutive calen-
15 dar weeks before the hearing in a newspaper of general circulation in
16 the judicial district. The court may also require posting of the
17 notice at locations it considers appropriate. The court shall by
18 judgment authorize the party to assume the new name in not less than
19 30 days after issuance of the judgment, if the court is satisfied that
20 no reasonable objection exists to assumption of the new name. Within
21 10 days after issuance of the judgment the party shall publish notice
22 of the approval of the name change in a newspaper of general circula-
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24 of a copy of the judgment.

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2 able breakdown of the marriage;

3 (2) [IF] there are minor children of the marriage or the
4 wife is pregnant, and the spouses have agreed on which spouse or third
5 party is to [SHALL] be awarded custody of each minor child of the
6 marriage and the extent of visitation, including visitation by grand-
7 parents and other persons, and support to be provided on the chil-
8 dren's behalf, whether the payments are to be made through the child
9 support enforcement agency and the tax consequences of that agreement;

10 (3) the spouses have agreed as to the distribution of all
11 jointly owned real and personal property, including retirement bene-
12 fits and career assets, and the payment of spousal support, if any,
13 and the tax consequences resulting from these payments; and

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

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

20 (1) incompatibility of temperament, as evidenced by ex-
21 tended absence or otherwise, has caused the irremediable breakdown of
22 the marriage;

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

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

3 (c) Except as provided in AS 25.24.220(i), [NOTHING IN THIS
4 SECTION PROHIBITS] a spouse who has been personally served with a copy
5 of a petition filed [MADE] under (a) of this section may execute [FROM
6 EXECUTING] an appearance, waiver of time to answer, and waiver of
7 notice of hearing. The appearance and waivers must [SHALL] include an
8 acknowledgment signed before an officer authorized to administer an
9 oath or affirmation that the spouse being served has read the peti-
10 tion; assents to the terms relating to custody of the children, child
11 support, visitation, spousal support and resultant tax consequences,
12 division of property, including retirement benefits and career assets,
13 and allocation of debts; agrees that the conditions otherwise required
14 by (a) of this section exist; agrees that the petition constitutes the
15 entire agreement between the parties; understands fully the nature and
16 consequences of the action; and is not signing the appearance and
17 waivers under duress or coercion.

18 (d) The action created under this section is separate from the
19 action created by AS 25.24.010. The procedures prescribed by AS 25.-
20 24.200 - 25.24.260 do not apply to an action brought under AS 25.24.-
21 010, nor do procedures prescribed under AS 25.24.010 - 25.24.180 apply
22 to an action filed [BROUGHT] under this section, except as specifical-
23 ly provided.

24 * Sec. 6. AS 25.24.200 is amended by adding a new subsection to read:

25 (e) A division of career assets must take into consideration the
26 extent to which each spouse contributed to the acquisition of the
27 career assets, including consideration of the value of homemaking and
28 child rearing services provided by each spouse.

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

1 (d) The petition shall request that the marriage be dissolved
2 and that the [PRIOR] name of a spouse be changed [RESTORED], if de-
3 sired by that spouse.

4 * Sec. 8. AS 25.24.210(e) is repealed and reenacted to read:

5 (e) If the petition is filed by both spouses under AS 25.24.-
6 200(a), the petition must state in detail the terms of the agreement
7 between the spouses concerning the custody of children, child support,
8 visitation, spousal support and tax consequences, if any, division of
9 property, including retirement benefits and career assets, and allo-
10 cation of debts. In addition, the petition must state

11 (1) the respective occupations of the petitioners;

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

14 (3) the date and place of the marriage;

15 (4) the name, date of birth, and current custodial status
16 of each minor child born of the marriage or adopted by the petition-
17 ers;

18 (5) whether the wife is pregnant;

19 (6) whether either petitioner requires medical care or
20 treatment;

21 (7) whether a domestic violence complaint has been filed
22 during the marriage by a member of the household;

23 (8) whether either petitioner has received the advice of
24 legal counsel regarding a divorce or dissolution;

25 (9) other facts and circumstances that the petitioners
26 believe should be considered;

27 (10) that the petition constitutes the entire agreement
28 between the petitioners; and

29 (11) any other relief sought by the petitioners.

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

2 (b) Except as provided in (i) of this section, if the petition
3 is filed by both spouses under AS 25.24.200(a) both spouses shall
4 attend the hearing personally and not through counsel. However, if
5 the petition is not subject to (i) of this section, one spouse may
6 comply with AS 25.24.200(c). Either spouse may have counsel at the
7 hearing.

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

9 (c) If the petition is filed [BROUGHT] by one spouse under
10 AS 25.24.200(b), that spouse shall submit proof of diligent inquiry as
11 to the whereabouts of the absent spouse and provide notice by publica-
12 tion, posting, or other means as ordered by the court under [IN ACCOR-
13 DANCE WITH] the Alaska Rules of Civil Procedure.

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

15 (d) If the petition is filed [BROUGHT] by both spouses under
16 AS 25.24.200(a), the court shall examine the petitioners or petitioner
17 present and consider whether

18 (1) the spouses fully understand the nature and conse-
19 quences of their action;

20 (2) the agreements between the spouses concerning child
21 custody, child support, and visitation are [FAIR,] just [, AND EQUIT-
22 ABLE] as between the spouses and in the best interests of the children
23 of the marriage;

24 (3) the written agreements between the spouses relating to
25 the division of property, including retirement benefits and career
26 assets, spousal support, and the allocation of obligations are [FAIR,]
27 just [, AND EQUITABLE]; [AND]

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

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

2 * Sec. 12. AS 25.24.220(e) is amended to read:

3 (e) If the petition is filed [BROUGHT] by one spouse under
4 AS 25.24.200(b), the court shall examine the petitioner and consider
5 whether the petitioner fully understands the nature and consequences
6 of the action and whether the conditions in AS 25.24.200(b) have been
7 met.

8 * Sec. 13. AS 25.24.220(g) is amended to read:

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

14 * Sec. 14. AS 25.24.220 is amended by adding new subsections to read:

15 (h) In its examination of a petitioner under (d) of this sec-
16 tion, the court shall use a heightened level of scrutiny of agreements
17 if

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

20 (2) a domestic violence complaint has been filed during the
21 marriage by a member of the family or there is evidence of significant
22 domestic violence during the marriage;

23 (3) there are minor children of the marriage; or

24 (4) there is a patently inequitable division of the marital
25 estate.

26 (i) If the court finds that a higher level of scrutiny is re-
27 quired by (h) of this section, the court shall examine the written
28 agreements between the spouses to determine that they are just, that
29 they constitute the entire agreement between the parties, and that the

1 agreements concerning child custody, child support, and visitation are
2 in the best interests of the children of the marriage, if any. The
3 court shall require the presence of both spouses at a hearing for this
4 purpose unless the court finds that it would constitute a significant
5 hardship on one of the spouses to appear, and that a just agreement
6 has been reached. If one of the spouses cannot attend the hearing
7 because the spouse has left the state, the court may require that
8 spouse to be available by telephone to answer questions, at that
9 spouse's expense.

10 * Sec. 15. AS 25.24.230 is repealed and reenacted to read:

11 Sec. 25.24.230. JUDGMENT. (a) If the petition is filed under
12 AS 25.24.200(a), and is not subject to AS 25.24.220(h), the court may
13 grant the spouses a final decree of dissolution and shall order other
14 relief as provided in this section if the court, upon consideration of
15 the information contained in the petition and the testimony of the
16 spouse or spouses at the hearing, finds that

17 (1) the spouses understand fully the nature and conse-
18 quences of their action;

19 (2) the written agreements between the spouses concerning
20 child custody, child support, and visitation are in the best interests
21 of the children of the marriage and constitute the entire agreement of
22 the parties on child custody, child support, and visitation;

23 (3) the written agreements between the spouses concerning
24 spousal support and tax consequences, if any, division of property,
25 including retirement benefits and career assets, and allocation of
26 obligations are not grossly unjust and constitute the entire agreement
27 between the parties;

28 (4) each spouse entered into the agreement voluntarily and
29 free from the coercion of another person; and

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

2 (b) If the petition is filed under AS 25.24.200(a) and is sub-
3 ject to AS 25.24.220(h), the court may grant the spouses a final
4 decree of dissolution and shall order other relief as provided in this
5 section if the court, upon consideration of the information contained
6 in the petition and the testimony of the spouse or spouses at the
7 hearing, finds that

8 (1) the spouses understand fully the nature and conse-
9 quences of their action;

10 (2) the written agreements between the spouses concerning
11 child custody, child support, and visitation are in the best interests
12 of the children of the marriage, constitute the entire agreement of
13 the parties on child custody, child support, and visitation, and, as
14 between the spouses, are just;

15 (3) the written agreements between the spouses concerning
16 spousal support and tax consequences, if any, division of property,
17 including retirement benefits and career assets, and allocation of
18 obligations are just and constitute the entire agreement between the
19 parties;

20 (4) each spouse entered the agreement voluntarily and free
21 from the coercion of another person; and

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

23 (c) If the petition is filed by one spouse under AS 25.24.-
24 200(b), the court may grant the spouse a final decree of dissolution
25 and change the petitioner's name, if so requested, if the court, upon
26 consideration of affidavits supplied by the spouse and the testimony
27 of the spouse at the hearing, finds that

28 (1) the spouse present at the hearing understands fully the
29 nature and consequences of the action;

1 (2) the conditions in AS 25.24.200(b) have been met; and

2 (3) the requirements of AS 25.24.165(b) have been sat-
3 isfied, if a change of name is requested.

4 (d) The court shall dismiss a petition or continue action on a
5 petition filed under AS 25.24.200 - 25.24.260 before findings are made
6 if

7 (1) a representative of the minor children objects to a
8 term of an agreement between the spouses;

9 (2) either of the spouses withdraws from an agreement
10 required under AS 25.24.200(a); or

11 (3) the petition alleges that the conditions in AS 25.24.-
12 200(b) exist, but the whereabouts of the absent spouse becomes known
13 to the other spouse or the court before findings are made.

14 (e) The court shall deny the relief sought in a petition filed
15 under AS 25.24.200 - 25.24.260 if the court does not make the findings
16 required under (a) or (b) of this section.

17 (f) If the petition is filed by both spouses under AS 25.24.-
18 200(a), the court shall change either spouse's name, if the spouse
19 seeking a change of name to a name other than a prior name complies
20 with AS 25.24.165(b), and shall fully and specifically set out in the
21 decree the written agreements of the spouses and shall order the
22 performance of those written agreements. The court shall also state,
23 in the decree, whether child support payments are to be made through
24 the child support enforcement agency. If the petition is filed by one
25 spouse under AS 25.24.200(b), the decree must state that it does not
26 bar future action on the issues not resolved in the decree.

27 (g) Notwithstanding other provisions of AS 25.24.200 - 25.24.-
28 260, the court may not award as between the spouses real or personal
29 property acquired by either spouse before the date of the marriage,

1 unless the spouses expressly agree otherwise or the court determines
2 that the property should be made available, by sale or other convey-
3 ance, to ensure that the best interests of the children are provided
4 for. If the court determines that the best interests of the children
5 require an award of premarital property, but the spouses do not agree,
6 the court shall dismiss or continue the action.

7 (h) If a judgment under this section distributes benefits to an
8 alternate payee under AS 14.25, AS 22.25, AS 26.05.222 - 26.05.226, or
9 AS 39.35, the judgment must meet the requirements of a qualified
10 domestic relations order under the definition of that phrase that is
11 applicable to those provisions.

12 * Sec. 16. AS 25.24.250 is amended by adding a new subsection to read:

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

17 * Sec. 17. AS 25.24 is amended by adding a new section to read:

18 ARTICLE 4. GENERAL PROVISIONS.

19 Sec. 25.24.350. DEFINITION. In this chapter, "career assets"
20 means tangible and intangible assets resulting from a spouse's educa-
21 tion, profession, or employment that were acquired at least in part as
22 a result of direct or indirect contributions made by the other spouse;
23 "career assets" includes professional education, licenses, increased
24 earnings, and good will.

25 * Sec. 18. AS 25.24.165, as added by sec. 4 of this Act, AS 25.24.-
26 210(d) as amended by sec. 7 of this Act, and AS 25.24.230(c) and 25.24.-
27 230(f) as amended by sec. 15 of this Act, have the effect of amending Rule
28 84(a), Alaska Rules of Civil Procedure, to allow a change of name to a name
29 other than a prior name to be commenced in a complaint for divorce or

1 annulment or a petition for dissolution of marriage.

2 * Sec. 19. AS 25.24.160(a)(5) is repealed.

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PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE SUND

NAME: LEILA WISE
 TITLE:
 ADDRESS: 1101 CORDOVA, #229
 CITY: ANCHORAGE ZIP: 99501
 PHONE: 277-1330
 BILL NO: HB 189
 SUBJECT: DIVORCE AND DISSOLUTION PROCEDURES
 MESSAGE: I URGE YOUR SUPPORT FOR THE CURRENT VERSION OF THE DIVORCE AND DISSOLUTION BILL.

POMID: 03161218
 DATE: 03/17/88
 TIME: 16:12:18
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COPIES: REPRESENTATIVES

- BARNES
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- NAVARRE
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- ULMER
- BOUCHER
- GRUSSENDORF
- HOFFMAN
- MARTIN
- PETTYJOHN

PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE SUND

NAME: JACK KEANE
 TITLE:
 ADDRESS: 2152 DANSON
 CITY: ANCHORAGE, ALASKA ZIP: 99503
 PHONE: 279-5208
 BILL NO: SB 415
 SUBJECT: APPROP: COURT EXPANSION IN ANCHORAGE
 MESSAGE: OPPOSED TO BUILDING THIS PROJECT. IT MAY PROVIDE A FEW JOBS BUT WILL BE TOO EXPENSIVE TO RUN. WE SHOULD USE THIS MONEY MORE EFFECTIVELY. CONSIDER EMPTY CLOSED 200 MILLION SCHOOLS ETC.

POMID: 03161801
 DATE: 03/17/88
 TIME: 16:18:01
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COPIES: REPRESENTATIVES REPRESENTATIVES SENATORS

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|-------------|-----------|--------------|
| ADAMS | BARNES | ABOOD |
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| BROWN | CATO | COGHILL |
| COLLINS | COTTEN | DUNCAN |
| DAVIDSON | DAVIS | ELIASON |
| DONLEY | ELLIS | FAHRENKAMP |
| FRANK | FURNACE | FAIKS |
| GOLL | GRUENBERG | FANNING |
| GRUSSENDORF | HANLEY | FISCHER |
| HERRMANN | HOFFMAN | HALFORD |
| HUDSON | KOPONEN | HENSLEY |
| LARSON | MARTIN | JCNES |
| MENARD | MILLER | JOSEPHSON |
| NAVARRE | PEARCE | KELLY |
| PETTYJOHN | PHILLIPS | KERTTULA |
| POURCHOT | RIEGER | RODEY |
| SHULTZ | SPRINGER | STURGULEWSKI |
| SHACKHAMMER | TAYLOR | SZYMANSKI |
| ULMER | WALLIS | UEHLING |
| ZAWACKI | | ZHAROFF |



FAMILY EQUITY AT ISSUE

A Study of the Economic
Consequences of Divorce
on Women and Children

ALASKA WOMEN'S COMMISSION 1987

FAMILY EQUITY AT ISSUE

A Study of the Economic Consequences
of Divorce on Women and Children

October 1987

*Written by Barbara Baker
Alaska Women's Commission*

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SUMMARY OF GENERAL FINDINGS

During the 1970's social reformers sought to ease the acrimony of divorce and create more fairness and equity for the families involved. "No fault" divorce reform was introduced in many states including Alaska. In addition, Alaska developed a dissolution procedure that allows people to file without the expense of an attorney. Unfortunately, many of these changes have had unintended economic results for women. It now appears that women and children are suffering major financial inequities as a direct result of some of the changes in divorce law and procedure.

The most striking documentation of the "downward mobility" of women and children created by "no fault" divorce was in the state of California. Because of the seriousness of the findings there, in 1986 the Alaska Women's Commission undertook a study to determine if Alaskan women and children were suffering the same effects.

The study of divorce is important because so many people are affected by it. The divorce rate in Alaska is 63 percent compared to 46 percent nationally. More than 11,000 people are affected each year, 3,000 of them children. Even though the two-decade increase in the divorce rate seems to have peaked, each year thousands of Alaskan families are affected by divorce.

The study site chosen was Anchorage, where more than half of the state's divorces occur. A statistically valid sample drawn from all divorce and dissolution cases occurring in a one year period was analyzed.

General Findings

- In Alaska, divorce has substantially different economic consequences for women and men.
- Divorced women and their children experienced a 33 percent decline in per capita income resulting in a radical downward shift of their standard of living. The greatest relative deprivation was experienced by women and children of middle and upper middle class families.
- Divorced men, however, experienced an improvement in their standard of living as a result of a 17 percent rise in their per capita incomes.
- In many marriages the couple's major investments are in the education and career of the primary wage earner, usually the husband. Yet, the division of marital property often excludes career assets. Disregarding this property allows the major wage earner, usually the husband, to keep what are often the most valuable assets of the marriage.
- Fifty four percent of divorcing men had pensions compared to 33 percent of divorcing women. The median value of the husband's pension was worth more than 3 times that of the wife's (\$27,500 and \$7,500 respectively). Yet, only 20 percent of the couples in the study divided pensions.

