HB

52

HB 52 An Act relating to child support for children who are not minors and representation of their interests during certain proceedings; and relating to postsecondary educational support of certain children.

Fiscal Note (blue)

NEW MATERIALS

SSBH 52 (7LS04338\G)

1. Sponsor Memo Request for Hearing

2. Sponsor Memo of 2/3/92 re SSHB 52 with sectional analysis

3. Steve Strube letter of support

Alaska State Legislature

HOUSE OF REPRESENTATIVES

REPRESENTATIVE FRAN ULMER

MEMORANDUM
January 14, 1992

TO: Rep. Georgianna Lincoln, Co-chair
Rep. Pat Carney, Co-Chair
House Health, Education and Social Services Committee

FROM: Rep. Fran Ulmer

RE: SSHB 52 relating to child support for children who are not minors

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I would like to request a hearing for Sponsor Substitute for HB 52 which provides child support up to the age of 19 years for dependent children who are still attending high school. The revised bill eliminates all other prior language in the bill authorizing the court to order child support for children over the age of 18 who are attending college or vocational school. In SSHB 52, child support is authorized only until the child completes high school or reaches the age of 19, whichever comes first. This provision will eliminate the need for those 18 year old children who are still in school to draw upon public assistance as they do now.

The revised version of HB 52 should satisfy all those criticism of the bill which were expressed at the previous hearing on the bill in the HESS committee.

Thank you for your consideration of this request.

State Capitol
Juneau, AK 99801-1182
(907) 465-4947
Fax 465-2108

Alaska State Legislature

HOUSE OF REPRESENTATIVES

REPRESENTATIVE FRAN ULMER

M E M O R A N D U M
February 3, 1992

TO: Rep. Pat Carney, Co-chair
Rep. Georgianna Lincoln, Co-chair
House Health, Education and Social Services Committee

FROM: Rep. Fran Ulmer

RE: Sponsor Substitute for HB 52, relating to child support for non-minors

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The purpose of SSHB 52 is to provide child support for unmarried, 18 year old children who are living as dependents and actively pursuing a high school diploma. This support is authorized until the child finishes high school or reaches 19 years of age, whichever comes earlier.

Currently, courts are authorized to order child support only for minor children. The result is that many Alaska children must complete their final year of high school without the benefit of financial support from the non-custodial parent. Some families in this situation have applied for Aid to Families with Dependent Children which provides for public assistance payments until the child completes high school or reaches age 19. SSHB 52 would eliminate the need for those families to apply to the state for assistance.

For those children with developmental disabilities who may require additional years to complete secondary school, current law already provides the authority to award continuing support payments for a handicapped adult child. Streb v. Streb, 774 P.2d 798 (Alaska 1989).

The sponsor substitute is a substantial redrafting of the original HB 52. All references to support for non-minor children over the age of 19 have been dropped from the bill. The current version of this legislation uses AFDC guidelines in regard to non-minor assistance payments to establish upper limits for the duration of child support. It affirms the importance of completing secondary education and the need for the support of children to be borne equitably by both parents.

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Sponsor Substitute for HB 52
Sectional Analysis

Section 1. A court appointed representative for a child under the age of 19 whose interests may be affected by a divorce may attend divorce mediation conferences.

Section 2. While divorce litigation is pending, the court is authorized to order reasonable support for unmarried children under the age of 19 who are actively pursuing a high school diploma and who are living as dependents with a parent or guardian.

Section 3. Provides that a judgment may be modified regarding child support for unmarried children under the age of 19 who are actively pursuing a high school diploma.

Section 4. Requires post-majority support to be included, among other items, as issues covered by dissolution agreements.

Section 5. Among other items, a dissolution petition must state the marital and educational status of each child under the age of 19 born to or adopted by the petitioners.

Section 6. A petition for dissolution may be dismissed, or an action continued, if a representative of an unmarried child under the age of 19 objects to a term providing, or failing to provide, support.

Section 7. In an action involving the custody, support or visitation of a child, the court may appoint someone to represent a child under the age of 19 who is actively pursuing a high school diploma or its equivalent and living as a dependent.

Section 8. Replaces the word "minor" with the word "child" regarding the appointment of a person to provide guardian ad litem services in divorce proceedings

Section 9. Deletes the word "minor" from "minor child" in regard to the court's authority to order parents to assign to the custodian of the child the portion of salary or wages sufficient to pay the ordered child support.

Section 10. Deletes the word "minor" from "minor child" in regard to subrogated child support orders.

JAN 10, 1992

REP. FRAN ULMER
PO BOX V
JUNEAU, AK 99811-3100
RE: HB 52 (SPONSOR SUBSTITUTE)
DEAR FRAN,

THANK YOU FOR CLARIFYING MY CONCERNS ABOUT THE POST-MAJORITY CHILD SUPPORT BILL. I SUPPORT THE SPONSOR SUBSTITUTE AS WRITTEN AND HOPE YOU WILL SUBMIT IT TO THE LEGISLATURE. IT IS ALSO MY HOPE THAT THIS BILL WILL NOT BE ALTERED, AS IT PASSES THROUGH COMMITTEES, TO ADD UNFAIR BURDENS ON NON-CUSTODIAL FAMILIES AND CHILDREN THAT THE STATE WOULD NOT ALSO EQUALLY IMPOSE UPON CUSTODIAL FAMILIES AND THEIR CHILDREN. AS YOU KNOW, ALL PERSONS INCLUDING CHILDREN ARE GAURENTEED EQUAL TREATMENT, OPPORTUNITIES, AND PROTECTION UNDER THE LAW.

ON JAN 8, 1992 THE LEGISLATIVE COMMITTEE OF THE GOVERNOR'S COMMISSION ON CHILDREN AND YOUTH DISCUSSED THIS BILL, AND WE PLAN TO CONTINUE THE DISCUSSION AT OUR NEXT MEETING IN LATE JANUARY.

I BELIEVE THIS BILL IS GOOD PUBLIC POLICY AND I WILL ADVOCATE FOR IT AT EVERY OPPORTUNITY.

SINCERELY,

THE PRECEDING PAGES WERE TREATED AS
A UNIT IN THE ORIGINAL FILE.

Alaska State Legislature

House of Representatives

REPRESENTATIVE FRAN ULMER

MEMORANDUM
May 2, 1991

TO: Rep. Georgianna Lincoln, Co-chair
Rep. Pat Carney, Co-chair
House Health, Education and Social Services Committee

FROM: Rep. Fran Ulmer

RE: HB 52, relating to child support for non-minors

Throughout American history, the duty of parents to support their children terminated upon emancipation. Emancipation was defined as either living independently from the family, marrying, or reaching a state-determined age of adulthood, invariably age 21. About 20 years ago, however, arguments were made that someone old enough to be drafted should be allowed to vote. As a result, the 26th Amendment to the U.S. Constitution was enacted which lowered the voting age in federal elections to 18. Soon thereafter, many states followed federal precedent and set 18 as the age for voting in state elections **and** as the age of majority.

