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# HOUSE COMMITTEE REPORT

(11)

Date Referred: April 3, 1989

FURTHER REFERRALS:

Date of Committee Action: 4/24/89

The FINANCE Committee considered:

HB 195

HOUSE BILL NO. 195

[DIVORCE, DISSOLUTION, & ANNULMENT]

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

**RECOMMENDATIONS:**

- be replaced with CS HB 195 (Finance)  the same title
- have attached amendment(s)  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):  
(Dept)

APPROVES PREVIOUS: (Date/Dept)

- fiscal impact \_\_\_\_\_
- zero fiscal note H. Fin.
- zero with analysis \_\_\_\_\_

- fiscal note(s) \_\_\_\_\_
- zero fiscal note(s) \_\_\_\_\_
- zero fn/analysis \_\_\_\_\_

**SIGNING DO PASS:**

**SIGNING:**  
(Check approp. column)

Ronald J. Larson  
Swackhammer  
Brown  
Olmer  
Barnes  
Wallis

	Do Not Pass	No Rec	Amend
<u>Koponen</u>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<u>Phillips</u>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<u>Rieger</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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co- Ronald J. Larson  
Chairman's Signature

**FISCAL NOTE**

**REQUEST:**

Revision Date: \_\_\_\_\_  
 Title: An act related to divorce and dissolution  
 Sponsor: \_\_\_\_\_  
 Requestor: House Finance

Agency Affected: Alaska Court System  
 BRU: Trial Courts  
 Components: \_\_\_\_\_

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

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	-0-	-0-	-0-	-0-	-0-	-0-
<b>CAPITAL</b>	-0-	-0-	-0-	-0-	-0-	-0-
<b>REVENUE</b>	-0-	-0-	-0-	-0-	-0-	-0-

**FUNDING: (Thousands of Dollars)**

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

**POSITIONS:**

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

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

Prepared by: House Finance Committee Phone: 465-3727  
 Division: Co-Chairman Ron Larson Ronald I. Larson Date: 4/28/89  
Co-Chairman Lyman Hoffman Lyman Hoffman 24  
 Approved by Commissioner: \_\_\_\_\_ Date: \_\_\_\_\_  
 Agency: \_\_\_\_\_

**Distribution (by preparer) :**

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

Adopted

Original sponsor: Rules/Governor

1 IN THE HOUSE

BY THE FINANCE COMMITTEE

2 CS FOR HOUSE BILL NO. 195 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST 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:

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 has  
13 been continuously stationed at [IN] a military base or installation in  
14 the state for at least 30 days is considered [A PERIOD OF ONE YEAR  
15 SHALL BE DEEMED] a resident [IN GOOD FAITH] of the state for the  
16 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; in  
23 applying this paragraph, the court shall take appropriate steps to  
24 ensure that the award of attorney fees does not contribute to an  
25 unnecessary escalation in the extent to which attorneys are used;

26 (2) reasonable spousal maintenance, including medical  
27 expenses; and

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

1 provide support.

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

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

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

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

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

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

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

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

22 \* Sec. 3. AS 25.24.160(a) is amended to read:

23 (a) In a judgment in an action for divorce or action declaring a  
24 marriage void or at any time after judgment, the court may provide

25 (1) for the payment by either or both parties of an amount  
26 of money or goods, in gross or installments that may include cost-  
27 of-living adjustments, as may be just and proper for the parties to  
28 contribute toward the nurture and education of their children, and the  
29 court may order the parties to arrange with their employers for an

1 automatic payroll deduction each month or each pay period, if the  
2 period is other than monthly, of the amount of the installment; if the  
3 employer agrees, the installment shall be forwarded by the employer to  
4 the clerk of the superior court that [WHICH] entered the judgment or  
5 to the court trustee, and the amount of the installment is exempt from  
6 execution;

7 (2) for the recovery by one party from the other of an  
8 amount of money for maintenance, in gross or in installments, as may  
9 be just and necessary without regard to which of the parties is in  
10 fault; an award of maintenance must take into consideration the extent  
11 to which each spouse contributed to the acquisition of career assets;

12 (3) for the delivery to either party of that party's per-  
13 sonal property in the possession or control of the other party at the  
14 time of giving the judgment;

15 (4) for the division between the parties of their property,  
16 including retirement benefits, whether joint or separate, acquired  
17 only during marriage [COVERTURE], in a just [THE] manner [AS MAY BE  
18 JUST,] and without regard to which of the parties is in fault; howev-  
19 er, the court, in making the division, may invade the property, in-  
20 cluding retirement benefits, of either spouse acquired before marriage  
21 when the balancing of the equities between the parties requires it;  
22 and to accomplish this end the judgment may require that one or both  
23 of the parties assign, deliver, or convey any of their real or person-  
24 al property, including retirement benefits, to the other party; a  
25 division of property must take into consideration the extent to which  
26 each spouse contributed to the acquisition of career assets

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

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

29 Sec. 25.24.165. CHANGE OF NAME IN DIVORCE OR ANNULMENT. (a) In

1 a judgment in an action for divorce or action declaring a marriage  
2 void, the court may change the name of either of the parties.