- Other types of career assets such as life insurance, paid leave, professional licenses, medical and dental insurance were rarely included in the division of property, even though they were acquired during the marriage.
- Award of the family home was influenced by the presence of children. In 74 percent of the cases, the home was given to the parent having physical custody. Fathers with physical custody almost always got the home (93%) while mothers with custody were awarded the family home only 68 percent of the time.
- Among the families who moved following divorce were accounts of children traumatized by the dislocation. New schools and neighborhoods increased the disruption already generated from economic and emotional distress.
- In the absence of children, husbands were awarded the family home and mortgage more frequently (60%) than wives (40%).
- Alimony was awarded in only 10 percent of the divorces surveyed. For the few who received it, this safety net appears to be an illusion. Awards usually lasted for only one year and provided an average of only \$500 a month, despite the fact that most who received it have no job, no other income or are of an age which makes it difficult to find paid work.
- Divorced mothers are the primary caretakers of children. Sole custody was awarded to mothers in 58 percent of the cases, while fathers received it in 18 percent of the cases. Joint custody was awarded 19 percent of the time.
- Child support was awarded in 80 percent of the divorces where minor children are present. However, the average amount per child is \$191. This barely meets half the monthly cost of child care in Anchorage today. This figure also falls below the standard used to determine eligibility for welfare.
- Cost of living increments were included in only 23 percent of the child support awards. Without these adjustments, the purchasing power of the support award continually declines because of inflation and the increased costs associated with older children.
- Only 22 percent of child support awards were written beyond the age of majority although financial burdens such as education continue for several years beyond this point.
- Only 58 percent of the people in the survey received the full amount of child support awarded. This is consistent with data from the Child Support Enforcement Agency.
- Divorced men are rarely required to pay more than 15 percent of their pre-divorce income to support their children.

Impact of Dissolution

In Alaska people can end their marriage in two ways. Both are considered "no-fault." One, a divorce, usually involves attorneys' fees and court hearings, with the judge making a final decision in areas where the two parties cannot

agree. The other, a dissolution, can be done without attorneys, with minimal expense, and requires that both parties agree about every issue. About two-thirds of all Alaskan couples who end their marriages choose a dissolution.

Alaska is one of only 8 states that permit dissolution. It is also one of the most liberal in its provisions. Most other states do not permit dissolutions if there are minor children, if the marriage is one of long duration, or if the couple has property. Alaska law places no limitations on the use of dissolutions.

In addition to the study's general findings, it appears that women who choose dissolution suffer even more financial hardship than women who go through a divorce.

- Women who used the dissolution procedure received far less than half of the couples property. Wives received only 29 percent of the property in dissolutions. Women who used divorce received 50 percent of the marital property.
- Child support awards were lower when the dissolution procedure was used. Particularly hard hit were families with one child where average awards were 27 percent lower than in divorce.

Conclusion

The findings of this study together with a growing body of research suggest that the current legal system of divorce creates economic hardships for women and children instead of providing greater family equity. Inadequate and poorly enforced child support awards, the near absence of spousal support, and unequal division of marital property are creating a new class of poor.

Divorced women and their children face a precipitous drop in family income. Some face certain impoverishment. Women who choose the dissolution procedure suffer even more financial hardship than those who go through a divorce.

INTRODUCTION

Divorce and its economic implications have generated growing concern due to the escalating impoverishment of women and their families. With the advent of divorce reform in the 1970's which was ostensibly aimed at eliminating gender bias in the law, the feminization of poverty was also emerging as a growing problem in the nation. Recent studies suggest that these reforms to divorce law designed to treat men and women equally have instead fostered economic inequity for many women and children. Weitzman's ten year study of California divorces revealed that divorced women and their minor children experienced a 73 percent decline in their standard of living in the first year after divorce. Their former husbands, however, experienced a 42 percent rise in their standard of living. Wishik's study of Vermont divorces revealed even further disparity. 1/

Weitzman suggests that reform of divorce laws from a "fault" to "no fault" basis have deprived divorced women and minor children of legal and financial protections formerly available to them. She also contends that all states which have "no fault" divorce laws (Alaska is one of them) suffer from similar outcomes of economic inequity.

Such assertions require further examination since so many people are affected by divorce. Each year more than 11,000 Alaskans are touched by divorce, 3,000 of them children. The divorce rate in Alaska exceeds that of the nation (63% compared to 46%).

Laws that guide the outcome of divorce are regulated state by state through statute and state court interpretation. Information about the economic impact of divorce upon Alaskans is necessary to judge whether our laws and legal system operate fairly and treat all its citizens equitably.

As a part of its continuing research on the status of women, the Alaska Women's Commission embarked upon an exploratory study of divorce in Alaska to determine whether Alaskan women and their families also suffer downward mobility from "no fault" divorce laws. The research assessed families' economic decisions at the time of divorce and the outcome of those decisions on postdivorce lives. This analysis identifies inequities which result from present laws and legal practices.

1/ L. Weitzman, *The Divorce Revolution*, 1985 and Wishik, "Economics of Divorce: An Exploratory Study," *Family Law Quarterly*, volume 20, number 1 (1986).

SCOPE OF STUDY

The process of divorce involves many facets - the parties who are divorcing, the type of legal procedure they use, their understanding of the law, the advice of attorneys (if they are consulted) and the courts and their interpretation of the law. Each affects the final economic outcome of divorce and is worthy of study to gain a comprehensive portrait of a complex issue.

However, time constraints and a limited budget required the prioritization of factors to be studied in this project. In the end, it is the divorced couple who are most acutely aware of and affected by the result of these processes. Therefore, this research focuses on the economic decisions made by divorced people and their perceptions of how the process affected their economic decisions and outcomes. Such analysis is an important key to understanding the relative influence of each aspect, guiding us toward needed reforms or the need for additional research.

The research is based upon interviews of people who terminated their marriages between July 1, 1984 and June 30, 1985. This period was selected to allow for a lapse of approximately one year since the close of the divorce case. Anchorage was selected as the study area where over one-half of all Alaskan divorces occur annually. 2/

Anchorage was chosen as the study area because its demographic profile generally reflects the statewide profile. Furthermore, access to necessary court records was easily obtainable and a pool of trained volunteers were available to assist on the project.

A sample containing an equal number of men and women was randomly selected from court records. One hundred thirty nine interviews were conducted with approximately an equal number of men and women interviewed. About one half of the participants interviewed utilized the traditional divorce process while the other utilized the dissolution or "do-it-yourself divorce" procedure.

The study was designed as an exploratory examination of factors influencing the economic outcomes of divorce. While the subject matter tended to attract respondents who were older, better educated and wealthier than the general population of Anchorage, the results are internally valid and provide the first economic data on Alaskan divorces.

The study focuses on mens' and womens' economic decisions made at the point of divorce - decisions about property, children and support. It also examines the outcomes that resulted from these decisions more than a year later. The research further examines whether there was any difference in the economic position of persons who utilized the dissolution procedure from those who proceeded through the traditional divorce procedure.

2/ Alaska Department of Health and Social Services, Division of Vital Records, 1984.

THE LEGAL PROCESS

Divorce is a legal action. To end the marriage contract, parties must determine the type of divorce procedure (dissolution or traditional divorce) that is most appropriate to the circumstances surrounding their marriage, i.e. the presence of minor children, length of marriage, the amount of property and self sufficiency of the parties. While both of Alaska's divorce laws are "no fault", one, a traditional divorce, follows strict procedural rules. It usually involves attorneys, and judges make the final decision in areas where the parties cannot agree. The other, a dissolution, requires that the two parties arrive at complete agreement on every issue and that they file together unless one spouse cannot be located. This procedure can be done without attorneys, thus can be relatively inexpensive. Although dissolution is a relatively new concept (enacted in 1976), about two-thirds of all Alaskan divorces are terminated through this process. ^{3/}

The majority of survey respondents considered themselves well informed about the divorce process and procedure they utilized. Eighty percent of the respondents who went through the traditional divorce procedure indicated that they understood their rights and duties in such areas as property division, spousal maintenance (alimony), child support and child custody. Similarly, 76 percent of the respondents who proceeded through dissolution, found the court prepared instructions helpful. Yet, over half of the respondents who proceeded through the dissolution process indicated that viewing a movie which explained how to prepare dissolution forms and provided information on such areas as property, alimony, child support and child custody would have been very useful. Anecdotal remarks suggest that a movie might have prevented the need for attorneys in some cases while others indicated that misunderstandings regarding property and support might have been avoided.

Nearly all agreements (95%) were negotiated between the parties or through their attorneys prior to the final hearing regardless of the procedure (divorce or dissolution) according to the study's findings. As a matter of law, dissolution cases may not be contested, thus only traditional divorce procedures are included in the five percent. The influence and use of attorneys varied based upon the procedure selected (see Table 1). Traditional divorces relied almost exclusively on the use of attorneys to reach settlement. Dissolutions were designed to be "attorney free." Yet, 20 percent of the respondents consulted with attorneys in order to reach agreement. This may indicate that dissolutions were used for cases more complex than what legislative drafters initially intended.

^{3/} Alaska State Court System, Superior Courts Domestic Relations Case Filings, fiscal year 1986.

TABLE I - METHOD OF AGREEMENT BY PROCEDURE UTILIZED

Method	Divorce (N=72)	Dissolution (N=67)	Total (N=139)
Between Spouses/Spouse Alone	7%	76%	40%
Your Attorney & Spouse Alone	43	16	31
Your Attorney & Spouse's Attorney	38	4	21
Mediator	1	3	3
Judge	11	-	5

Alaska is one of only eight states that have a dissolution law.^{4/} It is also one of the most liberal in its provisions. Most states do not permit dissolutions if there are minor children of the marriage and some will not allow them if there is ownership of any real property or if the couple has been married for a long duration.

Alaska law places no limitations on its use. The parties must simply agree to every issue. The respondents' decision to choose dissolution and seek legal advice may be an indication of the costs, both financial and emotional associated with a traditional divorce, but a recognition of the complexity surrounding issues of children, property and support.

The methods used by respondents to reach agreement were very similar for women and men. Women, however, tend to utilize attorneys less often (16%) than men (26%) when seeking a dissolution.

In court, the presence of counsel was similar in dissolution cases but quite different for men and women who proceeded through the traditional divorce procedure (see Table 2). Women were represented by counsel more frequently than men. In 33 percent of the cases, women were represented by attorneys while their husband had no attorney. Men, on the other hand were represented with attorneys when the wife had no counsel in only 18 percent of the cases. Husbands and wives were both represented by counsel in over one-third of the cases. Furthermore, women as compared to men were more likely to be present at the court hearing regardless of the procedure utilized.

^{4/} "1985 Survey of American Family Law," The Family Law Reporter, #3, Volume II, No. 26 (1985).

TABLE 2 - COURT APPEARANCE BY PROCEDURE UTILIZED

Present in Court	Divorce (N=72)	Dissolution (N=65)
Husband alone	4%	21%
Wife alone	6	21
Husband and Wife	-	46
Wife's Attorney	33	3
Husband's Attorney	18	5
Wife's Attorney and Husband's Attorney	38	3
<hr/>		
Wife	74%	83%
Husband	54	76

The ability to support one's self and the family and pay for legal expenses while proceeding through the divorce process is necessary if parties are to reach equitable agreements. Most respondents in the survey relied upon their own resources for support and legal expenses. In only 16 percent of the cases, interim support was awarded. However, another 8 percent indicated they were unaware that interim support could be considered.

The pattern of attorney fee payments was similar to interim support. Only 15 percent indicated that the other spouse paid any portion of the respondent's attorney fees while 85 percent paid for their own legal counsel. Women with minor children and older homemakers were the most frequent recipients of interim support and awards of attorney fees.

The adequacy of support is also critical to the equity of agreements reached. Responses to various questions in the survey suggest that economic pressure was a factor in the divorce process. Respondents were asked whether they received the interim support they requested. Of the 16 percent who requested support, only one-third indicated they received what they had asked for while the remaining received only part or nothing at all. Furthermore, when asked whether there was any undue pressure applied in reaching the divorce settlement, one-half of all women surveyed indicated that there was pressure and listed economic factors such as nonsupport of the children until settlement of the divorce was reached.

While the divorce process seems vulnerable to pressures from various ranks, respondents were generally satisfied with their legal representation and court proceedings (see Table 3). Approximately 70 percent of the respondents who sought legal counsel were satisfied with the services their attorney provided. Satisfaction ranked higher among men than women.

PROPERTY

Marital property must be identified, valued and divided at the time of divorce. Typically marital property has included income from wages and salaries, interest, and all other income earned during the marriage as well as property purchased with that income like automobiles, homes and furniture. Some career assets are also recognized as marital property. Pension and retirement accounts are the most typical of these assets.

Value and Ownership of Property

The average divorcing couple in the survey had acquired a moderate amount of marital property valued in the moderate range. Over half of the couples had major assets that included a family home and pension. Most couples also had other tangible assets such as furniture, automobiles and some savings in the form of bank accounts, stocks or bonds.

Table 4 illustrates the value of property owned by divorcing couples. Thirteen percent of the divorcing couples had property worth less than \$10,000 net. Another 27 percent had less than \$50,000. Overall, the median net worth of divorcing families was \$72,000.

TABLE 4 - TOTAL VALUE OF PROPERTY OWNED BY DIVORCING COUPLES

Property Value	Net Worth of Assets (including debts)		Gross Value of Assets (not including debts)	
	Percentage	Cumulative Percentage	Percentage	Cumulative Percentage
Negative Value	1%	1%	-	-
Less than \$ 10,000	12	13	10%	10%
\$ 10,000 - 29,999	15	28	9	19
\$ 30,000 - 49,999	12	40	9	28
\$ 50,000 - 99,999	25	65	6	34
\$100,000 - 149,999	13	78	17	51
\$150,000 - 199,999	4	82	14	65
\$200,000 - 299,999	9	91	14	79
\$300,000 - 499,999	2	93	12	91
\$500,000 +	6	99	9	100
	Median \$ 72,000		Median \$142,550	
	Mean 126,259		Mean 216,827	

A review of the property communally owned by respondents (shown in Table 5) indicates that the family home is the major community asset for the majority (76%) of the divorcing couples. The median equity was \$40,000. Many divorcing couples (30%) also had other property of considerable value.

More than half of the divorcing couples had acquired pensions whose value was strongly influenced by gender. Businesses are also a valuable asset but were owned by only 9 percent of the respondents.

Other property items frequently owned by divorcing couples had a relatively low to moderate value. While most owned household furniture (72%) and automobiles (59%), the median value of both of these assets was only \$5,000. Other transportation vehicles such as trucks, boats and airplanes were also owned by many couples (30%) but only averaged \$3,000 in value. However, nearly half (48%) of the divorcing couples had a median savings of \$6,250.

TABLE 5 - OWNERSHIP AND VALUE OF ASSETS

Type of Property	Percentage of Couples Owning Asset	Median Net Value
Furniture	72%	\$5,000
Cars	59	5,000
Other trans. vehicles	30	3,000
Money	48	6,250
Family home	76	40,000
Other real estate	30	23,000
Husband's pension	54	27,500
Wife's pension	33	7,500
Business	9	30,000
Other property	17	12,000

Pension Ownership

The pattern of pension ownership was significantly different between husbands and wives. Husbands were much more likely than wives to have a retirement account or pension as shown in Table 5. Fifty-four percent of the divorcing men had pensions compared to 33 percent of the divorcing women. The acquisition of pensions correlates to income the same for both husbands and wives i.e.; the higher the predivorce income the more likely they were to have acquired a pension. However, the value of pensions was distinctly different for men and women. The median value of the husband's pension was worth over three times that of the wife's (\$27,500 and \$7,500 respectively).

Value of Property by Family Income

Predictably, the value of community property increased with family income. Couples with family income under \$24,000 a year had on average less than \$5,000 net worth of community property. This increased to \$32,500 for couples with family incomes between \$24,000 to \$36,000 and to more than \$200,000 for couples with yearly incomes of \$66,000 or more.

Other studies suggest that the length of marriage also influences the value of property since people who were married longer are older, usually have more

employment experience, thus more opportunity to accumulate wealth and property. Surprisingly, data from this survey does not support such a relationship. Property values showed no consistent progression of worth as the length of the marriage rose.

Table 6 shows the relationships between family income and property. It also illustrates the relatively low value of property when compared to family income of most divorcing couples. Families having a median income of \$15,300 could earn the net value of their assets in less than a year and for the majority of families surveyed it would take less than two years to earn as much as their property is worth.

TABLE 6 - VALUE OF PROPERTY BY FAMILY INCOME

Family Income (yearly)	Median Income* (in group)	Value of Property	
		Net Value of Assets* (including debts)	Gross Value of Assets* (excluding debt)
Less than \$24,000	\$15,300	\$ 5,000	\$ 6,500
\$24,000 - 35,999	19,200	32,500	89,500
\$36,000 - 43,199	39,000	51,000	136,000
\$43,200 - 55,199	49,000	63,000	135,500
\$55,200 - 65,999	60,600	69,500	142,500
\$66,000 or more	88,700	202,400	375,500

* Median value rounded to nearest \$100.

The ownership and value of assets differs to some degree from Weitzman's findings. Alaskan respondents had more assets, higher income and may have a greater attachment to the labor force. Weitzman found that only 46 percent of the couples owned a family home and 11 percent other real estate. Twenty four percent of the husbands and only 11 percent of the wives had pensions. Furthermore, in Weitzman's study the value of all assets were quite low when compared with family income. The average divorcing family could earn more money in one year than the value of their property. Despite these differences the conclusion is the same. The spouses' earning ability is usually worth much more than the tangible assets of the marriage. At the time of divorce, property is divided once, but earnings continue to generate income into the future. Thus, earnings have a greater cumulative value.

Property Division

Alaska is an equitable distribution state. When parties divorce the property acquired during marriage is to be divided fairly no matter which spouse has title to it. Property acquired before the marriage may also be included if it is necessary to make the division of property fair. Alaska's "no fault" law says that in dividing property, one cannot look to the fault of either party in deciding how the property is to be divided, but rather one must look at the overall fairness.