When the age of majority was 21, child support generally lasted until children were able to become successfully independent. Children had completed high school by 21 and most children in college were almost finished. Those out of school were supporting themselves by 21. But, when the age of majority was reduced to age18 in the early 1970's, child support terminated well before independence was a realistic possibility. Children between ages 18-21 were either attending high school, college or vocational school, looking for work, or making wages that were too low to sustain self-sufficiency. Since housing and rental costs have outpaced inflation since the 70's, many 18-21 year olds cannot afford to live independently of their parents today, even many of those with jobs. In order to accommodate these realities, many states have altered their child support laws to extend support until children are more realistically in a position to be independent.

The purpose of HB 52 is to provide child support for non-minor children for educational purposes. HB 52 allows the court to order child support for non-minor children in two instances:

(a) for unmarried children who are under the age of 22, living as dependents with a parent or guardian, and who have not completed high school; support may be ordered until secondary education is terminated; this extended period allows for handicapped and developmentally disabled students who may take longer to finish their secondary education; and

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(b) for unmarried children under the age of 26 who are at least half-time students in good standing in a post-secondary education program that qualifies for the use of scholarship loans from the Alaska Post-Secondary Education Commission. This extended period would allow a child who chooses to enlist in the military to complete military service before pursuing post-secondary education. In this instance, a child is eligible for child support while enrolled in a post-secondary program, but not during military service.

HB 52 authorizes the court to order "reasonable" support for post-secondary education. When determining what is reasonable, this legislation directs the court to consider:

(a) the earnings, income and resources of the parents;
(b) the financial needs and resources of the child, his or her physical and emotional condition, as well as the educational needs of the child;
(c) the standard of living, including the likely educational attainment, the child would have enjoyed if the divorce had not occurred.

It is unfortunately true that in almost every divorce, children are the losers. Family incomes decline and children who might otherwise have received financial assistance for college expenses see their opportunities evaporate in the cross-fire of divorce. HB 52 seeks to ensure that children's interests are adequately protected when a divorce or dissolution occurs.

HB 52
Sectional Analysis

Section 1. A court appointed representative for a child under the age of 26 whose interests may be affected by a divorce may attend divorce mediation conferences.

Section 2. While divorce litigation is pending, the court is authorized to order reasonable support for unmarried children under the age of 22 who are actively pursuing a high school diploma and are living as dependents, and reasonable post-secondary educational support for children as outlined in Section 10 of the bill (see below).

Section 3. Provides that a judgment may be modified regarding child support for unmarried children under the age of 22 who are actively pursuing a high school diploma, and reasonable postsecondary educational support for other children as outlined in Section 10 of the bill.

Section 4. Requires post-majority support and postsecondary educational support to be included, among other items, as issues covered by dissolution agreements.

Section 5. Among other items, a dissolution petition must state the educational status of each child under the age of 26 born to or adopted by the petitioners.

Section 6. For dissolutions which will receive heightened scrutiny, the written agreements must include post-majority support and postsecondary educational support that is at least as great as would be ordered by a court under Section 10 of the bill.

Section 7. A petition for dissolution may be dismissed or an action continued if a representative of a child who is not a minor objects to a term providing or failing to provide post-majority support or postsecondary educational support.

Section 8. In an action involving the custody, support or visitation of a child, the court may appoint someone to represent the child who is not a minor with regard to postsecondary educational support or other post-majority support.

Section 9. Replaces the word "minor" with the word "child" regarding the appointment of a person to provide guardian ad litem services in divorce proceedings

Section 10. (a) Authorizes the court to order 4 years of reasonable postsecondary educational support for children while they are:

1) unmarried;
2) under the age of 26;
3) at least half-time students in good standing in a career education program, college or university that qualifies for loans from the Alaska Post-Secondary Education Commission;

(b) Directs the court to consider the following issues when determining what reasonable support may be:

1) the earnings, income and resources of the parents, including real and

personal property;
2) the financial needs and resources, physical and emotional condition, and educational needs of the child; and
3) the standard of living, including the likely educational attainment, the child would have enjoyed had the marriage stayed intact.

Section 11. Deletes the word "minor" from "minor child" in regard to the court's authority to order parents to assign to the custodian of the child the portion of salary or wages sufficient to pay the ordered child support.

Section 12. Deletes the word "minor" from "minor child" in regard to subrogated child support orders.

Section 13. The changes made by this Act constitute a material change in circumstances for purposes of a motion to modify a child support determination under AS 25.20.110.

THE ASSOCIATION FOR CHILDREN FOR
ENFORCEMENT OF SUPPORT (ACES)
ALASKA CHAPTER
P. O. Box 92910
Anchorage, Alaska 99509
(907) 274-2010

May 3, 1991

Representative Georgianna Lincoln
House HESS Co-Chair
P. O. Box V
Juneau, AK. 99811

Dear Rep. Lincoln:

The Alaska Chapter of ACES encourages all HESS members to vote DO PASS on HB52.

There are many children in the school system who turn 18 (the age of majority) during their senior year in school. My own son turns 18 only three weeks after starting his senior year. Custodial parents do not relinquish their financial responsibilities while their child is a senior in high school, despite the fact that they may turn 18 years old. It doesn't seem fair that non-custodial parents, however, no longer have a responsibility at that point.

To say the least, the senior year in high school is the most expensive year in a child's life. It is already sad to watch so many of them go without the basic needs, much less the humiliation of not being able to afford to engage in any senior social activities - for lack of funds.

And this problem is only going to get worse since new laws have made it clear that kids will be starting school later, so it is a given that eventually all kids will turn at least 18 years old while they're in high school.

The provision for financial help with a college education will also help Alaskan kids. Since it is not mandatory, and merely allows that issue to be considered before the courts, we encourage you to support that option also.

Alaskan children and custodial parents thank you for your consideration of this bill. Please vote YES.