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

18 \* Sec. 5. AS 25.24.200 is amended to read:

19 Sec. 25.24.200. DISSOLUTION OF MARRIAGE. (a) A husband and  
20 wife together may petition the superior court for the dissolution of  
21 their marriage under AS 25.24.200 - 25.24.260 if the following con-  
22 ditions exist at the time of filing the petition:

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

25 (2) if there are minor children of the marriage or the wife  
26 is pregnant, and the spouses have agreed on which spouse or third  
27 party is to [SHALL] be awarded custody of each minor child of the  
28 marriage and the extent of visitation, including visitation by grand-  
29 parents and other persons, if in the child's best interests, and

1 support to be provided on the children's behalf, whether the payments  
2 are to be made through the child support enforcement agency and the  
3 tax consequences of that agreement;

4 (3) the spouses have agreed as to the distribution of all  
5 jointly owned real and personal property, including retirement bene-  
6 fits, and the payment of spousal maintenance [SUPPORT], if any, and  
7 the tax consequences resulting from these payments; the agreement must  
8 be fair and just and take into consideration career assets; and

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

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

15 (1) incompatibility of temperament, as evidenced by extend-  
16 ed absence or otherwise, has caused the irremediable breakdown of the  
17 marriage;

18 (2) the petitioning spouse has been unable to ascertain the  
19 other spouse's position in regard to the dissolution of their marriage  
20 and in regard to the fair and just division of property, including  
21 retirement benefits, spousal maintenance, payment of debts, and  
22 custody, support and visitation because the whereabouts of the other  
23 spouse is unknown to the petitioning spouse after reasonable efforts  
24 have been made to locate the absent spouse; the division of property  
25 and spousal maintenance must take into consideration career assets;  
26 and

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

29 (c) Except as provided in AS 25.24.220(i). [NOTHING IN THIS

1 SECTION PROHIBITS] a spouse who has been personally served with a copy  
2 of a petition filed [MADE] under (a) of this section may execute [FROM  
3 EXECUTING] an appearance, waiver of time to answer, and waiver of  
4 notice of hearing. The appearance and waivers must [SHALL] include an  
5 acknowledgment signed before an officer authorized to administer an  
6 oath or affirmation that the spouse being served has read the peti-  
7 tion; assents to the terms relating to custody of the children, child  
8 support, visitation, spousal maintenance taking into consideration  
9 career assets, [SUPPORT] and [RESULTANT] tax consequences, division of  
10 property, including retirement benefits and taking into consideration  
11 career assets, and allocation of debts; agrees that the conditions  
12 otherwise required by (a) of this section exist; agrees that the  
13 petition constitutes the entire agreement between the parties;  
14 understands fully the nature and consequences<sup>ff</sup> of the action; and is  
15 not signing the appearance and waivers under duress or coercion.

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

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

23 (e) A division of property, and spousal maintenance, must take  
24 into consideration career assets.

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

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

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

1 (e) If the petition is filed by both spouses under AS 25.24.-  
2 200(a), the petition must state in detail the terms of the agreement  
3 between the spouses concerning the custody of children, child support,  
4 visitation, spousal maintenance and tax consequences, if any, and fair  
5 and just division of property, including retirement benefits. Agree-  
6 ments on spousal maintenance and property division must take into  
7 consideration career assets. In addition, the petition must state

8 (1) the respective occupations of the petitioners;

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

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

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

15 (5) whether the wife is pregnant;

16 (6) whether either petitioner requires medical care or  
17 treatment;

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

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

22 (9) other facts and circumstances that the petitioners  
23 believe should be considered;

24 (10) that the petition constitutes the entire agreement  
25 between the petitioners; and

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

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

28 (b) Except as provided in (i) of this section, if the petition  
29 is filed by both spouses under AS 25.24.200(a), both spouses shall

1 attend the hearing personally and not through counsel. However, if  
2 the petition is not subject to (i) of this section, a spouse who  
3 complies with AS 25.24.200(c) is not required to attend the hearing.  
4 Either spouse may have counsel at the hearing.

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

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

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

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

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

17 (2) the written agreements between the spouses concerning  
18 child custody, child support, and visitation are [FAIR,] just [, AND  
19 EQUITABLE] as between the spouses and in the best interests of the  
20 children of the marriage;

21 (3) the written agreements between the spouses relating to  
22 the division of property, including retirement benefits, spousal  
23 maintenance [SPOUSAL SUPPORT], and the allocation of obligations are  
24 [FAIR,] just; the division of property and spousal maintenance must  
25 take into consideration career assets; [, AND EQUITABLE; AND]

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

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

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

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

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

7 (g) The court may amend the written agreements between the  
8 spouses relating to child custody, child support, visitation, [SPOUSAL  
9 SUPPORT,] division of the property, including retirement benefits,  
10 spousal maintenance, and allocation of obligations, but only if both  
11 petitioners concur in the amendment in writing or on the record.  
12 Division of property and spousal maintenance must take into consid-  
13 eration career assets.

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 domestic  
22 violence during the marriage;

23 (3) there is a minor child 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 interest 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 on the record that it would constitute  
5 a significant hardship on one of the spouses to appear and that a just  
6 agreement has been reached. If one of the spouses cannot attend the  
7 hearing because it would constitute a significant hardship, the court  
8 may require that spouse to be available by telephone to answer ques-  
9 tions, at that spouse's expense.

10 (j) If the court exercises a higher level of scrutiny under (h)  
11 of this section because one party is represented by counsel and the  
12 other is not, and the court is uncertain whether the agreement between  
13 the parties is just, the court shall resolve its uncertainty by making  
14 a finding that gives priority to the interests of the party that is  
15 not represented by counsel if the facts presented and the law applica-  
16 ble to the proceeding permit the finding.