The amount of property and family income did not generally appear to influence the type of legal procedure used in terminating the marriage. The data showed an equal likelihood of either a divorce or dissolution, except in cases of high family income (over \$67,000/year) or where there were substantial assets (over \$100,000). Under these conditions, the majority of cases utilized the traditional divorce procedure.

Examining the division of property (shown in Table 7) the data suggests a nearly equal division (when based upon net value) with wives receiving slightly less than half (43%). The data also implies that the disposition of property varied based upon the type of property. Family homes and automobiles were equally divided between husbands and wives, while pensions were infrequently divided. Some type of property appeared to be linked to gender. Wives received the majority of home furnishings and money while husbands were more likely to be awarded major assets like the family business and other real estate as well as other assets like recreational vehicles and miscellaneous property.

TABLE 7 - PROPERTY DIVISION BY LEGAL PROCEDURE UTILIZED IN DIVORCE

	Total Division of Property (based upon value excluding debts)		Division of Property by Dissolution		Division of Property by Divorce	
	Husband	Wife	Husband	Wife	Husband	Wife
Furniture	38%	62%	40%	60%	38%	62%
Cars	45	55	42	58	46	52
Other Vehicles	75	25	80	20	72	28
Money	38	62	69	21	27	73
Family Home	49	51	50	50	48	52
Other Real Estate	68	32	77	23	60	40
Husband's Pension	89	11	89	11	92	8
Wife's Pension	2	98	4	96	1	99
Business	94	6	87	13	96	4
Other Property	64	36	71	29	60	40
All property (excluding debts)	61%	39%	64%	36%	61%	39%
All property (net value)	57%	43%	71%	29%	50%	50%

Upon closer examination of the total distribution of property and debt, wives who utilized the dissolution procedure were more likely to receive less property and more debt than wives who went through the traditional divorce process. Wives received only 29 percent of the property's net value when utilizing the dissolution procedure as compared to 50 percent for women who proceeded through a traditional divorce.

A Closer Look at the Family Home

Although the value of the family home appears to be divided equally among husbands and wives, the data suggests that the disposition of the family home may be influenced by the presence of children. In 74 percent of the cases, award of the family home was given to the parent having physical custody of minor children. Women were more likely to have physical custody yet they were not as likely as men to be awarded the home. Women with physical custody were awarded the home only 68 percent of the time as compared to men who nearly always got the home when they had physical custody (93%). Financial responsibility for the mortgage may account for this disparity since 92 percent of those awarded the home assumed full responsibility for the remaining debt. However, other factors may also influence this such as ability to qualify for refinancing or access to adequate legal information or representation.

The importance of the family home to children was demonstrated in comments made by respondents who moved (nearly all were women). Repeatedly, they indicated that children were further traumatized by the dislocation. Forced moves from schools and neighborhoods caused increased disruption during a period already laden with economic and emotional distress.

Disposition of the family home among couples without minor children suggests that men were more likely to obtain ownership than women. Sixty percent of the homes were awarded to husbands while wives received 40 percent. The type of legal procedure utilized to terminate the marriage also appears to have some bearing on the outcome. Husbands and wives were each as likely to be awarded the home in a traditional divorce process while husbands were twice as likely to be awarded the home when proceeding through the dissolution process. The financial burden of meeting monthly mortgage payments may have influenced the award of the home since responsibility for payment of the remaining debt followed the pattern of awards of the family home.

Very few couples retained joint ownership of the family home following divorce. Among the 12 percent who retained joint ownership, nearly all had minor children and had orders to sell the family home in order to divide the equity.

A Closer Look at Pensions

With regard to the division of pensions, the worker typically retained ownership and its full value since it was often excluded from property division. Only 20 percent traded other property of equal value for it, based upon survey findings. When asked why the pension was not divided, respondents often commented that the pension followed the worker and was therefore indivisible. However, according to Alaska law, pensions or their value are divisible under certain conditions.

Many others responded that they did not divide their pensions because both had a pension. But less than half of all respondents with pensions in the marriage knew the value of their's or their spouse's. The valuing of pensions was far more likely for those who proceeded through a traditional divorce process than through dissolution. Fifty-four percent of the pensions were valued under a traditional divorce as compared to only 33 percent for

dissolution. The presence of attorneys in most traditional divorce cases may account for this finding. Yet, even when controlling for their presence only half the respondents had valued their pensions.

Omission of pensions is alarming since pensions are often one of the major assets of the marriage. Without considering them property that can be divided and knowing their value, people cannot obtain an equitable division of the marital property. It is important to remember that the husband's pension is typically worth more than three times that of the wife's, and that husbands are more likely to have pensions than wives.

The division of pensions was not affected by the legal procedure utilized. According to the study's findings, it is equally unlikely that a pension will be divided under a traditional divorce or a dissolution.

Other Career Assets

While pensions are perhaps the most commonly recognized career asset, there are other tangible and intangible assets which are acquired as a part of a person's career. These include such things as life insurance; insurance for disability, medical, dental, and hospital coverage; paid sick leave and vacation benefits; education; a professional license; the goodwill of business and entitlements to a business' goods and services. Weitzman asserts in her study that all career assets acquired during the marriage should be treated (like pensions and retirement benefits) as marital property to be divided upon divorce. To disregard these assets as marital property ignores a major source of wealth for most divorcing families - the total value of their careers.

There is very little evidence from the study to suggest that these other career assets were recognized or considered as divisible while determining the value of marital property. For example, most respondents who were covered by medical insurance through their spouse's employment lost their insurance or paid for the coverage themselves without an exchange of property to cover the expense. And only three respondents indicated that life insurance policies were divided. Furthermore, one can deduce that if pension and retirement plans (which are generally recognized as divisible) are excluded from the marital property, other career assets are even less likely to be divided.

Summary

A cursory examination of property would conclude that most divorcing couples in the survey had a moderate amount and value of marital property which was equally divided. Upon closer examination, however a different pattern emerges. The exclusion of career assets both tangible and intangible suggests that the marital property is considerably undervalued and unevenly distributed since the wage earner leaves the marriage with most of these assets. Husbands typically benefit by this since their career assets are usually worth more than their wives. Furthermore based upon the legal procedure used in terminating the marriage, even greater disparity in the distribution of property may occur. Wives receive on average only 29 percent of the property when utilizing the dissolution procedure as compared to 50 percent when proceeding through the traditional divorce process.

CHILDREN

More than 3,000 Alaskan children are affected by divorce each year. Legal decisions made on the custody, care and support of these children have long term consequences for the social and economic well being of both parents and children.

A profile of survey respondents indicates that 57 percent had minor children present in the marriage at the time of divorce. This is slightly higher than the general population of divorces in which 50.3 percent had minor children present at the time of divorce. The surveyed families used the traditional divorce procedure more frequently than dissolution. Sixty-four percent of the families selected the traditional divorce procedure as compared to 36 percent who selected dissolution.

Attorneys were present in 72 percent of the cases where there were minor children in the marriage. Nearly all who used the traditional divorce process utilized attorneys while only a third of the cases involving dissolution had attorneys present.

Most custody and support awards were preagreed to. The court intervened in only five percent of the cases.

Child Custody

Alaska law specifically states that neither parent is entitled to preference in determining custody of a child. The court must determine custody in accordance with the best interests of the child, considering all relevant factors. When it is in the child's best interests, the court may award shared or joint custody to the parents.

The pattern of custody awards from the survey suggest that mothers requested and were awarded custody more frequently than fathers. In 58 percent of the cases, mother's requested and were awarded physical custody of minor children as compared to 18 percent for fathers (as shown in Table 8). Joint physical custody was requested in only 11 percent of the cases, but awarded to 19 percent. Judges appeared reluctant to award split custody and other types of unusual physical custody in favor of joint custody arrangements.

TABLE 8 - CHILD CUSTODY

	Physical Custody		Legal Custody	
	Request (N=80)	Award (N=79)	Request (N=79)	Award (N=76)
Mother	58%	58%	51%	51%
Father	18	18	18	21
Joint	12	19	24	22
Split and other	11	5	7	5
Total	100%	100%	100%	100%
Total to Father	30%	37%	42%	43%

An interesting observation that requires greater input to validate statistically was that the older the child the more likely the mother will have physical custody (see Table 9). Seventy-one percent of the children ages 6-18 were awarded to the mother as compared to 58 percent for younger children. Joint custody, on the other hand was almost twice as likely for younger children than older children.

TABLE 9 - PHYSICAL CUSTODY AWARDS BY AGE OF YOUNGEST CHILD

	Ages 0-5 (N=45)	Ages 6-18 (N=34)
Mother	58%	71%
Father	18	12
Joint	23	12
Other	-	5
Total	99%	100%

These results are contrary to the findings of Weitzman and Wishik. Both researchers found that younger children rather than older children were more likely to be awarded to the mother.

Responsibility for determining the child's education, religion and welfare through award of legal custody follows the same general pattern as physical custody where the majority of awards go to the mother. However, fathers' participation was more strongly indicated (refer to Table 8). In 43 percent of the cases, fathers were awarded either sole or joint legal custody as compared to 37 percent for physical custody.

Custody awards to fathers are much higher than in studies conducted by Weitzman and Wishik. Weitzman's study indicated that only between 9-13 percent of the awards involved fathers either in sole or joint physical custody and between 11-25 percent for legal custody. Wishik's study revealed 16 percent for physical custody.

Weitzman also concluded that the no-fault law had no impact on the requests or outcomes of physical custody awards. Awards to mothers after repeal of the maternal presumption remained about the same. Historical data on physical custody awards in Alaska prior to the repeal of maternal presumption were not available for the purposes of this study. Therefore, the impact of no-fault on custody award outcomes could not be examined.

Physical custody awards based upon legal procedure are interesting to note but require a larger data set to test their statistical validity. As Table 10 shows, mothers were awarded custody nearly 70 percent of the time in a traditional divorce process and only 52 percent in dissolutions. Husband and joint custody awards occur more frequently under a dissolution procedure than a traditional divorce.

TABLE 10 - PHYSICAL CUSTODY BY LEGAL PROCEDURE

	Divorce (N=50)	Dissolution (N=29)
Mother	70%	52%
Father	10	24
Joint	16	21
Other	4	3
Total	100%	100%

Visitation Arrangements

Reasonable visitation rights were awarded in 63 percent of the cases while the remaining had specific arrangements stipulated. The majority of respondents, 84 percent, indicated that their visitation arrangements required no modification. Only a few commented on visitation problems. They included a lack of access to children by the non-custodial parent and failure of non-custodial parent to visit children.

Child Support

Both parents have an equal duty to support minor children even though a divorce has occurred. In theory, support is determined by deciding what it costs to provide for the children. That amount is then divided between the parents based upon the parents financial ability to pay.

In the survey, child support was awarded in 80 percent of the divorces with minor children. The award level is higher than the national average of 58 percent. However, the national figure includes only women custodians awarded support. While the data set on non-awards is too small to validate statistically, it is worth noting that non-awards were higher among cases that utilized the dissolution process (25%) as compared to traditional divorce (18%) and that the majority of non-awards went to joint physical custody arrangements or to fathers who had physical custody.

Survey findings indicate that the mean monthly child support award per child was \$191 (see Table 11), an amount that barely meets half the monthly cost of day care for one child in Anchorage. 5/ The data also suggests that the amount of award may be influenced by the procedure utilized to terminate the marriage. A gap exists in the mean amount awarded with dissolution cases receiving lower awards. The discrepancy is most prominent in families with one child (which accounts for 64 percent of the surveyed families with children). A \$63 gap separates the amount awarded dissolution cases from traditional divorce cases. The absence of legal advice probably accounts for part of this gap in the amounts of support awarded. Only one third of the dissolution cases used attorneys.

5/ Average monthly cost of day care for pre-school age children in Anchorage is \$350, according to 1987 data from the Department of Community and Regional Affairs, Day Care Assistance Program.

TABLE 11 - MEAN MONTHLY CHILD SUPPORT AWARDS
BY LEGAL PROCEDURE

	Total	Dissolution	Divorce
All children (N=118)	\$191	\$178	\$199
1 Child (N=51)	\$214	\$172	\$235

However, what is most astounding about the average monthly amount of child support awarded is that even with the involvement of attorneys, the amount falls below the AFDC need standard of \$264.00 per month (a standard used to determine eligibility of one person for welfare assistance).

The amount of child support awarded is further eroded by the rising cost of living experienced in Anchorage. Only 23 percent had included automatic cost of living increments in support decrees. Without these adjustments the purchasing power of the support award continually declines.

Compounding the inflationary factor are the increased costs associated with children growing older. According to economist, Philip Eden, the amount spent for a child seventeen years old is almost three and a half times the amount spent at age one.^{6/} None of the support decrees included in the survey attempted to adjust support orders based upon the age of the child.

Furthermore, while most child support ends when a child is eighteen, the financial burden frequently continues or increases for the custodial parent. As children continue their education or work toward establishing themselves in the marketplace, continued monetary support is often required from the custodial parent. Yet, very few support decrees (22%) were written beyond the age of majority and even fewer provided an allowance for the increased costs of an education.

Another way to examine the modest amount of child support awarded is to compare it to income resources available for the payment of support. Since wives are usually caretakers of children, it is therefore appropriate to examine the husband's ability to pay support. On average, two-thirds of the family income is earned by the husband.

Survey findings suggest that the husband's income is, in general, inversely related to the amount of child support awarded. As Table 12 suggests, the higher the income of the husband, the greater the disparity in the percentage of income ordered for child support. Men with incomes between \$20,000 to \$30,000/yr. use over twice as much of their income for child support than do men who have incomes of over \$40,000.

^{6/} Philip Eden "How Inflation Flaunts the Court's Orders," Family Advocate
Vol. 1 no. 4, Spring 1979.

TABLE 12 - CHILD SUPPORT AND SPOUSAL MAINTENANCE AS A PERCENTAGE OF HUSBAND'S PREDIVORCE INCOME.

Husband's Income	Percentage of Husbands Income Awarded for Support		Total
	Child Support Ordered	Spousal Maintenance Ordered	
Under \$20,000 (N=17)	11%	-	11%
\$20,000-29,000 (N=14)	15	-	15
\$30,000-39,999 (N=17)	12	2%	14
\$40,000 + (N=22)	6	2	8

What is most significant, however, is that despite income levels divorced men were rarely asked to pay more than 15 percent of their income to support their children, even after including spousal support. Weitzman found similar inverse relationships of husband's income to support but, the percentage of support was greater although rarely over 30 percent of the husband's income.

In 1984, a governor's commission on child support enforcement was established to examine a variety of issues which included low support awards. They concluded that Alaska's system for determining child support lacked an objective standard. The commission recommended a presumptive use formula to determine the amount of support awarded based upon a percentage of the incomes of each parent that would normally be used for the support of children. The formula requires that 20 percent of the parents' adjusted income will be set aside for support of one child with additional percentage increments for successive children. In August, 1987 the Supreme Court adopted these guidelines as part of the Rules of the Court (Civil Rule 90.3, Child Support Awards).

The establishment of a standard will have a significant and positive impact on the monetary amounts awarded. For example, the typical surveyed family with one child would see an increase in child support, in some cases doubling the average amount previously awarded from \$250 to \$441. ^{7/}

Although the Supreme Court's action will have the immediate result of increasing the amount of child support awarded, it does not address the other part of the equation that forces many women and children into a significantly lower standard of living - the nonpayment of child support.

^{7/} Calculations are based upon mother having physical custody, with both parents working and having a combined income of \$54,000/yr.

Survey findings suggest that only about half (58%) received the child support they were awarded and another 18 percent received only a part of the award. These figures are consistent with statewide data on the collection of child support. 8/

The survey also found that the median amount of child support due was \$1,000.00, equalling almost half the annual average amount of child support awarded. Furthermore, among those who do pay, many had no predictable pattern of payment, thus creating uncertainty about whether it will be paid and uncertainty about whether monthly expenses associated with raising children could be met.

The majority (70%) of respondents who have not received the child support due them had taken some type of formal action. Most have filed with the Alaska Child Support Enforcement Agency while a few had pursued direct court action. The result of these actions has been very positive. Through garnishment of wages and other earnings or transferring of payments through the Child Support Enforcement Agency, most respondents were now receiving some level of child support. The remainder (22%) were pending action by Child Support Enforcement Agency or were not receiving payment because the ex-spouse was unemployed or unreachable.

Summary

Women are the primary caretakers of children after divorce. Although child support was awarded most of the time, the award amounts neither reflect an ability to pay nor the real costs associated with raising children. Caretakers and their children are expected to survive on a level of support that falls below the income criteria for welfare assistance. This amount may be further diminished by the choice of legal procedure utilized to terminate the marriage. Recently enacted child support guidelines will modify this condition. However inflation, rising expenses associated with older children and the de facto responsibility for support of college age children will continue to drive down the standard of living of most postdivorce families. Further eroding the economic condition of families is the non-compliance of child support. Only half received all support due them. Many have taken formal action to collect past due child support. Yet, the average amount due is equal to half the annual average award of child support.

8/ In federal FY86, the non-AFDC percentage of unpaid child support awards was 59 percent in Alaska and 51.8 percent for the United States. The non-AFDC figure is used because the survey sample contains very few AFDC recipients. The overall average for Alaska is 53.1 percent and 45.8 percent for the United States.

ALIMONY - SPOUSAL MAINTENANCE

Alaska law provides that either spouse may be ordered to provide support for the other following divorce. However, there must be evidence in most cases of economic necessity before spousal maintenance is awarded by the court. Older homemakers in marriages of long duration, women with full-time responsibility for young children and women in transition are examples of groups of women who may have financial need because of their inability to be mainstreamed easily into the job market and to compete equally.