Sincerely,

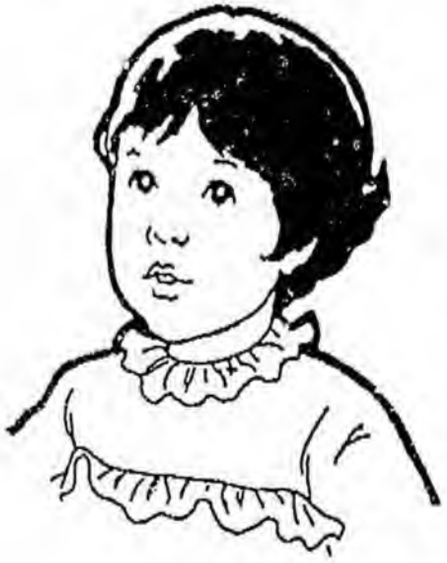
Glenda J. Straube

Glenda J. Straube
Volunteer Coordinator

Children's Legal Rights Journal - Spring '88

UPDATE

Altering the Boundaries of Child Support



by Jeff Ball

Introduction

If one thinks of child support as a cube, one can visualize how recent changes in legislation, case law and philosophy have transmogrified the once-static cube into an expanding elastic shape. If the length of the cube represents the longevity of one's duty to support a child, the width the spectrum of persons having a potential duty of support, and the depth the amount of the duty, including the degree to which non-monetary benefits may be considered as part of the obligation, one can see how all three dimensions are being stretched beyond past borders.

Three separate occurrences have played dominant roles in the degree of fluctuation the cube has recently undergone. The first event was the nationwide reduction in the age of majority from 21 to 18, and the resultant reduction in the length of the support duty in most states. While a few states such as Mississippi and Colorado still use 21 as the age of majority,[1] most states lowered the legal threshold of adulthood to 18 soon after the U.S. Constitution was amended to lower the voting age to 18 in federal elections.[2] Consequently, many states adjusted the termination of the obligor's responsibility to support the child to the lower age, though some states such as New York did not.[3] This created a gray area in which a child may still be dependent on parents for support without any entitlement to it. For instance, if a child is attending high school at age 18 and living at home, he or she would not be entitled to support in states that equate emancipation with age of majority. Most states have adjusted their termination date to take into account post-minority children who are still dependents.[4] In several states this date has gone beyond a child's completion of secondary education to college or vocational training.[5] Additionally, parents of adult children who are dependent due to a physical or mental disability may be liable for support in most states.[6]

This ties into the second driving influence in the reshaping of child support — a movement to ensure that someone is responsible for a dependent child, preferably someone close to the child and not the state. A combination of the conservative philosophy of weaning dependents from state dependence and liberal interest in ensuring that persons who inadequately care for themselves receive support has resulted in safeguards when the primary obligor or obligors cannot provide sufficient support for their children. Step-parents in many states are being held liable for the support of their non-adopted step-children when there is an enduring implicit or explicit parent/child relationship formed and the natural absent parent is not fully supporting the child.[7] In some states step-parent liability exists as long as the natural parent of the child remains married to the step-parent.[8] In some cases grandparents are facing liability to support grandchildren who are born to teenaged parents.[9] The use of the doctrine of *in loco parentis* has led to findings of financial liability of persons who are not next of kin although they fill that role.[10] Clearly the movement is in the direction of holding responsible for support those who have had a substantial, long-term influence on the child.

Another cause for expansion of the cube is the increasing awareness that support awards have, historically, inadequately represented the costs of raising a child, especially the skyrocketing costs of providing children with medical and dental needs.[11] As a response, many states are re-examining their methods for computing the support award amount, resulting in significant increases in many instances over what would have been awarded in the past. It appears that the federal government's mandate that all states have support guidelines has accelerated this review.[12]

This article will examine the first two dimensions of the support cube, the length of the support duty and the breadth of responsibility of that duty.

The Length of the Support Duty

From the days of Blackstone and Kent, the law has recognized the duty of parents to support their children.[13] This common law duty terminated upon emancipation, which either meant living independently from the family,[14] marrying,[15] or reaching a state-determined age at which the rights and responsibilities of adulthood were conferred, invariably age 21.[16]

Several states have long recognized the power of parties to contract for support duty that exceeded the statutory duty, and to have that agreement incorporated into a judically-enforceable court order.[17] Additionally, some states, such as Tennessee and Wyoming, have had judicially-created doctrines entitling adult children who are incapacitated to support from their parents.[18]

About 20 years ago, when the youth movement in America was powerful, arguments were made that someone old enough to be drafted should be allowed to vote. Congress passed and two-thirds of the states ratified the 26th Amendment to the U.S. Constitution, which lowered the voting age in federal elections to 18.[19] An avalanche of state legislative activity followed in which states not only lowered the age entitling one to vote in a state election to 18, but also reduced the age of majority to 18.[20] The reduction created confusion and litigation regarding then-current orders in which the duty of support lasted until the child reached the age of majority. Did this mean 21 or 18? Case law is divided whether the reduction affected existing orders and agreements in which no age was specified. A child's attaining the age of 18 became the end of the obligor's support duty in many states.[21]

Education Beyond Majority Age

When the age of majority was 21, few cases outside those involving disabled adult children resulted in litigation of the extension of the support duty. Children had finished high school by 21; most children in college were almost finished. Those out of school were supporting themselves by 21. When the age of majority was reduced generally to 18 in the early and mid-seventies, a group of quasi-dependent, healthy children emerged that did not fit under either a blanket dependency or independency niche. These children were either attending high school, college, or vocational school, looking for work or making wages that were too low to sustain self-sufficiency. As housing and rental costs have outpaced inflation since the mid-seventies, many 18 through 20-years olds cannot afford to live independently of their parents, even many of those with jobs.

Many states have altered their support duty laws to encompass those cases in which it is fair to presume dependency, such as an unmarried child finishing high school and living at home.[22] Of course many children do not complete high school by their 18th birthday, and many states have opted not to place high school students in the position of choosing education or work. Some states require that support continue until a child is 19 or finishes high school or its equivalent, whichever occurs first.[23] Other states leave post-minority support decisions to the discretion of the court.[24]

When it comes to forcing an adult child to choose between post-secondary education and work, or a combination of the two, states vary in their responses. Some states view education of one's child as a paramount parental duty, even if the child would be too old to receive support if not in school.[25]

Other states review the circumstances of each case and leave it to the discretion of the court to determine whether a support duty exists.[26] These states take into account promises made or reasonable expectations the child had of parent-supported, post-secondary education, as well as the financial means of the parents and the child's immediate capacity for full or partial self-support. An interesting situation arises where a duty exists to pay college expenses for a child of divorced parents while one does not exist for a child in similar circumstances of nonseparated parents.[27]

Another value judgment made in many of these cases has to do with determining the likelihood that, if the family had remained unified, the child would have gone to college and had his or her education bankrolled by the family. Many courts look at family background to see if one can auger a duty.[28] A situtation may arise where a child of well-educated parents who has little academic potential may be entitled to continued support while a more gifted child from a modest family background may not.