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

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

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

26 (2) the written agreements between the spouses concerning  
27 spousal maintenance and tax consequences, if any, division of proper-  
28 ty, including retirement benefits, and allocation of obligations are  
29 fair and just and constitute the entire agreement between the parties;

1 division of property and spousal maintenance must take into consid-  
2 eration career assets;

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

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

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

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

14 (2) the written agreements between the spouses concerning  
15 child custody, child support, and visitation are in the best interest  
16 of the children of the marriage, constitute the entire agreement of  
17 the parties on child custody, child support, and visitation, and, as  
18 between the spouses, are just;

19 (3) the written agreements between the spouses concerning  
20 spousal maintenance and tax consequences, if any, division of proper-  
21 ty, including retirement benefits, and allocation of obligations are  
22 just and constitute the entire agreement between the parties; division  
23 of property and spousal maintenance must take into consideration  
24 career assets;

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

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

28 (c) If the petition is filed by one spouse under AS 25.24.-  
29 200(b), the court may grant the spouse a final decree of dissolution

1 and change the petitioner's name, if so requested, if the court, upon  
2 consideration of affidavits supplied by the spouse and the testimony  
3 of the spouse at the hearing, finds that

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

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

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

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

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

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

16 (3) the petition alleges that the conditions in AS 25.24.-  
17 200(b) exist, but the whereabouts of the absent spouse becomes known  
18 to the other spouse or the court before findings are made.

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

22 (f) If the petition is filed by both spouses under AS 25.24.-  
23 200(a), the court shall change either spouse's name, if the spouse  
24 seeking a change of name to a name other than a prior name complies  
25 with AS 25.24.165(b), and shall fully and specifically set out in the  
26 decree the written agreements of the spouses and shall order the  
27 performance of those written agreements. The court shall also state,  
28 in the decree, whether child support payments are to be made through  
29 the child support enforcement agency. If the petition is filed by one

1 spouse under AS 25.24.200(b), the decree must state that it does not  
2 bar future action on the issues not resolved in the decree.

3 (g) Notwithstanding other provisions of AS 25.24.200 - 25.24.-  
4 260, the court may not award to one spouse real or personal property  
5 acquired by the other spouse before the date of the marriage, unless  
6 the spouses expressly agree otherwise or the court determines that the  
7 property should be made available, by sale or other conveyance, to  
8 ensure that the best interests of the children are provided for. If  
9 the court determines that the best interests of the children require  
10 an award of premarital property, but the spouses do not agree, the  
11 court shall dismiss or continue the action.

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

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

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

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

23 ARTICLE 4. GENERAL PROVISIONS.

24 Sec. 25.24.400. DEFINITION. In this chapter, "career assets"  
25 means the ability of a spouse to earn money resulting from that  
26 spouse's education, profession, or employment that was acquired at  
27 least in part as a result of the direct or indirect contribution,  
28 including the value of homemaking and child rearing services, provided  
29 by the other spouse.

1 \* Sec. 18. AS 25.24.165, as added by sec. 4 of this Act, AS 25.24.-  
2 210(d) as amended by sec. 7 of this Act, and AS 25.24.230(c) and 25.24.-  
3 230(f) as amended by sec. 15 of this Act, have the effect of amending Rule  
4 84(a), Alaska Rules of Civil Procedure, to allow a change of name to a name  
5 other than a prior name to be commenced in a complaint for divorce or  
6 annulment or a petition for dissolution of marriage.  
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*Amendment 1*

A M E N D M E N T

OFFERED IN THE HOUSE

BY RIEGER

TO: CSHB 195 (Judiciary)

Page 10, after line 6:

Insert a new subsection to read:

"(j) If the court exercises a higher level of scrutiny under (h) of this section because one party is represented by counsel and the other is not, and the court is uncertain whether the agreement between the parties is just, the court shall resolve its uncertainty by making a finding that gives priority to the interests of the party that is not represented by counsel if the facts presented and the law applicable to the proceeding permit the finding."

AMENDMENT

#2.

IN THE HOUSE

BY RIEGER

TO: CSHB 195 (Judiciary)

Page 1, line 22, after "action;":

Insert "in applying this paragraph, the court shall take appropriate steps to ensure that the award of attorney fees does not contribute to an unnecessary escalation in the extent to which attorneys are used;"

4/24/89

A M E N D M E N T 2  
(withdrawn)

OFFERED IN THE HOUSE

BY RIEGER

TO: CSHB 195 (Judiciary)

Page 13, line 16:

Delete "that"

Insert "to the extent that it"

Page 13, lines 16 - 17:

Delete "at least in part"

4/24/89pm Attachment 3

STEVE COWPER  
GOVERNOR



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

cc  
HB 195

February 24, 1989

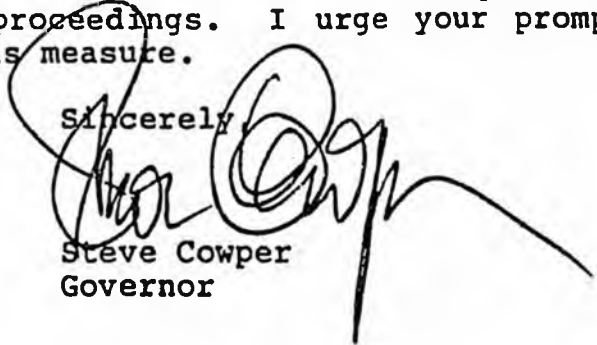
The Honorable Sam Cotten  
Speaker of the House  
Alaska State Legislature  
P.O. Box V  
Juneau, AK 99811

Dear Mr. Speaker:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill to amend the Alaska Statutes regarding divorce proceedings and marriage dissolution proceedings. The bill deals expressly with award of spousal maintenance and attorney fees during the pendency of a proceeding, judicial scrutiny of marriage dissolution agreements, and name changes in connection with divorces and dissolutions. The bill includes some clean-up and technical amendments, and, in so doing, 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.")