Alimony or spousal maintenance, as it is referred to in Alaska law, was awarded in a very small percentage of divorces, according to the study's findings. Only 10 percent of the respondents interviewed indicated that spousal maintenance awards were included in divorce settlements. And all awards were made to women. This is similar to national data that cited 14 percent of divorcees' wives were awarded alimony. ^{9/}

Maintenance awards were requested and awarded in similar proportions under both types of legal procedures (dissolution and divorce). About 11 percent requested spousal maintenance. Eighty-seven percent of the requests were awarded.

Women married for twenty years or longer were twice as likely to receive spousal maintenance than women married for shorter durations, according to the study's findings. However, only 24 percent of the women married for at least twenty years requested and received maintenance awards.

The data also suggests that the majority of maintenance awards were of a short duration, median of one year. Similar findings were reached in Weitzman's research although the duration of alimony averaged about two years.

Referred to as transitional alimony, the theory behind short duration awards is that most recipients have the ability to become self supporting in a short period of time. ^{10/} Transitional alimony gives the person time - a "safety net" - in which to find work or to seek training that leads to career opportunities. However, short duration awards of only one year run counter to an acknowledgment of the actual time required to train and find gainful employment. Most vocational and professional programs could not be completed in the length of time spousal maintenance is provided for. Hardest hit by this contradiction are homemakers who have little work experience outside the home. They lack the time to train and the job experience necessary to compete actively. Older women must also face the potential discrimination of ageism.

^{9/} U.S. Bureau of Census, "Child Support and Alimony: 1981," Current Population Reports Series P-23 No. 124, May 1983.

^{10/} L. Weitzman, The Divorce Revolution, 1985 pp 164-165.

This "safety net" becomes even more precarious since maintenance award amounts were low. According to survey findings, the median monthly award was only \$500.00. Nearly half of the women receiving spousal maintenance have no other income (except for child support in some cases). On average, women receiving spousal maintenance saw a 60 percent per capita decline in income following divorce.

Summary

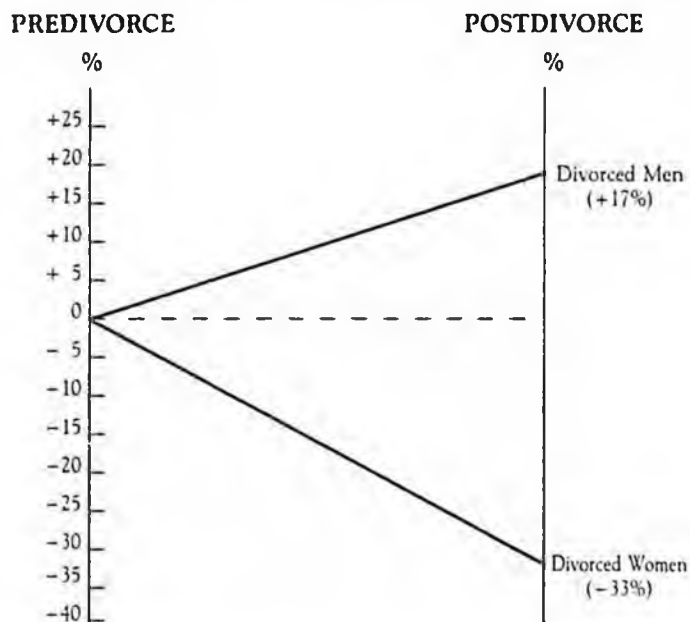
While the award of spousal maintenance recognizes a need for continued support, this "safety net" appears to be only an illusion for most women. Awards of short duration and low value assume that all women despite their circumstances can be quickly integrated and compete equally in the job market. However, the data reveals that nearly half of the women receiving spousal maintenance had no jobs at the time of divorce, no other income and some were of an age which would inhibit them from finding gainful employment.

ECONOMIC IMPLICATIONS OF DIVORCE

Divorce has substantially different economic consequences for men and women according to the study's findings. On average, men experienced an improved financial position following divorce while divorced women and the minor children faced radical downward mobility. The survey data indicates that on average, the per capita incomes of divorced men rose 17 percent while divorced women and children experienced a 33 percent drop in per capita income (see Figure A). ^{11/}

Figure A - Percentage Change in Per Capita Income of Divorced Men and Women

FIGURE 1: PERCENTAGE CHANGE IN PER CAPITA INCOME OF DIVORCED MEN AND WOMEN



Other findings from the study, in part, explain such an outcome. Court awards for child support and spousal maintenance are inadequate. The amount awarded for children is insufficient to cover even half the cost of child care. Furthermore, support often goes uncollected. The study also documented that some women have long term financial needs, yet spousal maintenance awards are infrequently awarded, are of a short duration and for low amounts.

^{11/} Per capita incomes are used to account for the presence and economic impact of children on the family's income. The calculation of income includes all income of the family including support if it is paid and any earnings from a new spouse or partner. Support was deducted from family income if respondent indicated they were the obligor and that they paid the amount. Per capita income is derived by taking the total income and dividing it by the total number of people in the family. For example, a family of four with a combined income of \$40,000 each adult and child would be considered to have a per capita income of \$10,000.

Downward mobility of divorced women is aggravated by many other factors within the legal process. Divorced women must settle for a less than equal share of the marital property, in part because many career assets are excluded from division and in part because that which is divided is done so unequally. The dissolution procedure may further exacerbate this inequity and also result in lower amounts of child support. A crisis in health care also arises for many families. Medical insurance often follows the major wage earner leaving many women and children without coverage or the replacement cost of insurance following divorce. Consequently, the affordability of health care often precludes anything other than emergency care and with it the fear of financial ruin.

The repercussion of domestic violence on the economic outcomes of divorced women must not be overlooked. Thirty-eight percent of the respondents indicated some form of violence - verbal to physical - occurred in the relationship. Over half of these people, nearly all women, indicated they experienced undue pressure while attempting to reach a settlement. However, reported incidences of domestic violence are not typically integrated into the court's review of divorce cases. The court must often rely upon the divorcing parties to surrender such information if they believe it is pertinent to the case.

Women are further disadvantaged by pervasive societal and judicial misconceptions regarding women's equality, their employment opportunities and earnings ability. Divorce reform laws are based upon the notion that women have achieved equality of opportunity in the job market. However as the findings of this study suggest, on average, divorced women's wages equal only two-thirds of divorced men. While there have been noted strides in society to reduce the gender imbalance in occupations and disparities in income between men and women, women remain employed for the most part in sex segregated occupations that have a lower earning potential than men. Furthermore, parenthood has a financial cost. Women who become mothers experience a decline in their average earnings potential. 12/ Hardest hit by the myth of equality are older homemakers. Divorce reform does not value the role of homemaker and often expects women who have not worked outside the home to become self sufficient without the necessary financial support to be trained and mainstreamed, if possible, into the job market.

The findings of this study together with a growing body of research suggests that the lofty goals of divorce reform - to create less acrimony in the process and provide greater family equity - have in fact promoted economic hardship for women and children.

Legislative reform is necessary to correct some of the inequities identified in the study. The legislature is currently considering legislation spearheaded by the Alaska Women's Commission which requires greater judicial scrutiny of dissolution cases under certain conditions. The bill also expands the definition of marital property to include career assets.

12/ Waite, Haggstrom and Kanouse, "The Effects of Parenthood on Career Orientation and Job Characteristics of Young Adults", Social Forces, Vol. 65, No. 1, September 1986, pp 43-73.

Another contributing factor is the distribution of family income following divorce. As primary caretaker of children, divorced women who earn only one-third of the family's income must now support the family on 66 percent less income. Divorced men on the other hand, typically have the wealth of the family but fewer obligations placed on their income. Divorced men are asked only to relinquish at the very most, 15 percent of their income to support their children.

Table 13 further illustrates this disparity. At every income level with the exception of the very lowest, divorced men had higher per capita incomes than divorced women. The use of per capita income reveals the financial impact the presence of children has on the family income of divorced women. The data also suggests that women and children of middle and upper middle class families face the greatest relative deprivation. The discrepancy between divorced men's and women's per capita income is over 100 percent (184 percent vs. 60 percent) in cases where the pre-divorce family had income between \$40,000-\$50,000. Weitzman's research documented similar disparities between divorced men and women's per capita income. Her findings also revealed that women and children from middle and upper income families experienced the most rapid downward mobility.

TABLE 13 - MEDIAN POST DIVORCE PER CAPITA INCOMES OF FAMILIES*

Predivorce Annual Family Income	Predivorce Per Capita Family Income	Postdivorce Per Capita Income		Postdivorce Per Capita Income as % of Predivorce Family Per Capita Income	
		Wife	Husband	Wife	Husband
Under \$30,000 (N=17)	\$ 6,738	\$ 8,043	\$ 5,820	119%	86%
\$30,000-39,000 (N=30)	11,832	9,300	9,576	79%	81%
\$40,000-49,999 (N=20)	15,200	9,188	27,912	60%	184%
\$50,000-59,999 (N=21)	19,200	12,750	30,000	66%	156%
\$60,000 + (N=51)	32,844	19,800	30,000	60%	91%

* Post divorce per capita income includes all income of family, including any support paid and earnings from a new spouse or partner divided by the total number of people (adults and children) in the newly constituted family. Support was deducted from income if respondent indicated they were an obligor and that they paid the amount.

While further legislative proposals may be required to correct other inequities of divorce, better education for people affected by the law and those who administer it is also essential. Alaska allows people to fashion their own divorces without legal assistance, yet provides insufficient information for those people to make informed and equitable agreements. More attention must be paid to educating people through such methods as legal clinics and the development and use of video and written materials so that informed rather than ignorant decisions can be reached. The future economic security of thousands of people, particularly women and children, depend upon it.

Continuing legal education for judges and attorneys is also integral. The legal community must be informed about the economic disparities which exist in divorce and how their role may contribute to such consequences. Only then can they serve as agents of family equity in the divorce process.

APPENDIX

RESEARCH METHODOLOGY

The study is based on interviews of persons who legally terminated their marriages between July 1, 1984 and June 30, 1985. An interview process was considered necessary since there is no data available on the economic impact arising from divorce. Previous studies conducted in other states have examined court records to obtain economic data, however, their research indicates that the data is incomplete and unreliable for analysis purposes. A review of randomly selected court records from the Anchorage judicial district revealed similar shortcomings and was therefore rejected for use in analysis. Furthermore, court record data provides a "snapshot" of the parties' economic positions only at the point of divorce. Interviews were required to assess the outcomes of these decisions approximately one year after the divorce.

Anchorage was selected as the study area. Over one half of all Alaskan divorces occur annually within the municipality. Its demographic profile of divorce cases also generally reflects the statewide profile.

Anchorage was also selected because of its volunteer resources. The project design required extensive use of volunteers for data collection and interviewing. The municipality's well organized volunteer network and university setting provided the Commission with sufficient members of well-trained personnel. In total, about 300 hours were contributed toward the completion of the research.

Sample design

Previous research suggests that divorce may have a different economic impact on men than on women. In addition to that, our understanding of the Alaskan system suggested that differences may exist between those individuals who go through a traditional divorce process and those who choose dissolution.

The sample design was determined by the need to test the following hypotheses:

- H₁: There are statistically significant differences in the impact of divorce and dissolution.
- H₂: There are statistically significant differences in the impact of divorce/dissolution on men and women.
- H₃: There are statistically significant differences in the impact of divorce and dissolution on men.
- H₄: There are statistically significant differences in the impact of divorce and dissolution on women.

These hypotheses suggest that both gender and the type of marriage termination may have an effect on individuals and their economic conditions. The sample was, therefore, stratified by gender and type of marriage termination

utilizing a disproportionate stratified sampling technique. Disproportionate stratified samples are very effective for group comparisons and are extensively used in social sciences and business research when between group comparisons are necessary. The sample was built as follows:

	Male	Female
Divorce	50	50
Dissolution	50	50
<u>Total</u>	<u>100</u>	<u>100</u>

We sought to interview 50 in each cell in order to make comparisons and draw conclusions through the use of a variety of statistical techniques, like Analysis of Variance which is robust enough to allow comparisons with samples of this size.

Sample Selection - A list of 310 dissolution and 545 divorce cases were randomly selected from court records. To obtain a sample that was evenly divided by sex, the wife was randomly chosen as respondent in half the cases and the husband as respondent in the other half. Letters were mailed from the Alaska Women's Commission office asking for participation. A reply card was included. As cards came back, participants were contacted by phone and interview appointments were scheduled.

A low response rate necessitated 2 supplementary mailings, phone calls to non-respondents and an incentive for respondents. In addition, another 540 dissolution cases were randomly selected from the court records. Two mailings were also sent out to this group.

The following table reports a breakdown of the mailings outcome:

	<u>Dissolution</u>	<u>Divorce</u>
Total Mailings	850	545
Undeliverables	42%	38%
Second mailing	55%	55%
Third mailing	18%	29% *
Participants	13% (66/492)	21% (73/337)

* Sent only to men

On hundred thirty nine people agreed to be interviewed. A variety of explanations can be offered for this outcome:

1) In mail surveys it is quite common to have 10% of mailings undeliverable. In this case the undeliverables were far greater than was expected (41%). None of the previous studies on divorce had a similar result. This may be an indication that the Alaskan population is substantially different from populations of other states.

2) There are inherent difficulties in reaching individuals who have gone through divorce. Previous studies have indicated that this is a "hard to reach" population; there is a tendency to relocate quickly, not leaving forwarding addresses.

Other studies on the subject suggested to oversample by a factor of 3 to overcome the problem of low participation. In our case, we oversampled by a factor of 8.5 in dissolution, and a factor of 5.4 in the case of divorce. A larger initial mailing was deemed necessary for dissolution cases as they were perceived to be a harder to reach subsample. Despite our concerted effort both the dissolution and divorce subsamples were smaller than projected.

3) The subject matter may be too sensitive or not appealing enough to entice people to participate. Many studies in the social sciences have shown a direct relationship between the sensitivity of the subject matter and willingness to participate.

Interviews

Interviews were conducted in person or by phone. An interview outline was followed. One hour was allocated for each interview. Although the number of interviews fell short of our desired sample size, the respondents were highly cooperative and provided complete detail of their economic situations both at the time of divorce as well as their present circumstances.

The following is the group distribution of interviews conducted:

	Male	Female	Total
Divorce	34	39	73
Dissolution	31	35	66
Total	65	74	139

Profile of Respondents

Our sample is somewhat different from the Anchorage population of divorce and dissolution cases. The subject matter tended to attract older, better educated, and higher income respondents than the general population. The largest concentration of respondents were people between the ages of 25 and 44, while younger cases were not as well represented. The respondents -- because slightly older -- were married longer than the actual population (2.5 years longer). The majority of the sample was also White, while only 79 percent of the divorces in Anchorage involve Whites. The respondents' family size was slightly larger than the population (1.5 minors vs. .83 for the population).

The main conclusion we can draw from this comparison is that the sample is slightly skewed. However, the data is not invalid. The study is internally valid and as an exploratory study on the economic consequences of divorce, it has met our goal. Future expansion of the data base would be beneficial to gain a greater understanding of the influence of various economic factors on subgroups of the population. Yet, it is important to note that the study's findings indicate that even when overrepresented by respondents of higher socio-economic status -- women's economic conditions worsen after divorce.

PROFILE OF SURVEY RESPONDENTS

(Sample Drawn From Anchorage Divorce Cases)

Age (139)	
18-24	1%
25-34	33
35-44	43
45-54	16
55-64	5
65+	1
Race (139)	
White	95%
Black	1
AK Native	1
Other	2
Education (139)	
High school	22%
College	67
Post grad work	11
Length of Marriage (139)	
Mean	9.5 years
Median	7 years
Gender (139)	
Male	47%
Female	53%
Minor children present in the marriage (80)	
Mean	1.5 children
Total number of children during marriage (85)	
Mean	1.9 children
Total household size during marriage (139)	
Mean	3.4 people
Median	3 people
Minors living with respondent after divorce (52)	
Mean	1.5 children
- Total household size after divorce (138)	
Mean	2.2 people
Median	2 people

PROFILE OF ALL ANCHORAGE DIVORCE CASES FROM SURVEY PERIOD

Age

18-24	10%
25-34	47
35-44	30
45-54	10
55 +	3

Race

White	86%
Native	4
Black	6
Other	3

Education

0 - 8	2%
High school	54
College	38
Post Graduate Work	6

Length of Marriage

Median 6.8 years

Minor children present in the marriage

Mean .83 children

Total household size during marriage

Mean 2.8 people
Median 3 people



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

BULK RATE
U.S. POSTAGE
PAID
Permit No. 691
Anchorage, AK

Members of Commission:

Kris Chatfield, chair
Anchorage
Joy Green-Armstrong, vice chair
Anchorage
Loretta Bullard
Nome
Elizabeth (Pat) Kennedy, Anchorage
Mary Pete, Bethel
Betty Ramage, Anchorage
Wendy Redman, Fairbanks
Paula Ziegler, Ketchikan

Executive Director

Christine Callahan

Research Analyst

Barbara Baker

State of Alaska

Steve Cowper, Governor
Stephen McAlpine, Lt. Governor

HOUSE COMMITTEE REPORT

426

(7)

Date referred: 3/18/87

FURTHER REFERRALS:

Judiciary

DATE: 2-25-88

The Health, Education and Social Services Committee has considered HB 189

"An Act relating to divorce and dissolution."

RECOMMENDS:

- [x] replace with CS HB189 (HESS) [] the same title
[] attached amendment(s) [x] a new title
[] do pass
[] do not pass
[] no recommendation
[] individual recommendations
[] additional referral to the Committee

ADOPTS: [] letter of intent

ATTACHES NEW FISCAL NOTE(s):

- [x] fiscal impact [] same as previous fiscal note published
[] zero fiscal note [] same as previous zero fiscal note published
[] zero with analysis

SIGNING DO PASS:

Handwritten signatures for 'SIGNING DO PASS' including names like Korman, etc.