Still some other states do not allow the courts to assert jurisdiction over post-minority children unless the parents had signed a separation agreement incorporated in a court order that provides for adult child support, particularly college expenses.[29] The theory is that parties are free to extend a support duty, while the court ensures that there is a minimal duty of support owed while the child is a minor.

Disability

Physical or mental disabilities in an adult child are common exceptions to the termination of sup-

port duty upon the child reaching adulthood.[30] Where states diverge is the degree to which the adult child must be mentally or physically disabled, functionally dependent on others, and destitute in order to qualify or continue to qualify for support.[31]

Some states look at the disability factor alone, determining that an adult child found to be at least marginally handicapped is entitled ultimately to parental support.[32] A few states include emotionally-dysfunctioning adult children in their definitions of disabled children for the purpose of finding a parental duty of support.[33]

States also disagree about the necessity of the disability occurring during the child's minority in order to justify a post-minority support obligation. Some states contend that there cannot be a springing duty of support after an interim of no duty, so that an adult child who becomes disabled would not have recourse to make a support claim against one or both parents.[34] Others reason that the need of the child is the determining factor, not the age at which the disability began.[35]

Dependency

Some states find a support duty if the child is or remains dependent on the obligor. This broad catch-all category may include disabled adult children as well as adult children attending school.[36] It may also include children who are indigent, receiving public assistance or unemployed.[37] Often a state that has a law requiring a parent to support an indigent child regardless of the child's age to the best of the parent's ability has a reciprocal duty emanating from the child to the parent if the parent is indigent.[38]

Premature Termination of the Support Duty

So far this article has reviewed ways to elongate a support duty past the age of majority. At the same time, myriad precedents exist for terminating a suport duty before a child reaches the age of majority. With duty often based on the premise that support is tied to dependency, both emotionally and financially, parents of children who manifest independence may find themselves without a child support duty. When a child marries, enters the armed services, lives independently of his or her parents, earns enough to be self sufficient, or is emancipated officially by a court, the parental support duty may be severed.[39] Generally, duty termination requires actions by the minor child that indicate independence; a parent may not unilaterally or even through agreement with the other parent absolve himself or herself of the support duty for a minor child. Courts, ever the third party to a domestic relations matter, have long been hesitant to sanction a parent's attempt to possibly jeopardize a child's welfare by permitting a premature termination of a support duty without strong signs that a minor child will be self-sufficient.[40]

Armed Services

To paraphrase an old adage, the army will make a man (or woman) out of you. Enlisting in the armed services is considered in many states as an act of independence sufficient to support a termination of the parental support duty.[41] Other states require more proof of self-sufficiency than merely the act of enlisting.[42] Also, since most states have lowered their age of majority to 18, and one cannot enlist in the armed services before 18, the issue of emancipation is mainly academic. In states such as New York where a support duty extends until the child is 21, the issue is still important. Although there is no military draft at this time, and its abolition coincided roughly with the time the age of emancipation and support duty length were lowered in most states to the 18th birthday of the child, it is interesting to speculate whether an involuntary act by a child such as reporting lawfully to the armed services branch that drafted him (or her) would also be grounds for termination of the parent's support duty.

Marriage

In most states, to be pronounced husband and wife is to be pronounced independent of the couple's parents, regardless of the couple's capability to fend for themselves.[43] Although considered a prime indicium of self-sufficiency, the marriage ceremony of course does not by itself instill in minor children the ability to function without financial and often emotional support from either set of parents. As a result, some states do not find marriage itself an "emancipating" act, without further proof of the couple's independence.[44] Indeed, when minor newlyweds expecting a child move in with parents, the financial responsiblities may measurably increase for the parents.

Independent Living

When a minor child voluntarily moves out of his or her parents' home, establishes an independent means of financial support, and acts in a responsible manner that leads one to conclude the child can function adequately in an adult world, the justification for a parent's continued support duty often

ends, and courts will sometimes terminate the legal duty.[45] Some courts, constrained by statute and precedent, will not find a minor capable of self support regardless of the evidence.[46] Also, some states require an affirmative court action brought by the responsible parent to terminate the support duty and will not retroactively reduce the arrearages accrued since the date of independence.[47] Indeed, federal law requires states, as a condition of continuing to receive federal welfare money, to prohibit retroactive modification of accrued arrearages, as each support installment past due is to be considered vested.[48] Thus a child may earn more than a parent responsible for his or her support and yet the support duty continues until the parent takes steps to terminate it.

Determining whether a child is independent for support purposes generally hinges on the facts of each case. A minor child may live in his or her parents' home and yet the court may still find that the child is independent and the parent's support duty terminated. A minor child may live away from home in a college dormitory or with some friends and the court may still find a parental duty of support. It boils down to a court determining whether it will allow a parent to abrogate a duty prematurely, and if so, under what conditions and presumptions.

Death of a Parent

When an obligor parent dies, does his or her support duty automatically end? States are split on this point, some finding that death terminates all responsibility[49] and others finding that the obligor's estate may be liable.[50]

In many states with a history of county responsibility for "public charges," the county is statutorily authorized to proceed against the estate of the deceased obligor to collect reimbursement for any county aid provided to the decedent's child.[51] Other states allow the surviving parent to collect from the decedent's estate for past, current and future support, the latter usually as a lump sum.[52]

The Breadth of the Support Duty — Who is Liable?

Parents

Traditionally, the father was responsible for the support of his minor child.[53] Over the last several decades the responsiblity has broadened to include both mother and father, either as the custodial parent or non-custodial parent.[54] The law has moved away from placing the father only in the center of the family circle, from whom all duties emanate and to whom all responsibilities are owed. Although several states still have possibly unconstitutional language stressing gender distinction, the trend has been to classify duty neutrally by referring to the parent-child relationship itself and the capability of either or both parents to support the child adequately. Also, the distinction between the support duty of fathers of children born out of wedlock and that of fathers at one time or another married to the child's mother has for the most part disappeared, as the children born out of wedlock have received favorable treatment from the U.S. Supreme Court over the past two decades in equal protection cases.[55]

Another interesting consideration is the existence of a parental duty of support when neither parent has legal custody of the child, such as when a custody order ends at 18 or when parents are living together. Is there a support duty to these parents' adult children if they are attending college? Does it matter whether or not the adult child selected a path that was with parental blessings? States vary as to whether a duty exists in such circumstances.[56]

Step-parents

As divorce has become a common phenomenon in America, many children live with spouses of their custodial parents who are not the children's natural parents. Step-parent liability is now a major issue affecting millions of children. Some states impose step-parent liability by statute,[57] while others have used estoppel and *in loco parentis* principles to create a common law duty.[58] Estoppel theory comes into play when a step-parent has held him or herself out to be the natural father of the child or has totally assumed a parental role for a long period of time. The latter concept is the basis for the *in loco parentis* theory of liability. It is clear that children adopted by step-parents have the same rights of support from the adoptive step-parent as if the step-parent were a natural parent.