I believe that the changes proposed in this bill will result in significantly greater justice in divorce and dissolution proceedings, as well as providing some basic clean-up in the statutes governing those proceedings. I urge your prompt and favorable action on this measure.

Sincerely,

  
Steve Cowper  
Governor

LAW OFFICE  
G. R. ESCHBACHER

---

718 BARROW STREET  
ANCHORAGE, ALASKA 99501  
[907] 276-8001

March 17, 1989

Max Gruenberg  
P.O. Box V  
Juneau, Alaska 99811

RE: House Bill #195

Dear Max,

The undersigned would appreciate your support of house bill #195. The Alaska Supreme Court, in it's January 1989 decision in Moffett v Moffett, emasculated the ability of the non-working spouse to obtain a fair settlement when the husband is a professional who has career assets. House bill #195 will go a long way toward remedying this injustice.

Very truly yours,



G. R. Eschbacher

# MEMORANDUM

State of Alaska  
Department of Law

TO: Shari Kochman  
Legislative Staff Assistant  
Office of the Governor

DATE: March 2, 1989

FILE NO: 773-89-0094

TEL. NO: 465-3603

SUBJECT: Sectional analysis of  
HB 195a

FROM: Elizabeth L. Shaw  
Assistant Attorney General

Attached is a sectional analysis of HB 195. Please let me know if there is anything further needed.

ELS:bap

Attachment

cc: Art Peterson w/copy of analysis  
Ruth Lister w/copy of analysis

## SECTIONAL ANALYSIS OF HB 195

HB 195 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 section-by-section description follows.

### Section 1

In sec. 1, the bill amends AS 25.24.100 to eliminate a one year durational residency requirement for divorce proceedings for military personnel stationed in Alaska.

### Section 2

In sec. 2, 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.

### Section 3

In sec. 3, the bill amends AS 25.24.160(a)(4) to include retirement benefits in the property that may be divided at the time of the divorce. The amendment also provides that in the property division decisions the court must consider the contribution of each spouse in the acquisition of career assets. Career assets, defined in sec. 17 of the bill, means the ability of a spouse to earn money resulting from the education, profession or employment acquired in part as a result of the contributions, including homemaking and child rearing, provided by the other spouse.

#### Section 4

In sec. 4, the bill adds a new section which provides that in the divorce or annulment action a court has jurisdiction to change the name of either party. The new section provides a notice and hearing procedure for the change of name to other than a prior name.

#### Section 5

AS 25.24.200 (a), (b) and (c) are amended in sec. 5 to reflect that property to be distributed in a property settlement in a dissolution proceeding includes retirement benefits and consideration of 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, if there are minor children of the marriage, or if there is a patently inequitable division of the marital estate, 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 6

Section 6 of the bill adds a new subsection to AS 24.25.-200 which specifically states that property division and spousal maintenance must take into consideration career assets.

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Section 7 makes an amendment in the provision regarding a spouse changing his or her name as part of the dissolution process. A spouse may change his or her name as part of the dissolution action, not merely restore his or her prior name.

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Section 8 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 career assets has also been added, to correspond to other amendments made by the bill.

### Section 9

Section 9 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. One of the spouses to be absent from the hearing if the court finds it would be an undue hardship for him or her to attend.

### Sections 10 and 12

Section 10 and sec. 12 of the bill make conforming amendments to AS 25.24.220 (c) and AS 25.24.220 (e) to provide consistency in references.

### Section 11

Section 11 of the bill amends AS 25.24.220(d) 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(d). This statute currently using 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."

### Section 13

AS 25.24.220(g) is amended in sec. 13 of the bill to require that the court's amendments to written agreements must be agreed to by both petitioners in writing or on the record. Other conforming amendments regarding retirement benefits and career assets are also made in this subsection.

### Section 14

AS 25.24.220 is further amended in sec. 14 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.

### Section 15

Section 15 of the bill repeals and reenacts AS 25.24.-230(a) to require that if the dissolution petition is not subject to AS 25.24.220(b), 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 consideration of career assets, and allocation of obligations,

are fair and just. In this case there would be no children of the marriage to consider.

Section 15 also repeals and reenacts AS 25.24.230(b) to require that, if there are children of the marriage, if only one party is represented by counsel, if a complaint for domestic violence has been filed during the marriage, or if the division of the marital estate is patently inequitable (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 consequence of their action and that they entered into the agreements voluntarily and free from coercion.

The language of existing AS 25.24.230(b) -- (g) appears as AS 25.24.230(c) -- (h) in the bill, with some minor corrections and conforming language changes including a hearing and notice requirement if a spouse seeks a change of a name other than a prior name.

#### Section 16

AS 25.24.250 is amended in sec. 16 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 17

Section 17 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.

#### Section 18

Section 18 of the bill notes that the effect providing for hearing and notice procedures for name changes in divorce and dissolution proceedings will have the effect of amending Rule 84(a), Alaska Rules of Civil Procedure.