SIGNING OTHER RECOMMENDATIONS:

Handwritten signatures for 'SIGNING OTHER RECOMMENDATIONS' including names like Bell, etc.

Handwritten signature of the Chairman and the word 'Section' below it.

Representative Fran Ulmer
P.O. Box V
Juneau, Ak. 99811

April 21, 1987

RECEIVED APR 22 1987

Subject: H.B. 189

Dear Representative Ulmer:

In reference to H.B. 189 directly, or if Bill is split. Said vehicle must be used to ammend statute custody language to ensure award of joint physical custody by Court, when minor(s) has stated this preference and is also recommended, after investigation of case, by Ad Litum. Necessary statute language follows. We hope, for this States childrens well-being, you will use it! It is the right thing to do.

It was the intent of the people and Legislature, in 1982, after in-depth study, to adopt this basis of fair equality in behalf of minor's well-being. It would also save the State millions of dollars in administration, litigation and policing of support, movement of children to other states and/or countries, delinquency and crimes of all varieties by minors, seven years old and up. Unfortunately, this has yet to occur, due to inadequate and non-specific statute language.

A decision for custody award, during initial dispute or modification, if truely addressing minor(s) well-being, is an easy one to make when adhering to specific law and not allowing the entrance of bias, selfishness and facts not directly related to minor(s) well-being. We must remember that custody disputes are the root issue of most disolutions. However, reality is quite different from rhetoric. Council may use the argument that they follow the adversary process to inform Court of relevent facts. Over ninety percent of the time their alledged facts have no nexus between law, minor's well-being and truth. Children do not get benefit of Jury to decide. They get an individual who may or may not be biased, whom may or may not consider proper facts and the child's well-being only.

For Example, I will quote just two of many attorney's who have similarly stated, "Facts presented in Court have nothing to do with right, wrong, truth or honesty, in winning a case. It has to do with who's the best liar!" Quote-unquote, Phil Wiedner and Ron Drathman.

We must have, at least, the reality of care and equality for minor's, otherwise the State is guilty of abuse of minor's, via mental cruelty. This causes not only grievous despair and anguish of our minor's, but creates disrespect of laws by minor's. As the State has, in no uncertain terms, let minor's know that no one really cares and that our laws are meaningless, through unrealistic custody decisions. Children don't get divorced, parents do!

Please review and utilize the following amendment, as it is, 1. In the best interests for the well-being of the children of this State, and 2. Will assist in curtailing disputes of divorcing parties and help avoid mental and possible physical abuse of one another, and 3. Will assist in curtailing the workloads

(2)

of our Departments of Revenue, child support enforcement division, Health and Social Services, family and youth service division, Public Safety, State Trooper Division, law's, Court System, as well as all other related political subdivision services, dealing with domestic relations and violence. This equals millions of dollars saved on administrative and personnel costs by making children happy by addressing their well-being, instead of bias, selfishness and or vengeance which has absolutely nothing to do with facts directly related to children(s) well-being.

Thank you for your assistance. It is past time that a decision for minor(s) well-being be made by said minor(s) and the hands on case study reality of Ad Litum, rather than a Judge making decisions on assumption. Anyone who supports fairness, equality and cares about children can support this very right and needed change. The children deserve it and everyone benefits.

AMENDMENTS TO ALASKA STATUTE 25.24.150

Addition's underscored:

Deletion's [bracketed]:

Add last sentence to 25.24.150(a)

Equal physical custody of minor(s) shall be awarded when it is the minor(s) preference and recommended by Ad Litum, as it is considered to be in the minor(s) best interests for well-being:

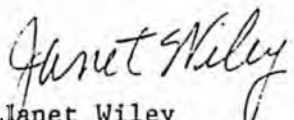
Add the word only to 24.24.150(c)

(c) The court shall determine custody in accordance with the best interests of the child under AS 25.20.060 - 25.20.130. In determining the best interest of the child the court shall only consider

Add/Delete to 25.24.150 (3)

(3) The child's stated preference if the child is [of sufficient age and capacity to form a preference] age seven (7) years or older and the investigating Ad Litum concurs. Ad Litum's recommendation if child is under age seven (7).

Sincerely,


Janet Wiley
P.O. Box 964
Douglas, Ak. 99824
789-3942

Attachment

Original sponsor: Rules/Governor



1 IN THE HOUSE

BY THE HEALTH, EDUCATION AND
SOCIAL SERVICES COMMITTEE

2

CS FOR HOUSE BILL NO. 189 (HESS)

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6

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

8

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

10

Section 1. AS 25.24.100 is amended to read:

11

Sec. 25.24.100. RESIDENCY OF MILITARY PERSONNEL. A person

12

serving in a military branch of the United States government who is

13

assigned to a duty station at [HAS BEEN CONTINUOUSLY STATIONED IN] a

14

military base or installation in the state [FOR A PERIOD OF ONE YEAR]

15

shall be considered [DEEMED] a resident [IN GOOD FAITH] of the state

16

for the purposes of this chapter [AS 25.24.010 - 25.24.180].

17

* Sec. 2. AS 25.24.140 is repealed and reenacted to read:

18

Sec. 25.24.140. ORDERS DURING ACTION. (a) During the pendency

19

of the action, a spouse may, upon application and in appropriate

20

circumstances, be awarded expenses, including

21

(1) attorney fees and costs that reasonably approximate the

22

actual fees and costs required to prosecute or defend the action;

23

(2) reasonable spousal support, including medical expenses;

24

and

25

(3) reasonable support for minor children in the care of

26

the spouse, if there is a legal obligation of the other spouse to

27

provide support.

28

(b) During the pendency of the action, upon application, a

29

spouse is entitled to necessary protective orders, including orders

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

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

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

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

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

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

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

19 * Sec. 3. AS 25.24.160(a)(4) is amended to read:

20 (4) for the division between the parties of their property,
21 including retirement benefits and career assets, whether joint or
22 separate, acquired only during marriage [COVERTURE], in a just [THE]
23 manner [AS MAY BE JUST,] and without regard to which of the parties is
24 in fault; however, the court, in making the division, may invade the
25 property, including retirement benefits and career assets, of either
26 spouse acquired before marriage when the balancing of the equities
27 between the parties requires it; and to accomplish this end the judg-
28 ment may require that one or both of the parties assign, deliver, or
29 convey any of their real or personal property, including retirement

NEW

1 benefits and career assets, to the other party; a division of career
2 assets must take into consideration the extent to which each spouse
3 contributed to the acquisition of the career assets, including consid-
4 eration of the value of homemaking and child rearing services provided
5 by each spouse;

6 * Sec. 4. AS 25.24 is amended by adding a new section to read:

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

Same

10 (b) If a party seeks a change of name to a name other than a
11 prior name, the court shall set a date for hearing not less than 40
12 days after filing of the action. Notice of the application for a
13 change of name to a name other than a prior name and the date of the
14 hearing shall be published once each week for four consecutive calen-
15 dar weeks before the hearing in a newspaper of general circulation in
16 the judicial district. The court may also require posting of the
17 notice at locations it considers appropriate. The court shall by
18 judgment authorize the party to assume the new name in not less than
19 30 days after issuance of the judgment, if the court is satisfied that
20 no reasonable objection exists to assumption of the new name. Within
21 10 days after issuance of the judgment the party shall publish notice
22 of the approval of the name change in a newspaper of general circula-
23 tion in the judicial district. The court may also require the posting
24 of a copy of the judgment.

25 * Sec. 5. AS 25.24.200 is amended to read:

26 Sec. 25.24.200. DISSOLUTION OF MARRIAGE. (a) A husband and
27 wife together may petition the superior court for the dissolution of
28 their marriage under AS 25.24.200 - 25.24.260 if the following condi-
29 tions exist at the time of filing the petition:

1 (1) incompatibility of temperament has caused the irremedi-
2 able breakdown of the marriage;

3 (2) if there are minor children of the marriage or the wife
4 is pregnant, and the spouses have agreed on which spouse or third
5 party is to [SHALL] be awarded custody of each minor child of the
6 marriage and the extent of visitation, including visitation by grand-
7 parents and other persons, and support to be provided on the chil-
8 dren's behalf, whether the payments are to be made through the child
9 support enforcement agency and the tax consequences of that agreement;

10 (3) the spouses have agreed as to the distribution of all
11 jointly owned real and personal property, including retirement bene-
12 fits and career assets, and the payment of spousal support, if any,
13 and the tax consequences resulting from these ^{distributions are} payments; and — From 17B496

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

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

20 (1) incompatibility of temperament, as evidenced by ex-
21 tended absence or otherwise, has caused the irremediable breakdown of
22 the marriage;

23 (2) the petitioning spouse has been unable to ascertain the
24 other spouse's position in regard to the dissolution of their marriage
25 *Same* and in regard to the division of property, including retirement bene-
26 fits and career assets, payment of debts, and custody, support, and
27 visitation because the whereabouts of the other spouse is unknown to
28 the petitioning spouse after reasonable efforts have been made to
29 locate the absent spouse; and

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

3 (c) Except as provided in AS 25.24.220(i), [NOTHING IN THIS
4 SECTION PROHIBITS] a spouse who has been personally served with a copy
5 of a petition filed [MADE] under (a) of this section may execute [FROM
6 EXECUTING] an appearance, waiver of time to answer, and waiver of
7 notice of hearing. The appearance and waivers must [SHALL] include an
8 acknowledgment signed before an officer authorized to administer an
9 oath or affirmation that the spouse being served has read the peti-
10 tion; assents to the terms relating to custody of the children, child
11 support, visitation, spousal support and resultant tax consequences,
12 division of property, including retirement benefits and career assets,
13 and allocation of debts; agrees that the conditions otherwise required
14 by (a) of this section exist; agrees that the petition constitutes the
15 entire agreement between the parties; understands fully the nature and
16 consequences of the action; and is not signing the appearance and
17 waivers under duress or coercion.

18 (d) The action created under this section is separate from the
19 action created by AS 25.24.010. The procedures prescribed by AS 25.-
20 24.200 - 25.24.260 do not apply to an action brought under AS 25.24.-
21 010, nor do procedures prescribed under AS 25.24.010 - 25.24.180 apply
22 to an action filed [BROUGHT] under this section, except as specifical-
23 ly provided.

24 * Sec. 6. AS 25.24.200 is amended by adding a new subsection to read:

25 (e) A division of career assets must take into consideration the
26 extent to which each spouse contributed to the acquisition of the
27 career assets, including consideration of the value of homemaking and
28 child rearing services provided by each spouse.

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

1 (d) The petition shall request that the marriage be dissolved
2 and that the [PRIOR] name of a spouse be changed [RESTORED], if de-
3 sired by that spouse.

4 * Sec. 8. AS 25.24.210(e) is repealed and reenacted to read:

5 (e) If the petition is filed by both spouses under AS 25.24.-
6 200(a), the petition must state in detail the terms of the agreement
7 between the spouses concerning the custody of children, child support,
8 visitation, spousal support and tax consequences, if any, division of
9 property, including retirement benefits and career assets, and allo-
10 cation of debts. In addition, the petition must state

11 (1) the respective occupations of the petitioners;

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

14 (3) the date and place of the marriage;

15 (4) the name, date of birth, and current custodial status
16 of each minor child born of the marriage or adopted by the petition-
17 ers;

18 (5) whether the wife is pregnant;

19 (6) whether either petitioner requires medical care or
20 New treatment;

21 (7) whether a domestic violence complaint has been filed
22 during the marriage by a member of the household;

23 (8) whether either petitioner has received the advice of
24 legal counsel regarding a divorce or dissolution;

25 (9) other facts and circumstances that the petitioners
26 believe should be considered;

27 same (10) that the petition constitutes the entire agreement
28 between the petitioners; and

29 (11) any other relief sought by the petitioners.

High Level
of Secretary

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

2 (b) Except as provided in (i) of this section, if the petition
3 is filed by both spouses under AS 25.24.200(a) both spouses shall
4 attend the hearing personally and not through counsel. However, if
5 the petition is not subject to (i) of this section, one spouse may
6 comply with AS 25.24.200(c). Either spouse may have counsel at the
7 hearing.

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

9 (c) If the petition is filed [BROUGHT] by one spouse under
10 AS 25.24.200(b), that spouse shall submit proof of diligent inquiry as
11 to the whereabouts of the absent spouse and provide notice by publica-
12 tion, posting, or other means as ordered by the court under [IN ACCOR-
13 DANCE WITH] the Alaska Rules of Civil Procedure.

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

15 (d) If the petition is filed [BROUGHT] by both spouses under
16 AS 25.24.200(a), the court shall examine the petitioners or petitioner
17 present and consider whether

18 (1) the spouses fully understand the nature and conse-
19 quences of their action;

20 (2) the written agreements between the spouses concerning child
21 custody, child support, and visitation are [FAIR,] just [, AND EQUIT-
22 ABLE] as between the spouses and in the best interests of the children
23 of the marriage;

24 (3) the written agreements between the spouses relating to
25 the division of property, including retirement benefits and career
26 assets, spousal support, and the allocation of obligations are [FAIR,]
27 just [, AND EQUITABLE]; [AND]

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

Same
rewritten

New

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

2 * Sec. 12. AS 25.24.200(e) is amended to read:

3 (e) If the petition is filed [BROUGHT] by one spouse under
4 AS 25.24.200(b), the court shall examine the petitioner and consider
5 whether the petitioner fully understands the nature and consequences
6 of the action and whether the conditions in AS 25.24.200(b) have been
7 met.

8 * Sec. 13. AS 25.24.220(g) is amended to read:

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

14 * Sec. 14. AS 25.24.220 is amended by adding new subsections to read:

15 (h) In its examination of a petitioner under (d) of this sec-
16 tion, the court shall use a heightened level of scrutiny of agreements
17 if

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

20 (2) a domestic violence complaint has been filed during the
21 marriage by a member of the family or there is evidence of significant
22 domestic violence during the marriage;

23 (3) there are minor children of the marriage; or

24 (4) there is a patently inequitable division of the marital
25 estate.

26 (i) If the court finds that a higher level of scrutiny is re-
27 quired by (h) of this section, the court shall examine the written
28 agreements between the spouses to determine that they are just, that
29 they constitute the entire agreement between the parties, and that the

same

Change from usually with child support

New from "or"

SH

||

1 | agreements concerning child custody, child support, and visitation are
2 | in the best interests of the children of the marriage, if any. The
3 | court shall require the presence of both spouses at a hearing for this
4 | purpose unless the court finds that it would constitute a significant
5 | hardship on one of the spouses to appear, and that a just agreement
6 | has been reached. If one of the spouses cannot attend the hearing
7 | because it would constitute a significant hardship, the court may
8 | require that spouse to be available by telephone to answer questions,
9 | at that spouse's expense.

10 * Sec. 15. AS 25.24.230 is repealed and reenacted to read:

11 *Same* Sec. 25.24.230. JUDGMENT. (a) If the petition is filed under
12 AS 25.24.200(a), and is not subject to AS 25.24.220(h), the court may
13 grant the spouses a final decree of dissolution and shall order other
14 relief as provided in this section if the court, upon consideration of
15 the information contained in the petition and the testimony of the
16 spouse or spouses at the hearing, finds that

17 (1) the spouses understand fully the nature and conse-
18 quences of their action;

19 (2) the written agreements between the spouses concerning
20 child custody, child support, and visitation are in the best interests
21 of the children of the marriage and constitute the entire agreement of
22 the parties on child custody, child support, and visitation;

23 (3) the written agreements between the spouses concerning
24 spousal support and tax consequences, if any, division of property,
25 including retirement benefits and career assets, and allocation of
26 obligations are not grossly unjust and constitute the entire agreement
27 between the parties;

28 (4) each spouse entered into the agreement voluntarily and
29 free from the coercion of another person; and

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

2 (b) If the petition is filed under AS 25.24.200(a) and is sub-
3 ject to AS 25.24.220(h), the court may grant the spouses a final
4 decree of dissolution and shall order other relief as provided in this
5 section if the court, upon consideration of the information contained
6 in the petition and the testimony of the spouse or spouses at the
7 hearing, finds that

8 (1) the spouses understand fully the nature and conse-
9 quences of their action;

10 (2) the written agreements between the spouses concerning
11 child custody, child support, and visitation are in the best interests
12 of the children of the marriage, constitute the entire agreement of
13 the parties on child custody, child support, and visitation, and, as
14 between the spouses, are just;

15 (3) the written agreements between the spouses concerning
16 spousal support and tax consequences, if any, division of property,
17 including retirement benefits and career assets, and allocation of
18 obligations are just and constitute the entire agreement between the
19 parties;

20 (4) each spouse entered the agreement voluntarily and free
21 from the coercion of another person; and

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

23 (c) If the petition is filed by one spouse under AS 25.24.-
24 200(b), the court may grant the spouse a final decree of dissolution
25 and change the petitioner's name, if so requested, if the court, upon
26 consideration of affidavits supplied by the spouse and the testimony
27 of the spouse at the hearing, finds that

28 (1) the spouse present at the hearing understands fully the
29 nature and consequences of the action;

1 (2) the conditions in AS 25.24.200(b) have been met; and
2 (3) the requirements of AS 25.24.165(b) have been sat-
3 isfied, if a change of name is requested.

4 (d) The court shall dismiss a petition or continue action on a
5 petition filed under AS 25.24.200 - 25.24.260 before findings are made
6 if

7 (1) a representative of the minor children objects to a
8 term of an agreement between the spouses;

9 (2) either of the spouses withdraws from an agreement
10 required under AS 25.24.200(a); or

11 (3) the petition alleges that the conditions in AS 25.24.-
12 200(b) exist, but the whereabouts of the absent spouse becomes known
13 to the other spouse or the court before findings are made.