Some states look to the natural parent who is absent from the household as the primary obligor, with the step-parent secondarily liable.[59] Other states place the liability on both step-parent and natural parent, which is sometimes implicitly done by taking into account the contribution of the step-parent to the payment of the child's expenses and the step-parent's income when determining the natural parent's liability.[60]

Most states tend to terminate the step-parent duty when the relationship between step-parent and

natural parent legally ends, such as by divorce or death.[61] Some states have said that separation does not by itself terminate a step-parent's support duty; there must be a lawful divorce to sever the ties.[62] States using equity principles may be more likely to terminate a duty when the step-parent/step-child relationship ends or at least fades in intensity, be it before or after an official dissolution.[63]

Cohabitants

A few states have statutes that make live-in partners of the custodial parent at least secondarily liable for the support of the custodial parent's child.[64] Cohabitants, who at common law had no duty, often have close relationships with their partners' children, creating in many cases surrogate parencies. This fairly recent addition to the breadth of duty may primarily be linked to the welfare system's byproduct in many states — aid available only to those families whose heads of household are not legally married.[65] As a consequence, several states want to make sure that the cohabitant faces the same degree of liability as would a natural parent. Also, as a result of a nationwide trend toward more extramarital cohabitation, many children are brought up in homes analogous to a step-parent/natural parent situation except for the lack of a marriage vow between the heads of household. In many of those cases, the cohabitant acts *in loco parentis* to the child.

Grandparents and Other Relatives

Very few states hold grandparents liable for the support of their grandchildren.[66] Grandparent liability sometimes attaches when the child of the grandparent is a minor at the time the grandchild is born and the child is not married or financially independent.[67] Some states have dependency laws to cover incapacity or indigency of family members beyond the spouse or issue of the parent.[68] The idea of extended family liability is not new to many cultures, including many ones indigenous to America. The liability of a grandparent ox other relative invariably arises only when the liability of the natural parent, step-parent or *in loco parentis* parent is unenforceable.

Conclusion

Reality shows that children do not automatically become independent, fully-functioning adults upon a birthday or upon the taking of a marriage vow. In a world more complex (albeit less harsh) than that faced by our predecessors, where children may be less innocent of "adult" ways but remain by and large unsophisticated in the rudiments of "getting by and making a living," a large percentage of post-minority youths lack the immediate and sometimes long-term ability to survive independently. The financial and emotional dependencies of these adult children have not gone overlooked by states, especially in the years following the wholesale lowering of the presumptive age of majority from 21 to 18. Family law has traditionally followed equitable principles, and the extension of a support duty to those who are still dependent owed by those who can best provide it accentuates the triumph of fairness over rigidity. The gray areas persist, though, as what is fair to one person becomes unfair to another, where one person's necessities are another person's luxuries, and where a person whose philosophy may be to teach independence to a child faces legal liability for support until the child is motivated to accept the provider's lesson. One example of the dilemma is determining the "fairness" of holding a modest-income, absent-parent liable for the entire cost of sending a child to private college when the parent may have insisted the child go to a public college or pay for much of his or her education if the absent parent had remained part of the child's household. Is it relevant whether there is a family history of post-secondary school attendance or if the child has shown exceptional academic promise? The issue goes beyond dependency to expectation. It is dealing with this politically-charged area of expectation that courts and legislatures may face their most difficult hurdle, as deciding a family's expectation of entitlement may unavoidably be a very subjective determination. The support cube's boundaries still appear to be fluctuating, often on a case-to-case basis.

Mr. Ball is an assistant director of the ABA Child Support Project, located in Washington, D.C.

Footnotes

1. *See, e.g.*, In re Plummer, 703 P.2d 657 (Colo. Ct. App. 1985); Taylor v. Taylor, 478 So.2d 310 (Miss. 1985).
2. U.S. CONST. AMEND. 26.
3. N.Y. DOM. REL. LAW § 3-A-31 (Uniform Support of Dependents Law).
4. *See, e.g.*, Verna v. Verna, 288 Pa. Super. 511, 432 A.2d 630 (1981); S.C. CODE ANN. § 20-7-90.
5. *See* IOWA CODE ANN. 598.1 (2); VT. STAT. ANN. tit. 15, § 201.
6. *See, e.g.*, Feinberg v. Diamant, 378 Mass. 171, 389