## HB 195, "Divorce/Dissolution Bill"

HB 195 is aimed at correcting some of the deficiencies of Alaska's divorce and dissolution statutes. Divorce and dissolution are two different processes used to achieve the same result: a decree of divorce. Dissolutions allow people to become divorced without retaining attorneys, provided that both parties agree on all issues. Recent research by the Women's Commission (Family Equity at Issue, 1987) indicates that women are agreeing to inequitable divorce settlements for a number of reasons. One reason is that they do not have the financial resources to contest the settlement, and therefore have no alternative but to agree to inequitable terms of a dissolution.

HB 195 clarifies and strengthens the courts prerogative of requiring one spouse to provide reasonable spousal support including attorney's fees while the divorce is pending. This would assist women in contesting inequitable settlements.

Another reason women may be agreeing to unreasonable settlements is that there is a history of violence or an otherwise unequal distribution of power in the relationship. HB 195 would require parties in a dissolution to disclose the following:

- the existence of any domestic violence complaints,
- either party having received legal counsel,
- either party needing medical care,
- that the agreement constitutes the entire agreement between the parties.

In the event that any of the following conditions exist:

- there are minor children,
- there is evidence of domestic violence,
- one party has an attorney,
- there is a patently inequitable division of property,

HB 195 would require heightened judicial scrutiny of the dissolution. This bill would also require that both parties be present at the hearing unless there are compelling circumstances warranting absence.

HB195 would also give either party the option of changing his or her name as part of the divorce process in addition to the option under current law of keeping the married name or restoring the prior name.

Finally, HB 195 would add language to include career assets to the statutes regarding the division of property and award of spousal maintenance. Career assets are defined as the ability of a spouse to earn money as a result of education, profession, or employment acquired in part through the contributions, including homemaking and child care, provided by the other spouse.

# ALASKA NETWORK ON DOMESTIC VIOLENCE AND SEXUAL ASSAULT

130 Seward, No. 301 • Juneau, Alaska 99801 • (907) 586-3650

Abused Women's Aid In Crisis (AWAIC);  
Advocates for Victims of Violence (AVV);  
Aiding Women in Abuse and Rape Emergencies (AWARE);  
Alaska Women's Resource Center (AWRC); Arctic Women in Crisis (AWIC);  
Bering Sea Women's Group (BSWG); Emmonak Women's Shelter;  
Kodiak Women's Resource & Crisis Center (KWRC);  
Manillaq Regional Women's Crisis Program; MEN, Inc.;  
Safe & Fear-Free Environment (SAFE); Sitkans Against Family Violence (SAFV);  
Southwestern Alaska Council for the  
Prevention of Child Sexual Assault (SWACPCSA);  
South Peninsula Women's Services (SPWS);  
Standing Together Against Rape (STAR); Tundra Women's Coalition (TWC);  
Valley Women's Resource Center (VWRC);  
Women in Crisis Counseling & Assistance (WICCA);  
Women in Safe Homes (WISH); Women's Resource & Crisis Center (WRCC)

## HB 195 DIVORCE/DISSOLUTION

The Alaska Network on Domestic Violence and Sexual Assault is a non-profit organization with a membership of 21 programs around the state that serve victims of domestic violence and sexual assault and their families.

The Network supports HB 195. In the day-to-day operation of Network programs, we frequently see a destructive dynamic that occurs when couples go through a process of dissolution of their marriage where domestic violence has occurred.

The dissolution process requires that couples negotiate with each other from a position of equal footing in order to arrive at a fair settlement. Victims of domestic violence are often seeking a quick way out of a relationship; they are usually -- with good cause -- afraid of their former abuser. Abusive partners can and do take advantage of this situation to skew settlements. The Network feels strongly that heightened scrutiny by judges and masters is absolutely necessary to assist in attaining more equitable settlements in these cases. We urge your support for this important bill.



**POSITION PAPER**

**DIVORCE AND DISSOLUTION REFORM**

AAUW SUPPORTS LEGISLATION TO CORRECT THE ECONOMIC INEQUITIES THAT OCCUR UNDER CURRENT DIVORCE AND DISSOLUTION LAWS, TO CLARIFY THE RIGHTS OF SPOUSES DURING DIVORCE ACTION, AND TO PREVENT THE IMPROVERISHMENT OF WOMEN AND CHILDREN AS A RESULT OF DIVORCE.

No-fault divorce was hailed as a progressive social reform to lessen the emotional trauma of divorce of all family members. Alaska, one of eight states to adopt such law (enacted in 1976), allows people to fashion their own divorces without legal assistance. Currently about two-thirds of all Alaskan divorces are terminated through dissolution procedures as opposed to the more traditional and structured divorce proceedings. Recent research, however, suggests that many women and children suffer severe "downward mobility" as the unintended result of these reforms. Economic settlements are often unfair, and women and children appear to be losing ground financially because of them.

Current Alaska law does not authorize spousal support while a divorce is pending. In addition, the court often awards insufficient attorney's fees to a spouse already in financial need. Proposed Divorce and Dissolution Reform bills address these problems; furthermore, proposed legislation would clarify that "career assets" are part of marital property under dissolution law.

In addition, reform would require greater judicial scrutiny to ensure that economic settlements would be fair and equitable. This would serve to protect the best interests of children involved and help prevent unfair bargaining power from being exercised by either of the parties.

In the face of a growing body of research which suggests that the current legal system of divorce creates economic hardships for women and children instead of providing greater family equity, AAUW advocates reform in the Divorce and Dissolution laws. 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. Legislative reform is necessary to correct these inequities.