14 (e) The court shall deny the relief sought in a petition filed
15 under AS 25.24.200 - 25.24.260 if the court does not make the findings
16 required under (a) - (c) f this section.

17 (f) If the petition is filed by both spouses under AS 25.24.-
18 200(a), the court shall change either spouse's name, if the spouse
19 seeking a change of name to a name other than a prior name complies
20 with AS 25.24.165(b), and shall fully and specifically set out in the
21 decree the written agreements of the spouses and shall order the
22 performance of those written agreements. The court shall also state,
23 in the decree, whether child support payments are to be made through
24 the child support enforcement agency. If the petition is filed by one
25 spouse under AS 25.24.200(b), the decree must state that it does not
26 bar future action on the issues not resolved in the decree.

27 (g) Notwithstanding other provisions of AS 25.24.200 - 25.24.-
28 260, the court may not award as between the spouses real or personal
29 property acquired by either spouse before the date of the marriage,

1 unless the spouses expressly agree otherwise or the court determines
2 that the property should be made available, by sale or other convey-
3 ance, to ensure that the best interests of the children are provided
4 for. If the court determines that the best interests of the children
5 require an award of premarital property, but the spouses do not agree,
6 the court shall dismiss or continue the action.

7 (h) If a judgment under this section distributes benefits to an
8 alternate payee under AS 14.25, AS 22.25, AS 26.05.222 - 26.05.226, or
9 AS 39.35, the judgment must meet the requirements of a qualified
10 domestic relations order under the definition of that phrase that is
11 applicable to those provisions.

12 * Sec. 16. AS 25.24.250 is amended by adding a new subsection to read:

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

17 * Sec. 17. AS 25.24 is amended by adding a new section to read:

18 ARTICLE 4. GENERAL PROVISIONS.

19 Sec. 25.24.350. DEFINITION. In this chapter, "career assets"
20 means tangible and intangible assets resulting from a spouse's educa-
21 tion, profession, or employment that were acquired at least in part as
22 a result of direct or indirect contributions made by the other spouse;
23 "career assets" includes professional education, licenses, increased
24 earnings, and good will.

25 * Sec. 18. AS 25.24.165, as added by sec. 4 of this Act, AS 25.24.-
26 210(d) as amended by sec. 7 of this Act, and AS 25.24.230(c) and 25.24.-
27 230(f) as amended by sec. 15 of this Act, have the effect of amending Rule
28 84(a), Alaska Rules of Civil Procedure, to allow a change of name to a name
29 other than a prior name to be commenced in a complaint for divorce or

1 annulment or a petition for dissolution of marriage.

2 * Sec. 19. AS 25.24.160(a)(5) is repealed.

*Name
Change*

Greenberg
#1

1 (1) incompatibility of temperament has caused the irremedi-
2 able breakdown of the marriage;

3 (2) ^{IF} [IF] there are minor children of the marriage or the
4 wife is pregnant, and the spouses have agreed on which spouse or third
5 party is to [SHALL] be awarded custody of each minor child of the
6 marriage and the extent of visitation, including visitation by grand-
7 parents and other persons, and support to be provided on the chil-
8 dren's behalf, whether the payments are to be made through the child
9 support enforcement agency and the tax consequences of that agreement;

10 (3) the spouses have agreed as to the distribution of all
11 jointly owned real and personal property, including retirement bene-
12 fits and career assets, and the payment of spousal support, if any,
13 and the tax consequences resulting from these payments; and

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

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

20 (1) incompatibility of temperament, as evidenced by ex-
21 tended absence or otherwise, has caused the irremediable breakdown of
22 the marriage;

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

agreements concerning child custody, child support, and visitation are in the best interests 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 that it would constitute a significant hardship on one of the spouses to appear, and that a just agreement has been reached. If one of the spouses cannot attend the hearing ^{b/c attendance would constitute a significant hardship} ~~because the spouse has left the state~~, the court may require that spouse to be available by telephone to answer questions, at that spouse's expense.

* Sec. 15. AS 25.24.230 is repealed and reenacted to read:

Sec. 25.24.230. JUDGMENT. (a) If the petition is filed under AS 25.24.200(a), and is not subject to AS 25.24.220(h), the court may grant the spouses a final decree of dissolution and shall order 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 interests of the children of the marriage and constitute the entire agreement of the parties on child custody, child support, and visitation;

(3) the written agreements between the spouses concerning spousal support and tax consequences, if any, division of property, including retirement benefits and career assets, and allocation of obligations are not grossly unjust and constitute the entire agreement between the parties;

(4) each spouse entered into the agreement voluntarily and free from the coercion of another person; and

*Grucenberg
this*

1 (2) the conditions in AS 25.24.200(b) have been met; and

2 (3) the requirements of AS 25.24.165(b) have been sat-
3 isfied, if a change of name is requested.

4 (d) The court shall dismiss a petition or continue action on a
5 petition filed under AS 25.24.200 - 25.24.260 before findings are made
6 if

7 (1) a representative of the minor children objects to a
8 term of an agreement between the spouses;

9 (2) either of the spouses withdraws from an agreement
10 required under AS 25.24.200(a); or

11 (3) the petition alleges that the conditions in AS 25.24.-
12 200(b) exist, but the whereabouts of the absent spouse becomes known
13 to the other spouse or the court before findings are made.

14 (e) The court shall deny the relief sought in a petition filed
15 under AS 25.24.200 - ^(a) ~~(a)~~ ^(b) ~~(b)~~ if the court does not make the findings
16 required under (a) ~~(a)~~ ^(a) ~~(a)~~ ^(b) ~~(b)~~ of this section.

17 (f) If the petition is filed by both spouses under AS 25.24.-
18 200(a), the court shall change either spouse's name, if the spouse
19 seeking a change of name to a name other than a prior name complies
20 with AS 25.24.165(b), and shall fully and specifically set out in the
21 decree the written agreements of the spouses and shall order the
22 performance of those written agreements. The court shall also state,
23 in the decree, whether child support payments are to be made through
24 the child support enforcement agency. If the petition is filed by one
25 spouse under AS 25.24.200(b), the decree must state that it does not
26 bar future action on the issues not resolved in the decree.

27 (g) Notwithstanding other provisions of AS 25.24.200 - 25.24.-
28 260, the court may not award as between the spouses real or personal
29 property acquired by either spouse before the date of the marriage,

HB 189 Revised Koponen Amelt
to §1
- AMENDMENT -

Page 1, lines 12-13:

Delete: "has been continuously stationed in"

Insert: "is assigned to a duty station at"

Page 1, line 14:

Delete: "for a period of one year"

Page 1, line 15:

Delete: "in good faith"

**STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE**

Bill Version: HB 189
Publish Date:

REQUEST: _____

Revision Date: _____ Agency Affected: Alaska Court System
Title: An act relating to divorce and BRU: Trial Courts
dissolution.
Sponsor: Rules by request of governor Components:
Requestor: _____

EXPENDITURES/REVENUES:		(Thousands of Dollars)				
OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
Personal Services	81.7	81.7	81.7	81.7	81.7
Travel	10.4	7.5	7.5	7.5	7.5
Contractual
Supplies
Equipment	8.2	. . . .	. . . .	. . . .	. . . .
Land & Structures
Grants & Claims
TOTAL OPERATING	0.0	100.3	89.2	89.2	89.2	89.2
CAPITAL
REVENUE

FUNDING:		(Thousands of Dollars)				
General Funds	0.0	100.3	89.2	89.2	89.2	89.2
Federal Funds	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Other	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
TOTAL	0.0	100.3	89.2	89.2	89.2	89.2

POSITIONS:						
Full-time	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Part-time	. . . .	3.0	3.0	3.0	3.0	3.0
Temporary	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .

ANALYSIS: (Attach a separate page if necessary)

See attached analysis.

Prepared by: Karla Forsythe, General Counsel Phone: 264-8228
Division: Alaska Court System Date: 4-1-87
Approved by: *Stephanie J. Cole* Date: 4-1-87
Agency: Alaska Court System

- Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management & Budget
Impacted Agency(ies)
Senate Secretary

ALASKA COURT SYSTEM
HB 189 - FISCAL ANALYSIS

Personal Services:	Salary	Benefits	Total
Special Master, Range 24A, Fairbanks, PPT - 6 months	\$32,310	\$8,789	\$41,099
Custody Investigator, Range 1 A, Anchorage, PPT - 6 months	18,774	5,781	24,555
Court Clerk II, Range 10B, Palmer, PPT - 6 months	11,790	4,228	16,018

Total Personal Services			81,672

 Travel:			
Custody investigator travel-			
Monthly service to Kenai and Kodiak. Quarterly service to Ketchikan, Sitka, Wrangell, & Petersburg			
			7,500
Forms Committee meeting- (one time cost)			
Cost of Dissolution Forms Committee meeting in Anchorage for two days with one and one-half days of in-transit time.			
			2,900

Total Travel			10,400

 Equipment: (one time cost)			
Desk, chair, filing cabinet, and typewriter for each new employee			
			8,202

Total First Year Cost			\$100,274
			=====

ALASKA COURT SYSTEM

HB 189 - FISCAL ANALYSIS

Summary of FY 86 Filings - Dissolution of Marriage

Court	Number of Filings	Estimated # of Cases Involving Children (1)	Estimated # of Cases Requiring Custody Investigation (2)
Anchorage	1,703	1,141	114
Fairbanks	511	342	34
Palmer	222	149	15
Kenai	193	129	13
Kodiak	76	51	5
Juneau	195	131	13
Ketchikan	111	74	7
Sitka	37	25	3
Wrangell/ Petersburg	30	20	2

- (1) Two-thirds of dissolution cases are estimated to involve children.
- (2) Ten percent of dissolution cases involving children are estimated to require custody investigations.

STATE OF ALASKA THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 25, 1988

SUBJECT: Interaction of AS 25.24.090 and 25.24.100 and
the Soldiers and Sailors Relief Act

TO: Representative Gruenberg

FROM: George Utermohle
Legislative Counsel

This memorandum is in response to your request for an opinion as to whether AS 25.24.090 and 25.24.100 conflict with the terms of the Soldiers and Sailors Civil Relief Act.

AS 25.24.100 provides that a person serving in the military services who has been continuously stationed in the state for a period of one year is to be considered to be a resident for the purposes of bringing an action for divorce in the courts of Alaska. AS 25.24.100 does not make military personnel who have been continuously stationed in the state for a year or more state residents. This provision of state law merely confers one of the benefits of state residency upon certain military personnel.

AS 25.24.090 provides that a non-resident person may bring a divorce action against a spouse in the courts of Alaska if that person's spouse is a resident of the state or has a right to bring an action for divorce in the state courts under AS 25.24.100. The effect of AS 25.24.090 and 25.24.100 together is that a non-resident member of the military may be summoned into an Alaskan court to defend against a divorce action brought by a non-resident spouse.

The Soldiers and Sailors Civil Relief Act (50 app. USCA 501 - 591) protects the rights of military personnel from actions and proceedings in state courts while they are in the service. Military personnel may stay actions or proceedings pending in a state court, vacate default judgments entered against them, stay or vacate judgments, attachments, and numerous other legal proceedings brought against them.

Representative Gruenberg

Page 2

February 25, 1988

The critical fact that must exist before military personnel may invoke the protections of the Act is that their ability to defend or prosecute actions or proceedings be materially affected by reason of their military service. If the military personnel are not materially and adversely affected by reason of their military service, a state court may decide actions or proceedings brought against them and may enter valid and enforceable judgments against them.

Thus the non-resident spouse of a non-resident member of the military stationed in the state could bring a divorce action under AS 25.24.090, if the member has been stationed in the state for the one year period set out in AS 25.24.100. If the member of the military is present in the state and adequately served with notice of the divorce action, the state court has personal jurisdiction. The Soldiers and Sailors Civil Relief Act would not prevent the state court from granting the divorce and granting other relief, unless a member of the military could show that service in the military materially affected the ability to defend the action. It would be difficult for a based in Anchorage, Juneau, or some other major city in the state where a superior court is located to show that the member could not adequately defend the divorce action because military duties prevented an adequate defense. The purpose of the Act is to protect military personnel from legal proceedings occurring in locations far from where they are located which they can not adequately participate in because military obligations foreclose their opportunity to participate. This is not often the case when legal actions are occurring conveniently near the place where the military personnel are permanently stationed.

The ability of an Alaskan court to validly and effectively exercise jurisdiction over non-resident personnel stationed in the state is based upon the establishment of personnel jurisdiction over them by their presence in the state and the ability to adequately serve them with notice of the action. Legal residency is not a factor.

The question has arisen whether AS 25.24.090 and 25.24.100 result in the imposition of Alaska residency upon non-resident military personnel in violation of the Soldiers and Sailors Civil Relief Act. The exercise of personnel jurisdiction over non-resident military personnel under AS 25.24.090 and 25.24.100 is independent of the residency status of the military personnel. The Act does not address

Representative Gruenberg
Page 3
February 25, 1988

the issue of the residency of a member of the military except to provide that the member may establish residency in a state for tax purposes and then maintain that residency for as long as the member remains in the military service without regard to how long the member may be absent from that state. (50 app. USCA 574) The purpose of this provision is to prevent the income and personal property of a member of the military from being subject to taxes in more than one state. This provision does not otherwise bar a state from making determinations as to benefits that may be available to individuals, including military personnel based on their residency status. Thus the state may determine what benefits of residency it may wish to confer on non-resident military personnel and their families.

In conclusion there is no conflict between AS 25.24.090 and 25.24.100 and the Soldiers and Sailors Civil Relief Act. The Act provides protections to military personnel so that they are not adversely affected by actions of state courts as the result of the military personnel's military service. AS 25.24.090 and 25.24.100 allow military personnel and their spouses to take advantage of the divorce laws of the state, however, if a particular member of the military is prejudiced in a divorce action brought in state court due to service in the military, the Act allows the member to obtain a stay or other relief from the action.

GU:bb
wkb3/034

TABLE A.16
POVERTY STATUS^a OF ALASKA AND U.S. FAMILIES
BY RACE, 1980

	<u>All Families</u>			<u>Female-Headed Families, No Husband Present</u>		
	<u>Total</u>	<u>Below Poverty Level</u>		<u>Total</u>	<u>Below Poverty Level</u>	
		<u>Number</u>	<u>% of Total</u>		<u>Number</u>	<u>% of Total</u>
<u>Alaska</u>						
All Races	96,840	8,319	8.6	10,055	2,669	26.5
White	79,300	4,778	6.0	6,549	1,374	21.0
Alaska Native	12,036	3,042	25.3	2,699	1,071	39.7
Black	3,270	301	9.2	570	173	30.3
<u>United States^b</u>						
All Races	59,190	5,670	9.6	8,205	2,484	30.3
White	50,645	3,567	7.0	5,489	1,225	22.3
Black	6,104	1,616	26.5	2,272	1,052	46.3
Spanish Origin	3,274	696	21.3	636	306	48.1

^aA national standard defined by the federal government. Tends to understate poverty in Alaska due to higher living cost.

^bNumbers in thousands

SOURCES: 1980 U.S. Census, Report PC80-1-C3, Table 82.
 1980 U.S. Census, Report PC80-1-C1, U.S. Summary, Tables 96, 139.

Representative Fran Ulmer
P.O. Box V
Juneau, Ak. 99811

April 21, 1987

RECEIVED APR 22 1987

Subject: H.B. 189

Dear Representtative Ulmer:

In reference to H.B. 189 directly, or if Bill is split. Said vehicle must be used to ammend statute custody language to ensure award of joint physical custody by Court, when minor(s) has stated this preference and is also recommended, after investigation of case, by Ad Litum. Necessary statute language follows. We hope, for this States childrens well-being, you will use it! It is the right thing to do.

It was the intent of the people and Legislature, in 1982, after in-depth study, to adopt this basis of fair equality in behalf of minor's well-being. It would also save the State millions of dollars in administration, litigation and policing of support, movement of children to other states and/or countries, delinquency and crimes of all varieties by minors, seven years old and up. Unfortunately, this has yet to occur, due to inadequate and non-specific statute language.

A decision for custody award, during initial dispute or modification, if truely addressing minor(s) well-being, is an easy one to make when adhering to specific law and not allowing the entrance of bias, selfishness and facts not directly related to minor(s) well-being. We must remember that custody disputes are the root issue of most disolutions. However, reality is quite different from rhetoric. Council may use the argument that they follow the adversary process to inform Court of relevent facts. Over ninety percent of the time their alledged facts have no nexus between law, minor's well-being and truth. Children do not get benefit of Jury to decide. They get an individual who may or may not be biased, whom may or may not consider proper facts and the child's well-being only.

For Example, I will quote just two of many attorney's who have similarly stated, "Facts presented in Court have nothing to do with right, wrong, truth or honesty, in winning a case. It has to do with who's the best liar!" Quote-unquote, Phil Wiedner and Ron Drathman.

We must have, at least, the reality of care and equality for minor's. otherwise the State is guilty of abuse of minor's, via mental cruelty. This causes not only grievous despair and anguish of our minor's, but creates disrespect of laws by minor's. As the State has, in no uncertain terms, let m'nor's know that no one really cares and that our laws are meaningless, through unrealistic custody decisions. Children don't get divorced, parents do!

Please review and utilize the following amendment, as it is, 1. In the best interests for the well-being of the children of this State, and 2. Will assist in curtailing disputes of divorcing parties and help avoid mental and possible physical abuse of one another, and 3. Will assist in curtailing the workloads

of our Departments of Revenue, child support enforcement division, Health and Social Services, family and youth service division, Public Safety, State Trooper Division, law's, Court System, as well as all other related political subdivision services, dealing with domestic relations and violence. This equals millions of dollars saved on administrative and personnel costs by making children happy by addressing their well-being, instead of bias, selfishness and or vengeance which has absolutely nothing to do with facts directly related to children(s) well-being.