N.E.2d 998 (1979); Eckenroed v. Eckenroed, 668 S.W. 2d 104 (Mo. Ct. App. 1984).
7. N.D. CENT. CODE § 140-09-09; OR. REV. STAT. § 109.053.
8. VT. SAT. ANN. tit. 15, § 296; WASH. REV. CODE ANN. § 26.16.205.
9. Rhodes v. Rhodes, 305 So. 2d 352 (La. Ct. App. 1974); Skeens v. Patero, 60 Md. App. 48, 480 A.2d 820 (1984).
10. DEL. CODE ANN. tit. 13, § 501(b); VT. STAT. ANN. tit. 15, § 294.
11. *See generally*, R. Williams, Development of Guidelines for Child Support Orders (1987).
12. 42 U.S.C. § 667 (1987).
13. Blackstone's Commentaries (Lewis ed.) 419; Kent on American Law 190.
14. IND. CODE ANN. § 31-1-11.5-12(d); MO. REV. STAT. § 454.460.
15. C.v.R., 169 N.J. Super. 168, 404 A.2d 366 (1979); Church v. Hancock, 261 N.C. 764, 136 S.E. 2d 81 (1964).
16. Blair v. Brewington, 445 So. 2d 294 (Ala. 1983).
17. Gersten v. Gersten, 281 So. 2d 607 (Fla. Dist. Ct. App. 1973); McClain v. McClain, 235 Ga. 417, 211 S.E. 2d 561 (1975).
18. Sayne v. Sayne, 39 Tenn. App. 422, 284 S.W. 2d 309 (1956); Kamp v. Kamp, 640 P. 2d 48 (Wyo. 1982).
19. U.S. CONST. AMEND. 26.
20. MONT. CODE ANN. § 40-5-201; OHIO REV. CODE ANN. § 3109.5.
21. *See, e.g.*, CONN. GEN. STAT. ANN. § 46b - 215; Oviatt v. Oviatt, 43 Mich. App. 628, 204 N.W. 2d 753 (1972).
22. *See, e.g.*, TENN. CODE ANN. § 34-1-101; TEX. FAM. CODE ANN. § 4.02.
23. CAL. CIV. CODE § 196; S.D. CODIFIED LAWS ANN. § 25-5-18.1.
24. *See, e.g.*, Evans v. Evans, 456 So. 2d 956 (Fla. Dist. Ct. App. 1984).
25. *See, e.g.*, IOWA CODE ANN. § 598.1(2).
26. Nicolls v. Nicolls, 371 A. 2d 400 (Conn. 1977); Sakovits v. Sakovits, 178 N.J. Super. 623, 429 A. 2d 1091 (1981).
27. In re Marriage of Urban, 293 N.W. 2d 198 (Iowa 1980).
28. *See, e.g.*, Wagner v. Wagner, 286 S.C. 489, 335 S.E. 2d 246 (1985).
29. *See, e.g.*, Kotler v. Spaulding, 4 Mass. App. Ct. 515, 510 N.E. 2d 770.
30. ARIZ. REV. STAT. ANN. § 25-320B; In re Koltay, 646 P. 2d 405 (Colo. Ct. App. 1982), *aff'd*, 667 P. 2d 1374 (Colo. 1983).
31. Feinberg v. Diamant, 378 Mass. 171, 389 N.E. 2d 998 (1979), compare with Sayne v. Sayne, 39 Tenn. App. 422, 284 S.W. 2d 309 (1956).
32. *See, e.g.*, Rose v. Rubenstein, 693 S.W. 2d 580 (Tex. Ct. App. 1985).
33. Sayne v. Sayne, 39 Tenn. App. 422, 284 S.W. 2d 309 (1956); Com. ex rel Magaziner v. Magaziner, 419 A. 2d 149 (Pa. Super. Ct. 1980).
34. Kamp v. Kamp, 640 P. 2d 48 (Wyo. 1982); Taylor v. Taylor, 478 So. 2d 310 (Miss. 1985); OHIO REV. CODE ANN. § 3109.5; TEX. FAM. CODE ANN. § 14.05(b); NEV. REV. STAT. § 125B.110.1.
35. ARIZ. REV. STAT. ANN. § 25-320B; N.H. REV. STAT. ANN. § 546-A; Sininger v. Sininger, 300 Md. 604, 479 A. 2d 1354 (1984).
36. DEL. CODE ANN. tit. 13, § 503; Blair v. Brewington, 445 So. 2d 294 (Ala. 1983); S.C. CODE ANN. § 20-7-90.
37. ALASKA STAT. § 25.20.030; IDAHO CODE § 32-1001.
38. CAL. CIV. CODE § 206; DEL. CODE ANN. tit. 13, § 505.
39. MO. REV. STAT. § 453.400; MONT. CODE ANN. § 40-5-201.
40. *See, e.g.*, Bernier v. Bernier, 125 N.H. 517, 484 A. 2d 1088 (1984).
41. MO. REV. STAT. § 454.460; N.C. GEN. STAT. § 110-129.
42. *See, e.g.*, Baker v. Baker, 217 Kan. 319, 537 P. 2d 171 (1975).
43. *See, e.g.*, C.v.R., 169 N.J. Super. 168, 404 A. 2d 366 (N.J. Ch. 1979); Going v. Going, 8 Tenn. App. 690 (Tenn. Ct. App. 1926).
44. Embree v. Embree, 85 Idaho 443, 380 P. 2d 216 (1963); UTAH CODE ANN. § 78-45-2(4).
45. MASS GEN. LAWS ANN. ch. 208, § 28; Bernier v. Bernier, 125 N.H. 517, 484 A. 2d 1088 (1984).
46. In re Marriage of Hughes, 734 S.W. 2d 280 (Mo. Ct. App. 1987).
47. Baker v. Baker, 217 Kan. 319, 537 P. 2d 171 (1975); Johnson v. Johnson, 215 Neb. 689, 340 N.W. 2d 393 (1983).
48. 42 U.S.C. § 666(a)(9).
49. Reinhardt v. Reinhardt, 131 So. 2d 509 (Fla. Dist. Ct. App. 1961); TEX. FAM. CODE ANN. § 14.05(d).
50. N.M. STAT. ANN. § 40-5-14; Caldwell v. Caldwell, 5 Wis. 2d 146, 92 N.W. 2d 356 (1958).
51. MONT. CODE ANN. § 40-5-201; S.D. CODIFIED LAWS ANN. § 25-7-14.
52. ILL. REV. STAT. ch. 40, § 510(c); NEV. REV. STAT. § 125B.130.
53. N.C. GEN. STAT. § 50-134(b).
54. OR. REV. STAT. § 109.030; WASH. REV. CODE ANN. § 26.16.205.
55. Weber v. Aetna Casualty and Surety Co., 406 U.S. 164 (1972); Levy v. Louisiana, 391 U.S. 68 (1968).
56. Dubroc v. Dubroc, 284 So. 2d 869 (La. Ct. App. 1973); Hoffman v. Hoffman, 122 A.D. 2d 583, 505 N.Y.S. 2d 273, appeal dismissed, 69 N.Y. 2d 706, 504 N.E. 2d 398 (1986); Childers v. Childers, 89 Wash. 29, 575 P. 2d 201 (1978)
57. MO. REV. STAT. § 453.400; N.Y. DOM. REL. LAW § 3-A-31 (Uniform Support of Dependents Law); N.D. CENT. CODE § 14-09-09.
58. A.S. v. B.S., 150 N.J. Super. 122, 374 A. 2d 1259 (1976); Niesen v. Niesen, 38 Wis. 2d 599, 157 N.W., 2d 660 (1968).
59. Byers v. Byers, 618 P.O. 2d 930 (Okla. 1980); OR. REV. STAT. § 109.053; S.D. CODIFIED LAWS ANN. § 25-7-8.
60. *See, e.g.*, Ewing v. May, 705 S.W. 2d 910 (Ky. 1986); Guildelines in Determining Child Support as adopted by the State of Hawaii Department of the Judiciary.
61. OR. REV. STAT. § 109.053; VT. STAT. ANN. tit. 15, § 296.
62. Stahl v. Dep't of Social and Health Services, 43 Wash. App. 401, 717 P. 2d 320 (Wash. Ct. App. 1986).

(7)

Date Referred: January 14, 1992 FURTHER REFERRALS: Judiciary

Date of Committee Action: 2/4/92

The HEALTH, EDUCATION AND SOCIAL SERVICES Committee considered: SSHB 52

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 52 CHILD SUPPORT FOR NONMINORS

"An Act relating to child support for children who are not minors and representation of their interests during certain proceedings."