STEVE COWPER  
GOVERNOR



PHONE  
(907) 561-4227

STATE OF ALASKA

OFFICE OF THE GOVERNOR

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

April 4, 1989

Representative Randy Phillips  
P.O. Box V  
Juneau, AK 99811

Dear Representative Phillips:

HB 195, a bill on divorce and dissolution introduced by Governor Cowper, passed out of House Judiciary on April 3 with the next referral being Finance. HB 195 would require heightened judicial scrutiny for dissolutions where there are minor children, where one party has an attorney, where there is a patent inequity in property distribution or where there is evidence of domestic violence. HB 195 also adds consideration of career assets to the division of property and award of spousal maintenance.

I am enclosing a copy of the Women's Commission position paper which discusses the need for this legislation, a sectional analysis of the bill and a summary of our research on divorce and dissolution.

I strongly urge your support of HB 195.

Sincerely,

A handwritten signature in cursive script that reads "Ruth Lister".

Ruth Lister  
Executive Director

RL/mm

Enclosure



STATE OF ALASKA

OFFICE OF THE GOVERNOR

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

March 17, 1989

POSITION PAPER ON HB 195

In the last two decades, the divorce process has undergone major reform. The introduction of no-fault divorce and the procedure of dissolution for terminating marriages have had a major impact on divorce and its consequences in Alaska. The impetus behind this legislation was to remove the bitter court battles that had traditionally accompanied divorce and to lessen the financial burden of divorce. While emotionally less traumatic and, in the case of dissolutions, much cheaper, we are seeing a serious negative economic impact of divorce on women and children. A recent study by the Alaska Women's Commission showed that women's per capita income declines 33% after divorce and men's increases 17%.

Dissolution is used by 2/3 of Alaskan couples who end their marriages. 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.

What we have found is that women who choose dissolution suffer even more financial hardship than women who go through divorce. Our study indicated that women using dissolutions received only 29% of the marital property. Physical custody of the children was awarded to the mother in 70% of cases using divorce compared with 52% of cases using dissolution. Women are not faring so well with dissolutions because there is often an imbalance of power in marital relationships and women are pressured or threatened to agree to settlements which are not in their or their children's best interests. In Alaska 26% of women report having been in a violent relationship. Domestic violence is a factor in a significantly high number of divorces.

For all of the above reasons, the Alaska Women's Commission believes that there should be heightened judicial scrutiny of dissolutions under certain circumstances. HB 195 would require increased judicial scrutiny for dissolutions where there are minor children, there is evidence of domestic violence, one party has an attorney, or there is a patently inequitable division of property. In addition to statements currently required in a dissolution of marriage petition, parties must state whether either spouse needs medical care, whether a domestic violence complaint has been filed, whether either party has received legal counsel and whether the petition constitutes the entire agreement between the parties. Both parties are required to be present at the hearing except upon a finding that there are compelling circumstances warranting absence.

A second area addressed by HB 195 is the division of property and spousal maintenance. In many marriages the couple's major investments are in the education and career of the primary wage earner, usually the husband. Homemaking and child raising, which are usually done by women, enable the primary wage earner to make career advancements. The value of homemaking and child raising, which are essential to the marriage partnership and thus to the building of career assets, are presently virtually ignored. The division of marital property usually excludes career assets, thus allowing the major wage earner to keep what are often the most valuable assets of the marriage. For example, not only do almost twice as many men as women have retirement benefits, but the median value of the husband's benefits is three times that of the wife's. Retirement benefits were divided by only 20% of couples in our study. Other types of career assets were rarely included in the division of property. By not including career assets we are contributing to the rising number of women and children in poverty.

Alimony or spousal maintenance was awarded in only 10 percent of divorces surveyed. Awards lasted usually for one year, at most two, and averaged \$500 month. Yet most who received it had no job, no other income and were of an age which made it difficult to find paid work.

In HB 195 career assets are defined as the ability of a spouse to earn money resulting from education, profession or employment acquired in part as a result of the contributions, including homemaking and child rearing, provided by the other spouse. This legislation would require that career assets be considered in the division of property and award of spousal maintenance. Retirement benefits are also specified.

A third area addressed by HB 195 is the ability of the parties involved to obtain legal representation, support and protection prior to a settlement. Half of the women we surveyed felt pressured to reach a divorce settlement by economic factors such as non-support of the children until settlement of the divorce. Only 15% indicated that the other spouse paid any portion of the respondent's attorney fees. HB 195 clarifies and strengthens orders during the pendency of the action providing for spousal maintenance, attorney's fees, child support and protective restraining orders.

Finally, the bill provides for name changes in divorce and dissolution proceedings, which will have the effect of amending Rule 84(a), Alaska Rules of Civil Procedure.

In Alaska, with a divorce rate of 63% compared with 47% nationally, it is imperative that the economic hardships for women and children created by divorce be addressed and increased judicial scrutiny of dissolutions be incorporated into the statute. Divorce laws are based upon the notion that women have achieved equality of opportunity in the job market. Married women earn on average half of what their spouse's earn. Many have put their own careers or education on hold and thus not attained an earning power adequate to support themselves and their children, even with child support. Hardest hit are older homemakers. HB 195 is a critical piece of legislation. The Alaska Women's Commission strongly urges your support.

# MEMORANDUM

State of Alaska  
Department of Law

TO: Shari Kochman  
Legislative Staff Assistant  
Office of the Governor

DATE: March 2, 1989

FILE NO: 773-89-0094

TEL. NO: 465-3603

SUBJECT: Sectional analysis of  
HB 195

FROM: Elizabeth L. Shaw  
Assistant Attorney General

Attached is a sectional analysis of HB 195. Please let me know if there is anything further needed.