Thank you for your assistance. It is past time that a decision for minor(s) well-being be made by said minor(s) and the hands on case study reality of Ad Litum, rather than a Judge making decisions on assumption. Anyone who supports fairness, equality and cares about children can support this very right and needed change. The children deserve it and everyone benefits.

AMENDMENTS TO ALASKA STATUTE 25.24.150

Addition's underscored:

Deletion's [bracketed]:

Add last sentence to 25.24.150(a)

Equal physical custody of minor(s) shall be awarded when it is the minor(s) preference and recommended by Ad Litum, as it is considered to be in the minor(s) best interests for well-being:


Add the word only to 24.24.150(c)

(c) The court shall determine custody in accordance with the best interests of the child under AS 25.20.060 - 25.20.130. In determining the best interest of the child the court shall only consider

Add/Delete to 25.24.150 (3)

(3) The child's stated preference if the child is [of sufficient age and capacity to form a preference] age seven (7) years or older and the investigating Ad Litum concurs. Ad Litum's recommendation if child is under age seven (7).

Sincerely,


Janet Wiley
P.O. Box 964
Douglas, Ak. 99824
789-3942

Attachment



FAMILY EQUITY AT ISSUE: A Study of the Economic Consequences of Divorce on Women and Children

During the 1970's social reformers sought to ease the acrimony of divorce and create more fairness and equity for the families involved. "No fault" divorce reform was introduced in many states including Alaska. In addition, Alaska developed a dissolution procedure that allows people to file without the expense of an attorney. Unfortunately, many of these changes have had unintended economic results for women. It now appears that women and children are suffering major financial inequities as a direct result of some of the changes in divorce law and procedure.

The most striking documentation of the "downward mobility" of women and children created by "no fault" divorce was in the state of California. Because of the seriousness of the findings there, in 1986 the Alaska

Women's Commission undertook a study to determine if Alaskan women and children were suffering the same effects.

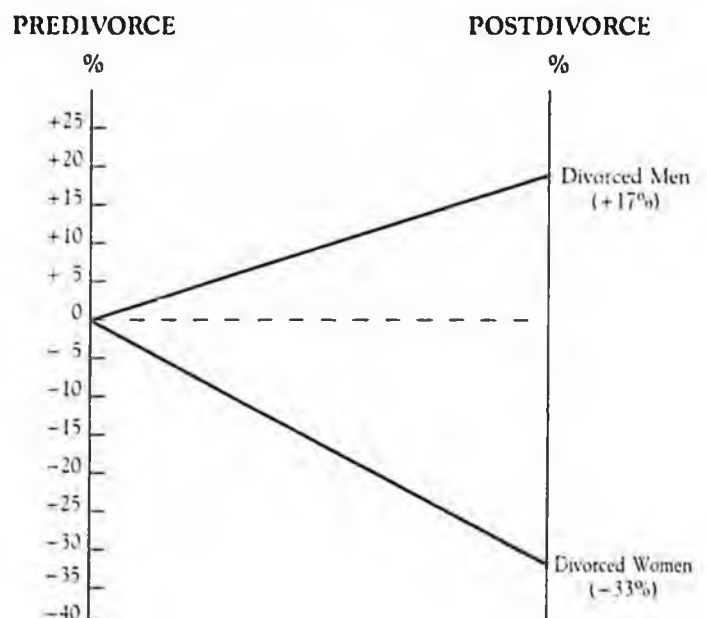
The study of divorce is important because so many people are affected by it. The divorce rate in Alaska is 63 percent compared to 46 percent nationally. More than 11,000 people are affected each year, 3,000 of them children. Even though the two-decade increase in the divorce rate seems to have peaked, each year thousands of Alaskan families are affected by divorce.

The study site chosen was Anchorage, where more than half of the state's divorces occur. A statistically valid sample drawn from all divorce and dissolution cases occurring in a one-year period was analyzed.

GENERAL FINDINGS:

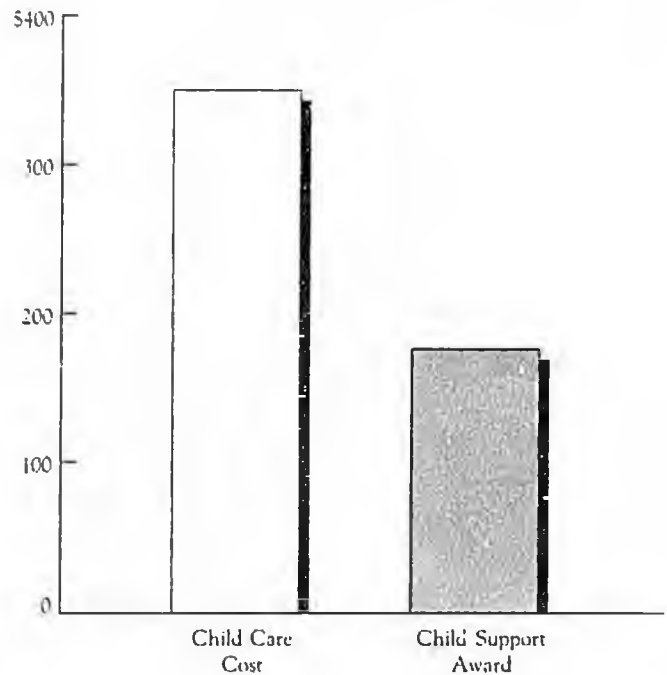
- In Alaska, divorce has substantially different economic consequences for women and men.
- Divorced women and their children experienced a 33 percent decline in per capita income resulting in a radical downward shift of their standard of living (see Figure 1). The greatest relative deprivation was experienced by women and children of middle and upper middle class families.
- Divorced men, however, experienced an improvement in their standard of living as a result of a 17 percent rise in their per capita incomes (see Figure 1).
- In many marriages the couple's major investments were in the education and career of the primary wage earner. Yet the division of marital property often excluded career assets. Disregarding this property allows the major wage earner, usually the husband, to keep what are often the most valuable assets of the marriage.

FIGURE 1: PERCENTAGE CHANGE IN PER CAPITA INCOME OF DIVORCED MEN AND WOMEN



- Fifty-four percent of divorcing men had pensions compared to 33 percent of divorcing women. The median value of the husband's pension was worth more than 3 times that of the wife's (\$27,500 and \$7,500 respectively). Yet, only 20 percent of the couples in the study divided pensions.
- Other types of career assets such as life insurance, paid leave, professional licenses, medical and dental insurance were rarely included in the division of property, even though they were acquired during the marriage.
- Award of the family home was influenced by the presence of children. In 74 percent of the cases, the home was given to the parent having physical custody. Fathers with physical custody almost always got the home (93 percent) while mothers with custody were awarded the family home only 68 percent of the time.
- Among the families who moved following divorce were accounts of children traumatized by the dislocation. New schools and neighborhoods increased the disruption already generated from economic and emotional distress.
- In the absence of children, husbands were awarded the family home and mortgage more frequently (60 percent) than wives (40 percent).
- Alimony was awarded in only 10 percent of the divorces surveyed. For the few who receive it, this "safety net" appears to be an illusion. Awards usually lasted for only one year and provided an average of only \$500 a month, despite the fact that most who received it had no job, no other income or were of an age which makes it difficult to find paid work.
- Divorced mothers are the primary caretakers of children. Sole custody was awarded to mothers in 58 percent of the cases, while fathers received it in 18 percent of the cases. Joint custody was awarded 19 percent of the time.
- Child support was awarded in 80 percent of the divorces where minor children were present. However, the average amount per child was \$191. This barely meets half the monthly cost of child care in Anchorage today (see Figure 2). This figure also falls below the standard used to determine eligibility for welfare.
- Cost of living increments were included in only 23 percent of the child support awards. Without these adjustments, the purchasing power of the support award continually declines because of inflation and the increased costs associated with older children.
- Only 22 percent of child support awards were written beyond the age of majority although financial burdens such as education continue for several years beyond this point.

FIGURE 2: AVERAGE MONTHLY COST OF CHILD CARE COMPARED TO AVERAGE MONTHLY CHILD SUPPORT AWARD



- Only 58 percent of the people in the survey received the full amount of child support awarded. This is consistent with statewide data from the Child Support Enforcement Agency.
- Divorced men are rarely required to pay more than 15 percent of their predivorce income to support their children.

IMPACT OF DISSOLUTION:

In Alaska people can end their marriage in two ways. Both are considered "no-fault." One, a divorce, usually involves attorneys' fees and court hearings, with the judge making a final decision in areas where the two parties cannot agree. The other, a dissolution, can be done without attorneys, with minimal expense, and requires that both parties agree about every issue. About two-thirds of all Alaskan couples who end their marriages choose a dissolution.

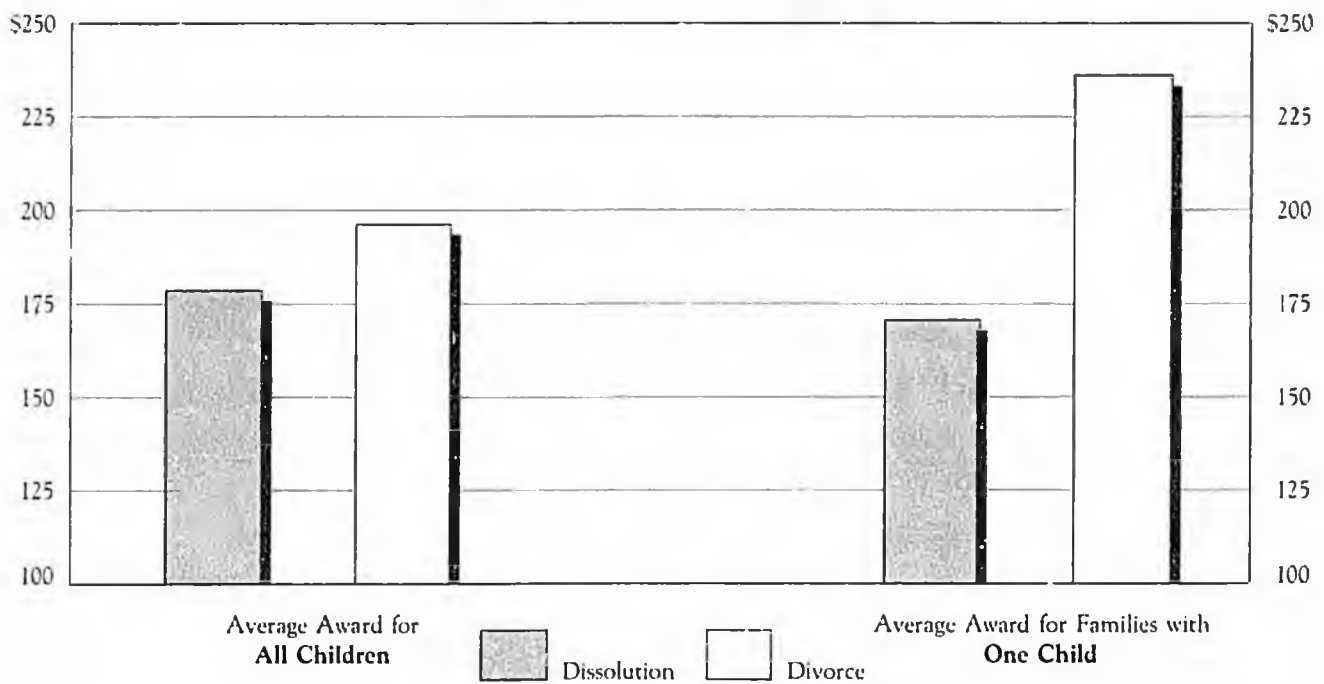
Alaska is one of only 8 states that permit dissolutions. It is also one of the most liberal in its provisions. Most

other states do not permit dissolutions if there are minor children, if the marriage is one of long duration, or if the couple has property. Alaska law places no limitations on the use of dissolutions.

In addition to the study's general findings, it appears that women who choose dissolution suffer even more financial hardship than women who go through a divorce.

- Women who used the dissolution procedure received far less than half of the couple's property. Wives received only 29 percent of the property in dissolutions. Women who used divorce received 50 percent of the marital property.
- Child support awards were lower when the dissolution procedure was used. Particularly hard hit were families with one child where average awards were 27 percent lower than in divorce (see Figure 3).

FIGURE 3: AVERAGE MONTHLY CHILD SUPPORT AWARD FOR ALL CHILDREN AND ONE CHILD FAMILIES BY LEGAL PROCEDURE



SUMMARY:

The findings of this study together with a growing body of research suggest that the current legal system of divorce creates economic hardships for women and children instead of providing greater family equity. Inadequate and poorly enforced child support awards, the near absence of spousal support, and unequal division of marital property are creating a new class of poor.

Divorced women and their children face a precipitous drop in family income. Some face certain impoverishment. Women who choose the dissolution procedure suffer even more financial hardship than those who go through a divorce.

The Alaska Women's Commission was created to ensure equity for women in Alaska. The Commission's current legislative platform attempts to correct many of the inequities that occur under existing divorce laws. The findings of the Commission's study support these efforts.

The report was written by Barbara Baker, research analyst for the Alaska Women's Commission. For a copy of the full report or for more information about the Commission's legislative advocacy, research efforts and educational services, please contact the Commission office at 3601 "C" Street, Suite 742, Anchorage, Alaska 99501 or call 561-4227.

RESOURCES:

Community resources exist to assist people who are considering divorce. The following is a list of some of the agencies who provide legal assistance or counseling.

Legal Assistance:

Alaska Legal Services — Provides legal assistance to low income people. It also screens applicants for the Pro Bono Program which provides free legal assistance to low income people. "Do It Yourself" (Pro Se) Divorce Clinics are also conducted by Alaska Legal Services in some communities. Legal Services is located in Anchorage, Barrow, Bethel, Dillingham, Fairbanks, Juneau, Ketchikan, Kodiak, Kotzebue, Nome, Unalaska.

Dispute Resolution Services, Fairbanks

Counseling and Support:

Women's Resource Centers are located in Anchorage, Barrow, Bethel, Cordova, Fairbanks, Homer, Kenai/Soldotna, Kodiak, Kotzebue, Nome and Wasilla.

Men's Support Network, Anchorage

Father's Rights Group, Fairbanks

RELATED RESEARCH ON DIVORCE:

Lenore Weitzman, *The Divorce Revolution: The Unexpected Social and Economic Consequences for Women and Children in America* (New York: The Free Press, 1986).

Heather Wishik, "Economics of Divorce: An Exploratory Study," *Family Law Quarterly*, Vol. 20, No. 1, Spring 1986.

California Senate Task Force on Family Equity (Sacramento, State of California, 1987).

S. Hofiman and T. Holmes, "Husbands, Wives, and Divorce," *Five Thousand American Families — Patterns of Economic Progress* (Ann Arbor, Michigan: Institute for Social Research, 1976).

William Goods, *After Divorce* (New York: The Free Press, 1956).



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

Members of Commission:

Kris Chatfield, chair
Anchorage
Joy Green-Armstrong, vice chair
Anchorage
Loretta Bullard
Nome
Elizabeth (Pat) Kennedy, Anchorage
Mary Pete, Bethel
Betty Ramage, Anchorage
Wendy Redman, Fairbanks
Paula Ziegler, Juneau

Executive Director

Christine Callahan

Research Analyst

Barbara Baker

State of Alaska

Steve Cowper, Governor
Stephen McAlpine, Lt. Governor

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Anchorage, AK

ADDRESS CORRECTION REQUESTED

Family Law

By Nancy Polikoff

BACKGROUND FACTS

The standard of living of men increases 42 percent one year after divorce, a recent study found. In dramatic contrast, the standard of living of women and children decreases 73 percent one year after divorce.

One of the principle factors contributing to the feminization of poverty is that divorced fathers are not paying sufficient child support; 60 to 80 percent of children in single-parent families receive no child support whatsoever.

Only 59 percent of the 8.4 million divorced, never married and separated women with minor children were awarded any child support, according to Census Bureau's spring 1982 data.

A Colorado study found that two-thirds of fathers were ordered to pay less per month for child support than they paid on monthly car loan payments.

Alimony is, and always has been, virtually nonexistent. Only 17 percent of divorces in California in 1977 resulted in alimony awards. Even among full-time housewives married more than fifteen years, one-third were never awarded alimony. The mean alimony award was \$3,000 and the mean for women over 40 was \$3,600, according to 1981 census data.

Half of divorcing couples have less than \$11,000 worth of distributable property, according to one study.

Although most state statutes now mandate "equitable distribution" of marital assets upon divorce, women are receiving only 30 to 40 percent of the assets.

In the 10 to 17 percent of divorces where custody is contested, fathers prevail 45 to 63 percent of the time.

Recent statutes have given judges greater flexibility in mandating joint custody, even when one parent opposes it.

There is some evidence that joint custody is being inappropriately used to lower child support awards, thereby compounding the devastating economic consequences of divorce for women and children.

THE PROBLEM

The typical divorce looks very different from the woman's perspective than it does from the man's. It is likely that the wife has been either entirely economically dependent upon her husband or has been the secondary wage-earner in the family. It is likely that property which is held in the name of one spouse is held in the husband's name. It is also likely that the husband, and not the wife, has achieved the long-term security of a professional degree, seniority rights, or a guaranteed pension. And it is likely that, even if she is employed, the wife has been the primary caretaker of the children of the marriage. Statutes which govern dissolution of marriage need to take account of these circumstances.

Property division at divorce. While recent changes in divorce law have benefitted women, two crucial aspects of the law of property division still need to be addressed by statutes in most states: (1) The definition of marital or community property often fails to include the value of a pension or a professional degree; and (2) in giving broad discretion to judges, statutes fail to require that, as a starting point, each party should be presumed to be entitled to 50 percent of the divisible property of a marriage.