RECOMMENDATIONS: [ ] the same title
be replaced with _____ [ ] a new title

[ ] have attached amendments(s)

[ ] do pass

[ ] do not pass

[ ] no recommendations

[✓] individual recommendations

[ ] additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept) APPROVES PREVIOUS: (Dept/Date)

[✓] fiscal impact Revenue (CSED) [ ] fiscal note(s) _____

[ ] zero fiscal note _____ [ ] zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
Patti L Cowan	✓				
Mary Miller	✓				
Bettye Davis	✓				
C. E. Bowles	✓				
Chris Davis	—				

Patti L Cowan
CHAIRMAN'S SIGNATURE

HOUSE COMMITTEE REPORT

(7)

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RECOMMENDATIONS: [ ] the same title
be replaced with _____ [ ] a new title

[ ] have attached amendments(s)
[ ] do pass
[ ] do not pass
[ ] no recommendations
[✓] individual recommendations
[ ] additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept)
[✓] fiscal impact Revenue (CSED)
[ ] zero fiscal note _____

APPROVES PREVIOUS: (Dept/Date)
[ ] fiscal note(s) _____
[ ] zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
Patti L Cowan	✓				
Mary Miller	✓				
Bettye Davis	✓				
J. E. Bonaba	✓				
Cheri Davis	—				

Patti L Cowan
CHAIRMAN'S SIGNATURE

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. HB52

Revision Date: February 1, 1991
Title: Act relating to child support for children who are not minors
Sponsor: Ulmer, B. Davis
Requestor:

Department Affected: Department of Revenue
BRU: Child Support Enforcement Division
Component:

COMPONENT SERIAL NO. | | | |

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	77.6	81.0	83.0	88.5	92.5	96.6
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	4	1	1	1.1	1.2	1.3
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	3	0	0	0	0	0
LANDS & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	84.6	82.0	84.0	89.6	93.7	97.9
CAPITAL	0	0	0	0	0	0
REVENUE	85	94	104	115	127	141

FUNDING: (Thousands of Dollars)

GENERAL FUND	28.8	27.9	28.6	30.5	31.8	33.3
FEDERAL FUNDS	55.8	54.1	55.4	59.1	61.9	64.6
OTHER	0	0	0	0	0	0
TOTAL	84.6	82.0	84.0	89.6	93.7	97.9

POSITIONS:

FULL-TIME	2	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year impact: 0

ANALYSIS: See attached analysis.

Prepared By: Ardith Lynch
Division: Child Support Enforcement Division
Phone: 263-6277
Date: February 4, 1991

Approved by Commissioner: Lee E. Fisher
Agency: Department of Revenue
Date: 2-28-91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

Rev 10/90

Reference: HB 52 Child support for children who are not minors

HB 52 will have a positive fiscal impact on the Child Support Enforcement Division; it will increase AFDC collections, thereby also increasing the amount of incentives that CSED receives from the Federal Government. The increased revenue will exceed the additional operating costs of implementation of this bill by the Child Support Enforcement Division.

This bill would allow the court to order support for children who are over eighteen, including children who reach age 18 during their final year of school. It would therefore enable CSED to collect support for children over age 18 who are receiving public assistance benefits. The Division of Public Assistance estimates that AFDC benefits are paid to an average of 83 children each month who are over eighteen and enrolled in school (and expected to graduate before age 19), with an average benefit payment amount of $298 per month attributable to that child. Assuming an average child support order for these children of $225 per month, and a collection rate of 33%, CSED would collect an additional $74,000 in these AFDC cases in the first year. (CSED projects an increase in collections of 12% per year.) Child support collections in AFDC cases are deposited in the general fund to help pay the State's AFDC general fund match. In addition, CSED earns federal incentives on its collections, both AFDC and non-AFDC, which would increase by $11,000 in the first year. However, collection of additional support in both AFDC and non-AFDC cases will require additional caseworker time. In addition, support orders must be modified to include post-majority support. This fiscal note reflects the cost of one additional Child Support Enforcement Officer I and one additional Clerk IV who will be assigned to modification and enforcement. The positions in the first year will cost $74,200, with associated equipment and contractual costs for computer terminals at $6,000 (one-time cost) and telephones at $1000. Increases in personnel services costs in the years beyond FY 92 are projected at a conservative rate of 4.5 percent.

CSED supports this bill because it will provide continued financial support for children on public assistance, thereby reducing public dependency and increasing state collections.

AAL:dab

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. SSHB52

Revision Date: February 3, 1992
Title: Act relating to child support for children who are not minors
Sponsor: Ulmer, B. Davis
Requestor:

Department Affected: Department of Revenue
BRU: Child Support Enforcement Division
Component:

COMPONENT SERIAL NO. | | 1 | 1 | 1 |

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	44.4	46.6	49.1	51.8	54.7	57.1
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	3	0	0	0	0	0
LANDS & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	47.4	46.6	49.1	51.8	54.7	57.1
CAPITAL	0	0	0	0	0	0
REVENUE	26.9	27.2	27.5	27.7	28.0	28.3
*FUND SOURCE: 1004	23.6	23.9	24.2	24.4	24.7	25.0
FUND SOURCE: 1016	3.3	3.3	3.3	3.3	3.3	3.3

FUNDING: (Thousands of Dollars)

GENERAL FUND	16.1	15.8	16.7	17.6	18.6	19.4
FEDERAL FUNDS	31.3	30.8	32.4	34.2	36.1	37.7
OTHER	0					
FUND SOURCE:	0					
TOTAL	47.4	46.6	49.1	51.8	54.7	57.1

POSITIONS:

FULL-TIME	1	1	1	1	1	1
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year impact: 0

ANALYSIS: See attached analysis.

Prepared By: Teri D. Mahaney
Division: Child Support Enforcement Division
Phone: 263-6279
Date: February 3, 1992

Approved by Commissioner: Darrel J. Roxwinkel
Agency: Department of Revenue
Date: 2/3/92

Distribution (By preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DOF, Gov. Legis. Ofc., & Impacted Agency(ies).

rev 10/07/91

FISCAL NOTE ANALYSIS
CHILD SUPPORT ENFORCEMENT DIVISION
BUDGET COMPONENT #111
PAGE 2 OF 2

Reference: HB 52 Child support for children who are not minors

Summary:

This bill would allow the court to order support for 18 year old dependent children who are actively pursuing a high school diploma or vocational training. Support orders for these children would enable CSED to collect support for children over age 18, including children who are receiving public assistance benefits. The Division of Public Assistance grants AFDC benefits to children who are over eighteen and enrolled in school (and expected to graduate before age 19).