ELS:bap

Attachment

cc: Art Peterson w/copy of analysis  
Ruth Lister w/copy of analysis

## SECTIONAL ANALYSIS OF HB 195

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Section 15 of the bill repeals and reenacts AS 25.24.-230(a) 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 consideration of career assets, and allocation of obligations,

are fair and just. In this case there would be no children of the marriage to consider.

Section 15 also repeals and reenacts AS 25.24.230(b) to require that, if there are children of the marriage, if only one party is represented by counsel, if a complaint for domestic violence has been filed during the marriage, or if the division of the marital estate is patently inequitable (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 consequence of their action and that they entered into the agreements voluntarily and free from coercion.

The language of existing AS 25.24.230(b) -- (g) appears as AS 25.24.230(c) -- (h) in the bill, with some minor corrections and conforming language changes including a hearing and notice requirement if a spouse seeks a change of a name other than a prior name.

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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.

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Section 18 of the bill notes that the effect providing for hearing and notice procedures for name changes in divorce and dissolution proceedings will have the effect of amending Rule 84(a), Alaska Rules of Civil Procedure.



## 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.

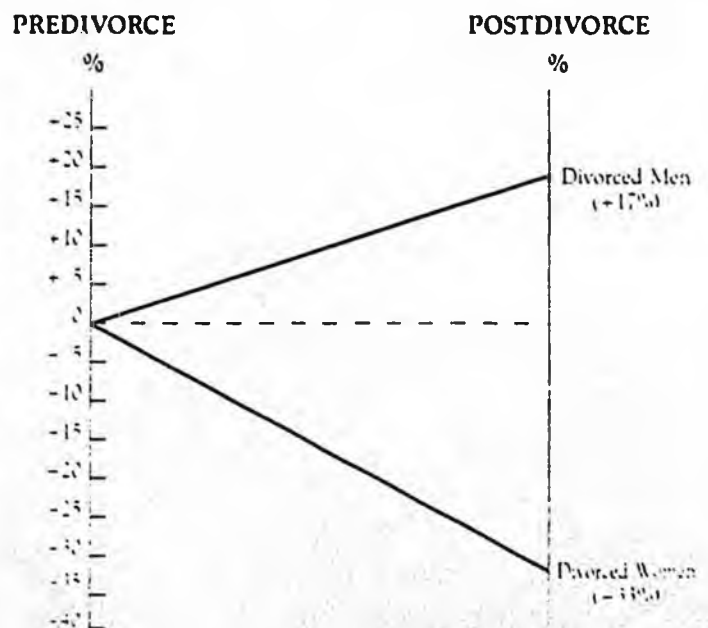
The study of divorce is important because so many people are affected by it. The divorce rate in Alaska is 63 percent compared to 46 percent nationally. More than 11,000 people are affected each year, 3,000 of them children. Even though the two-decade increase in the divorce rate seems to have peaked,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

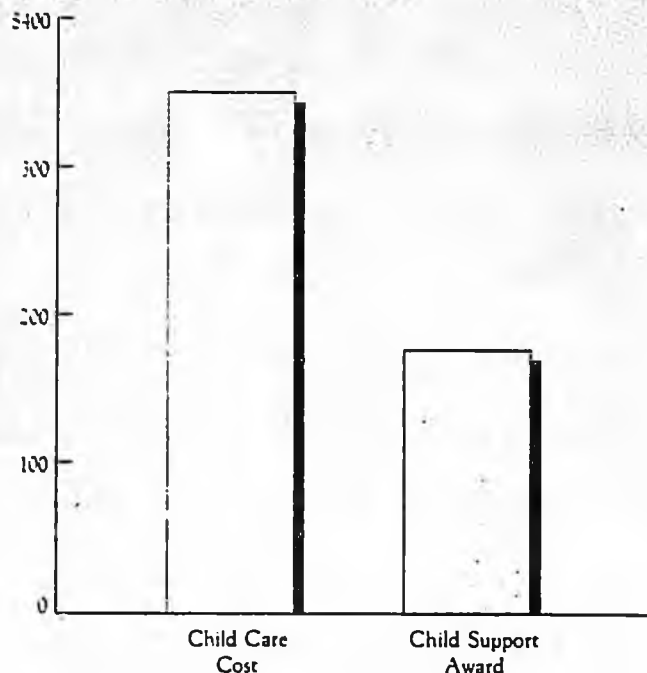
- In Alaska, divorce has substantially different economic consequences for women and men.
- Divorced women and their children experienced a 33 percent decline in per capita income resulting in a radical downward shift of their standard of living (see Figure 1). The greatest relative deprivation was experienced 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.