Alimony. Perhaps no family law area is more shrouded in myth than alimony. The reality is that only a small percentage of women have ever been awarded alimony. While few people would recommend awarding alimony to economically self-sufficient women whose earning potential has not been adversely affected by the marriage, short-term rather than permanent alimony awards should be made when future self-sufficiency is possible. Permanent alimony still is necessary in many instances. Some women should receive alimony, though currently they do not: (1) women who have been full-time homemakers over many years, who have foregone all possible avenues of earning potential and will never be able to meaningfully support themselves; (2) women who have foregone their own career development to further their husbands' education and training and will be unable to obtain further education or training without financial assistance; and (3) women with young children who do not have full-time employment.

Amount of child support awards. Better standards need to be developed for determining the amount of child support awarded. It is largely because child support awards are so low that the standard of living of men increases dramatically after divorce while the standard of living of women and children plummets. The level of child support payments should be set through a resource-sharing approach rather than by the court seeking to determine a fixed monetary value for the

costs of raising a child. This approach seeks to equalize the financial burden of the divorce so that all members of the family -- mother, father and children -- experience about the same proportional reduction in standard of living.

Other reforms needed: 1) automatic cost of living adjustments should be presumed unless the payor could convince a judge that the adjustment should not take place; and 2) courts should be given the power, which they lack in many states, to order a parent to maintain both health and life insurance for the benefit of the children; 3) child support should be terminated at age 21 rather than 18, in order to encourage fathers to share in the expenses of higher education. (See separate chapter on Child Support Enforcement.)

Disputed custody. States have recently begun to replace a "tender years" presumption in custody disputes with a sex-neutral "best interests of the child" standard. Unfortunately, judges interpreting today's sex-neutral custody standards have often given too little weight to which parent has been primarily responsible for child care during the marriage. This undervaluing of "mothering" is often accompanied by consideration of other factors which inappropriately penalize mothers. For example, an employed mother may be judged more harshly than an employed father because the mother is not devoting full time to her expected homemaker role. The father's superior economic position may also make him seem a more attractive custodian.

Men's greater earning power and the substantial costs of litigation are major reasons that fathers who request custody obtain it half the time. Divorcing mothers, because of their disadvantageous economic position, often agree to a lower property division or child support award, in exchange for being able to retain custody without the costs and risks of litigation. This situation has prompted one state supreme court to adopt a presumption that custody will be awarded to the primary caretaker parent, regardless of sex.

The legislation of many states permits a judge to award joint custody over the objection of one parent, but serious unresolved problems exist with such joint custody awards.

Many commentators have cautioned that joint custody can be ordered by a judge as a way to avoid making a difficult choice. This wholly inappropriate approach has nothing to do with the child's best interest. The best approach is to permit joint custody only when both parents agree and when it has been in effect between the parents for enough time for a judge to conclude that the parents can make it work in the child's best interests.

WHAT STATES CAN DO

Amount of Child Support Awards

° States should enact legislation which mandates that judges use resource sharing as the basic premise for child support awards.

° States should enact legislation establishing that the duty to support extends until a child's 21st birthday.

° States should enact legislation establishing automatic cost-of-living adjustments to child support awards unless the payer petitions the court and shows good cause why the adjustment should not be made.

° States should enact legislation authorizing judges to require a parent to maintain health and life insurance for the benefit of the minor children.

° States should enact legislation establishing that a hearing on a child support petition shall not be delayed pending disposition of a custody counterclaim from the other parent.

Property

° States should enact legislation which defines marital or community property to include pensions and professional degrees.

° States should enact a presumption that marital property will be equally divided between the parties, unless the judge enumerates reasons why such a division would be inequitable.

Alimony

° States should enact legislation directing a presumption that an award of alimony to any party married more than twenty years would be permanent alimony.

° States should enact legislation establishing the circumstances under which temporary alimony should be awarded.

Custody

° States should enact legislation requiring judges to give substantial weight in custody disputes to the parent who has acted as the child's primary caretaker.

° States should enact legislation permitting awards of joint custody only when both parents request it, and when the parents have demonstrated the ability to make joint custody work.

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 25, 1988

SUBJECT: Constitutionality of Durational Presence
 Requirement under AS 25.24.100

TO: Representative Gruenberg

FROM: George Utermohle *GU*
 Legislative Counsel

This memorandum is in response to your request for an opinion as to whether the one year durational presence requirement under AS 25.24.100 is a violation of the right to equal protection.

AS 25.24.100 states:

A person serving in a military branch of the United States government who has been continuously stationed in a military base or installation in the state for a period of one year shall be deemed a resident in good faith of the state for the purposes of AS 25.24.010 - 25.24.180.

The issue is whether the state may validly confer the right to bring a divorce action in this state upon non-resident military personnel who have been continuously stationed in the state for one year while denying the same right to non-resident military personnel who have been in the state for less than a year.

The Alaska Supreme Court has stated that, under the state equal protection clause, if legislation creates an identifiable class to be treated differently from others not in the class, the classification

. . . must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so

that all persons similarly circumstanced shall be treated alike.

Isakson v. Rickey, 550 P.2d 359, 363 (Alaska 1976).
Moreover, the object of the legislation must be a legitimate governmental purpose.

In determining whether a statute violates a person's equal protection rights the court will look at the statute to determine what interest of the person is affected. To the extent that the statute affects more important interests such as the right to vote, or makes distinctions based on suspect classifications, such race or religion, the reason for the statute must be more important and the means used to achieve the goal of the statute must be closely tailored to fit the problem without affecting persons who are not part of the problem. If the interests of the person affected by the statute are less important, then the standard applied is more lenient. In the case where only economic interests of a person are affected the court will accept the statute if there is a rational relationship between the problem to be addressed and the means used to solve the problem. Also the closeness of the fit between the means and ends of the statute may be less precise. (Wilson v. Municipality of Anchorage, 669 P.2d 569, 572 (Alaska 1983); State v. Ostrosky, 667 P.2d 1184, 1192-93 (Alaska 1983)).

Under the equal protection analysis used by the Alaska Supreme Court the first step is to identify what interest of the person is affected. In the case of AS 25.24.100 the interest affected is arguably on the one hand the right of access to state courts for divorce and on the other hand the right to be treated the same as other non-resident military personnel. If the interest at stake is the right of access to the state courts for a divorce, the court will use strict scrutiny in analyzing the issue because access to the courts is among those fundamental rights which are most highly protected under the equal protection clause. Under strict scrutiny, the state must have a compelling reason for distinguishing between non-resident military personnel who have been present in the state for a year and those who have been in the state for less than a year. In Adams v. State, 522 P.2d 1125 (Alaska 1974), the court found that the state must have a compelling state interest to justify limited access to state courts by state residents who have not lived in the state for a year or more and as a consequence, overturned a one year durational residency requirement..

It is not certain that the issue posed by AS 25.24.100 is a clear issue of access to the state divorce courts. The state does have some power to reasonably limit access to its courts by non-residents. If the state could limit access to the state divorce courts to residents, then the issue is not one of access to the courts but rather an issue of discriminating between classes of non-resident military personnel. The state need only have a rational basis for discriminating between classes of individuals if their only interest at stake is their right to be treated the same as other persons similarly situated.

The next step in the analysis is to determine what is the state's interest in discriminating between the two classes of non-resident military personnel. An evident reason for the discrimination is to protect the integrity of its divorce decrees. The state wants to establish an adequate nexus between the state and the non-resident military personnel who are seeking the divorce. Non-resident military personnel are residents of other states and by virtue of their non-resident status have declared that they do not intend to remain in the state. Absent a satisfactory nexus to the marriage that is terminated by the divorce, the divorce decree of the Alaska court is subject to collateral attack in another state.

The final step in the analysis is to weigh the interests of the person against the interest of the state. Under strict scrutiny the states must have a compelling state interest for distinguishing between the classes of people and the means chosen to achieve the end must be very precise and may not affect more persons than necessary to address the problem. The state's interest in assuring an adequate nexus between the state and the persons seeking a divorce does not rise to the level of a compelling state interest. The state has other means available to it to determine whether the adequate nexus is present. The use of the 12 month durational presence as the criteria for determining whether an adequate nexus exists is overbroad. Some non-resident military personnel could establish an adequate nexus with the state in a relatively short time, while others could not establish a sufficient nexus after being present in the state for several years. Thus under strict scrutiny, the requirement for a durational presence in the state under AS 25.24.100 would be unconstitutional.

Under the rational basis test, the state needs only to have a legitimate state purpose to achieve through its discrimination between classes of non-resident military personnel and the fit between means and end of the statute do not need to be very precise. The preservation of the integrity of the state's divorce decrees is a legitimate state purpose and may outweigh the interests of short term non-resident military personnel not to be discriminated against, however the use of an arbitrary 12 month durational presence requirement as the sole criteria for discriminating between non-resident military personnel may be too imprecise to be acceptable, even under the highly deferential rational basis. The alternative available to the state, to allow the divorce courts to determine based on the facts before it whether an adequate nexus exists, is so much more efficient and precise that the durational presence requirement of AS 25.24.100 would not survive even a rational basis analysis.

In conclusion, the durational presence requirement of AS 25.24.100 is subject to challenge under the equal protection clause of the Alaska Constitution (Art. I, sec. 1), because it discriminates between classes of non-resident military personnel in the state based upon the length of time they have been present in the state. Under strict scrutiny by the courts the durational presence requirement would be unconstitutional and even under the highly deferential rational basis test it is possible that the requirement could be unconstitutional. However, in my view, the court would not find that strict scrutiny is the appropriate standard of review and that under a rational basis standard, the durational presence requirement would be sustained.

In the time available, it has not been possible to research into how other states have treated this issue.

GU:bb
wkb3/033

**STATE OF ALASKA 1988 LEGISLATIVE SESSION
FISCAL NOTE**

REQUEST:

Bill Version: CSHB 189 (HESS)
Publish Date: HOUSE 2/26/88

Revision Date: 02/25/88
Title: An act relating to divorce and
dissolution
Sponsor: House HESS
Requestor:

Agency Affected: Alaska Court System
BRU: Trial Courts

Components:

EXPENDITURES/REVENUES:		(Thousands of Dollars)				
OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
Personal Services	83.1	83.1	83.1	83.1	83.1
Travel	10.4	7.5	7.5	7.5	7.5
Contractual
Supplies
Equipment	8.2	. . . .	. . . .	. . . .	. . . .
Land & Structures
Grants & Claims
TOTAL OPERATING	0.0	101.7	90.6	90.6	90.6	90.6

CAPITAL
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REVENUE
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FUNDING:		(Thousands of Dollars)				
General Funds	0.0	101.7	90.6	90.6	90.6	90.6
Federal Funds
Other	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
TOTAL	0.0	101.7	90.6	90.6	90.6	90.6

POSITIONS:						
Full-time	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Part-time	. . . .	3.0	3.0	3.0	3.0	3.0
Temporary	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .

ANALYSIS: (Attach a separate page if necessary)

See attached fiscal analysis.

Prepared by: Jan Strandberg, General Counsel
Division: Alaska Court System
Phone: 264-8228
Date: 2-25-88

Approved by: Arthur H. Snowden, II, Administrative Director
Agency: Alaska Court System
Date: 2-25-88

- Distribution (by preparer):
- Legislative Finance
 - Legislative Sponsor
 - Requestor
 - Office of Management & Budget
 - Impacted Agency(ies)
 - Senate Secretary

ALASKA COURT SYSTEMCS HB 189 - FISCAL ANALYSISCSHB 189(HESS)
No. 2
HOUSE 2/26/88

<u>Personal Services:</u>	<u>Salary</u>	<u>Benefits</u>	<u>Total</u>
Special Master, Range 24A, Fairbanks, PPT - 6 months	\$32,310	\$9,215	\$41,525
Custody Investigator, Range 18A, Anchorage, PPT - 6 months	18,774	6,255	25,029
Court Clerk II, Range 10B, Palmer, PPT - 6 months	11,790	4,728	16,518

Total Personal Services			83,072

Travel:			
Custody investigator travel-			
Monthly service to Kenai and Kodiak. Quarterly service to Ketchikan, Sitka, Wrangell, & Petersburg			7,500
Forms Committee meeting- (one time cost)			
Cost of Dissolution Forms Committee meeting in Anchorage for two days with one and one-half days of in-transit time.			2,900

Total Travel			10,400

Equipment: (one time cost)			
Desk, chair, filing cabinet, and typewriter for each new employee			8,202

Total First Year Cost			\$101,674
			=====

ALASKA COURT SYSTEM

CSHB 189 (HESS)

HB 189 - FISCAL ANALYSIS

HOUSE 2/26/88

Summary of FY 87 Filings - Dissolution of Marriage

<u>Court</u>	<u>Number of Filings</u>	<u>Estimated # of Cases Involving Children (1)</u>	<u>Estimated # of Cases Requiring Custody Investigation (2)</u>
Anchorage	1,641	1,099	110
Fairbanks	556	373	37
Palmer	178	119	12
Kenai	164	110	11
Kodiak	65	44	4
Juneau	171	115	12
Ketchikan	122	82	8
Sitka	54	36	4
Wrangell/ Petersburg	27	18	2
Others	80	54	5

- (1) Two-thirds of dissolution cases are estimated to involve children.
- (2) Ten percent of dissolution cases involving children are estimated to require custody investigations.

**STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE**

No. 1

REQUEST: _____

Bill Version: HB 189
Publish Date: HOUSE 3/18/87

Revision Date: _____
Title: An Act Relating to
Divorce and Dissolution
Sponsor: Rules Committee
Requestor: Governor

Agency Affected: Office of the Governor
BRU: Special Offices/Commissions

Components: Alaska Womens Commission

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		0	0	0	0	0

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

REVENUE						
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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: Michael A. Nizich, Director
Division: Administrative Services

Man

Phone: 465-3616
Date: 3-9-87

Approved by Commissioner: Carol P. Kastelic
Agency: Office of the Governor

CPK

Date: 3-9-87

Distribution (by preparer):

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

**STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE**

Bill Version: HB 189
Publish Date:

REQUEST: _____

Revision Date: _____ Agency Affected: Alaska Court System
Title: An act relating to divorce and BRU: Trial Courts
 dissolution.
Sponsor: Rules by request of governor Components:
Requestor: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)						
	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
OPERATING						
Personal Services	81.7	81.7	81.7	81.7	81.7
Travel	10.4	7.5	7.5	7.5	7.5
Contractual
Supplies
Equipment	8.2	. . . .	. . . .	. . . .	. . . .
Land & Structures
Grants & Claims
TOTAL OPERATING	0.0	100.3	89.2	89.2	89.2	89.2
CAPITAL
REVENUE

FUNDING: (Thousands of Dollars)						
General Funds	0.0	100.3	89.2	89.2	89.2	89.2
Federal Funds	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Other	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
TOTAL	0.0	100.3	89.2	89.2	89.2	89.2

POSITIONS:						
Full-time	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Part-time	. . . .	3.0	3.0	3.0	3.0	3.0
Temporary	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .

ANALYSIS: (Attach a separate page if necessary)

See attached analysis.

Prepared by: Karla Forsythe, General Counsel Phone: 264-8228
Division: Alaska Court System Date: 4-1-87
Approved by: *Stephanie J. Cole* Deputy Director Date: 4-1-87
Agency: Alaska Court System

- Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management & Budget
Impacted Agency(ies)
Senate Secretary

ALASKA COURT SYSTEM
HB 189 - FISCAL ANALYSIS

Personal Services:	Salary	Benefits	Total
Special Master, Range 24A, Fairbanks, PPT - 6 months	\$32,310	\$8,789	\$41,099
Custody Investigator, Range 18A, Anchorage, PPT - 6 months	18,774	5,781	24,555
Court Clerk II, Range 10B, Palmer, PPT - 6 months	11,790	4,228	16,018 -----
Total Personal Services			81,672 -----
 Travel:			
Custody investigator travel-			
Monthly service to Kenai and Kodiak. Quarterly service to Ketchikan, Sitka, Wrangell, & Petersburg			7,500
Forms Committee meeting- (one time cost)			
Cost of Dissolution Forms Committee meeting in Anchorage for two days with one and one-half days of in-transit time.			2,900 -----
Total Travel			10,400 -----
 Equipment: (one time cost)			
Desk, chair, filing cabinet, and typewriter for each new employee			8,202 -----
Total First Year Cost			\$100,274 =====

ALASKA COURT SYSTEM

HB 189 - FISCAL ANALYSIS

Summary of FY 86 Filings - Dissolution of Marriage

Court	Number of Filings	Estimated # of Cases Involving Children (1)	Estimated # of Cases Requiring Custody Investigation (2)
Anchorage	1,703	1,141	114
Fairbanks	511	342	34
Palmer	222	149	15
Kenai	193	129	13
Kodiak	76	51	5
Juneau	195	131	13
Ketchikan	111	74	7
Sitka	37	25	3
Wrangell/ Petersburg	30	20	2

(1) Two-thirds of dissolution cases are estimated to involve children.

(2) Ten percent of dissolution cases involving children are estimated to require custody investigations.

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST: _____

Bill Version: HB 189

Publish Date: _____

Revision Date: _____

Agency Affected: Public Safety

Title: An Act relating to divorce
and dissolution

BRU: Council on Domestic
Violence & Sexual Assault

Sponsor: Rules/Governor

Components: _____

Requestor: House HESS

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
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, Executive Director
Division: Council on Domestic Violence & Sexual Assault

Phone: 465-4356
Date: 3-31-87

Approved by Commissioner: [Signature]
Agency: Public Safety

Date: 4/1/87

Distribution (by preparer):

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

JWR
4/1/87