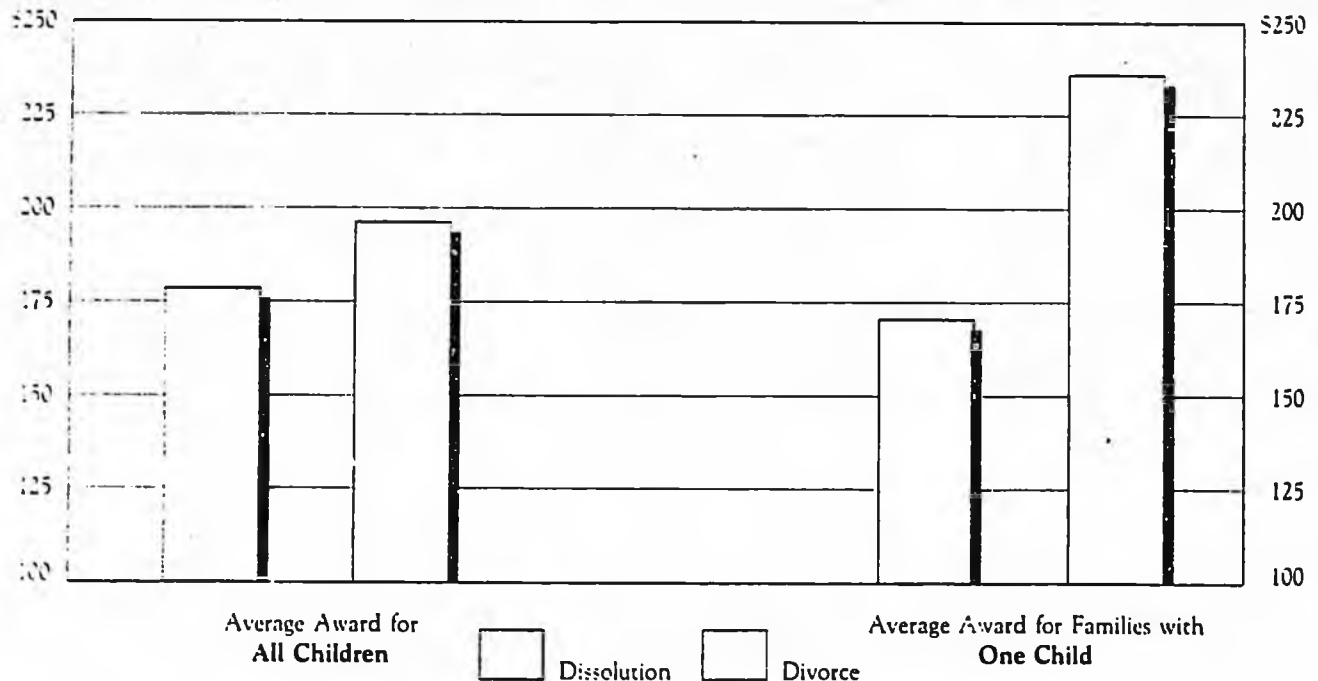
Alaska is one of only 8 states that permit dissolutions. It is also one of the most liberal in its provisions. Most

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

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Anchorage  
Joy Green-Armstrong, vice chair  
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ADDRESS CORRECTION REQUESTED

FISCAL NOTE

REQUEST:

Revision Date 1/31/90 Agency Affected: Alaska Court System  
 Title: An act related to divorce and BRU: Trial Courts  
dissolution  
 Sponsor: Rules/Governor Components: \_\_\_\_\_  
 Requestor: Senate Judiciary

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 90	FY 91	FY 92	FY 93	FY 94	FY 95
Personal Services		50.4	50.4	50.4	50.4	50.4
Travel		12.9	10.0	10.0	10.0	10.0
Contractual						
Supplies						
Equipment		2.6				
Land & Structures						
Grants & Claims						
TOTAL OPERATING	0.0	65.9	60.4	60.4	60.4	60.4

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

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

FUNDING: (Thousands of Dollars)

General Funds	0.0	65.9	60.4	60.4	60.4	60.4
Federal Funds						
Other						
TOTAL	0.0	65.9	60.4	60.4	60.4	60.4

POSITIONS:

Full-time		1.0	1.0	1.0	1.0	1.0
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

See attached analysis.

Prepared by: Jan Strandberg, General Counsel

Division: Alaska Court System

Approved by: Arthur H. Snowden, II, Administrative Director

Agency: Alaska Court System

Phone: 264-8228

Date: 01/31/90

Date: 01/31/90

Distribution (by preparer):

Legislative Finance  
 Legislative Sponsor  
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 Impacted Agency(ies)

ALASKA COURT SYSTEM  
FISCAL ANALYSIS

HB 195 - Divorce and Dissolution

	<u>Salary</u>	<u>Benefits</u>	<u>Total</u>
<u>Personal Services</u>			
Custody Investigator, Range 18A, Anchorage, PFT - 12 months	\$37,548	\$12,900	<u>\$50,448</u>
<u>Travel</u>			
Custody investigator travel-			
Monthly service to Fairbanks, Kenai and Kodiak. Quarterly service to Ketchikan, Sitka, Wrangell, & Petersburg			10,000
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.			<u>2,900</u>
Total Travel			<u>12,900</u>
<u>Equipment: (one time cost)</u>			
Desk, chair, filing cabinet, and typewriter for new employee			<u>2,574</u>
Total First Year Cost			<u>\$65,922</u>

**ALASKA COURT SYSTEM**  
**FISCAL ANALYSIS**

**Summary of FY 89 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	1,445	968	97
Fairbanks	475	318	32
Palmer	187	125	13
Kenai	150	101	10
Kodiak	61	41	4
Juneau	173	116	12
Ketchikan	125	84	8
Sitka	51	34	3
Wrangell/ Petersburg	21	14	1
Others	<u>68</u>	<u>46</u>	<u>5</u>
Total	<u><u>2,756</u></u>	<u><u>1,847</u></u>	<u><u>185</u></u>

(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.

Although the estimated increase in dissolutions that will require custody investigations is principally centered in Anchorage and Fairbanks, each of the other superior courts is expected to be impacted as well. To meet these needs on a statewide basis, one new custody investigator will be hired in Anchorage to provide services to Anchorage, Fairbanks and other communities on an as needed basis.