Assumptions:

HB 52 will increase child supports collections in AFDC (public assistance) cases and increase the amount of incentives that the State receives from the Federal Government.

Average benefit payment	$341 per month
41 children with an average support payment of	$200 per month
Collection rate of	24%

Based on these assumptions, CSED would collect an additional $23,616 in these AFDC cases the first year. CSED projects an increase in collections of 1% per year.

Positions:

One Child Support Enforcement Officer I at $44.4 with a 4.5% increase per year.

Other Expenditures:

One time cost of equipment and computer terminal: $3.0.

Funding:

Funding for the CSED's operating costs is 66% Federal funding and 34% State General Fund Match.

Economic Impact:

Child Support collections in AFDC cases are deposited in the general fund to help pay the State's AFDC General Fund Match. In addition, the State receives Federal incentives for its child support collections, both AFDC and non-AFDC. This would increase incentives by $3.3 in the first year based on the above assumptions.

THE FOLLOWING PAGES WERE TREATED AS
A UNIT IN THE ORIGINAL FILE.

7-LS0438\D
Lauterbach
5/3/91

CS FOR HOUSE BILL NO. 52 ( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES ULMER, B.Davis

A BILL

FOR AN ACT ENTITLED

"An Act relating to child support for children who are not minors and representation of their interests during certain proceedings; and relating to postsecondary educational support of certain children."

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

* Section 1. AS 25.24.060(c) is amended to read:

(c) Mediation shall be conducted informally as a conference or series of conferences. The parties to the action and a court-appointed representative of any [MINOR] children of the marriage <u>under the age of 26 whose interests may be affected</u> shall attend. Counsel for the parties may attend all such conferences.

* Sec. 2. AS 25.24.140(a) is amended to read:

(a) During the pendency of the action, a spouse may, upon application and in appropriate circumstances, be awarded expenses, including

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

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

(3) reasonable support for minor children <u>of the marriage</u> in the care of the spouse, <u>reasonable support for other unmarried children of the marriage under the age of 22 who are actively pursuing a high school diploma or its equivalent while living as dependents with the spouse or designee of the spouse, and reasonable postsecondary educational support for children of the marriage as provided in AS 25.24.320</u> [, IF THERE IS A LEGAL OBLIGATION OF THE OTHER SPOUSE TO PROVIDE SUPPORT].

* Sec. 3. AS 25.24.170(a) is amended to read:

(a) Subject to AS 25.20.110, any time after judgment the court, upon the motion of either party, may set aside, alter, or modify so much of the judgment as may provide for alimony, for the appointment of trustees for the care and custody of the minor children or for their nurture and education, <u>for the care, nurture, and education of other unmarried children of the marriage under the age of 22 while they are actively pursuing a high school diploma or its equivalent while living as dependents with a parent, guardian, or designee of the parent or guardian, and reasonable postsecondary educational support for other children of the marriage as provided under AS 25.24.320,</u> or for the maintenance of either party to the action.

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

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

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

(2) if there are <u>unmarried</u> [MINOR] children of the marriage <u>under the age of 26</u> or the wife is pregnant, and the spouses have agreed on which spouse or third party is to be awarded custody of each minor child of the marriage and the extent of visitation, including visitation by grandparents and other persons if in the child's best interests, and support, <u>including post-majority support and postsecondary educational support,</u> to be provided on the children's behalf, whether the payments are to be made through the child support enforcement agency and the tax consequences of that agreement;

(3) the spouses have agreed as to the distribution of all jointly owned real and personal property, including retirement benefits, and the payment of spousal maintenance, if any, and the tax consequences resulting from these payments; the agreement must be fair and just and take into consideration the factors listed in AS 25.24.160(a)(2) and (4) so that the economic effect of dissolution is fairly allocated; and

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

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

(e) If the petition is filed by both spouses under AS 25.24.200(a), the petition must state in detail the terms of the agreement between the spouses concerning the custody of children, child support, visitation, spousal maintenance and tax consequences, if any, and fair and just division of property, including retirement benefits. Agreements on spousal maintenance and property division must fairly allocate the economic effect of dissolution and take into consideration the factors listed in AS 25.24.160(a)(2) and (4). In addition, the petition must state

(1) the respective occupations of the petitioners;

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

(3) the date and place of the marriage;

(4) the name, date of birth, and current custodial **and educational** status of each [MINOR] child **under the age of 26** born of the marriage or adopted by the petitioners;

(5) whether the wife is pregnant;

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

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

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

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

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

(11) any other relief sought by the petitioners.

* **Sec. 6.** AS 25.24.230(b) is amended to read:

(b) If the petition is filed under AS 25.24.200(a) and is 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 visitation, child custody, and child support, including postsecondary educational support and post-majority support, [AND VISITATION] are in the best interest of the children of the marriage, constitute the entire agreement of the parties on child custody, child support, and visitation, and, as between the spouses, are just; the court may not grant the spouses a final decree of dissolution unless the agreement provides for postsecondary educational support for the children that is at least as great as would be ordered by a court under AS 25.24.320 and post-majority support for children under the age of 22 while they are actively pursuing a high school diploma or its equivalent and living as dependents with a parent, guardian, or designee of the parent or guardian;

(3) the written agreements between the spouses concerning spousal maintenance and tax consequences, if any, division of property, including retirement benefits, and allocation of obligations are just and constitute the entire agreement between the parties;

(4) the spousal maintenance and division of property fairly allocate the economic effect of dissolution and take into consideration the factors listed in AS 25.24.160(a)(2) and (4);

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

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

* Sec. 7. AS 25.24.230(d) is amended to read:

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

(1) a representative of the minor children objects to a term of an agreement between the spouses or a representative of a child who is not a minor objects to a term providing or failing to provide postsecondary educational support or other post-majority support for the child;

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

(3) the petition alleges that the conditions in AS 25.24.200(b) exist, but the whereabouts of the absent spouse becomes known to the other spouse or the court before findings are made.

* Sec. 8. AS 25.24.310(a) is amended to read:

(a) In an action involving a question of the custody, support, or visitation of a **child** [MINOR], the court may, upon the motion of a party to the action or upon its own motion, appoint an attorney or the office of public advocacy to represent a minor with respect to the custody, support, and visitation of the minor or in any other legal proceeding involving the minor's welfare **or to represent a child who is not a minor with respect to postsecondary educational support or other post-majority support**. When custody, support, or visitation is at issue in a divorce, it is the responsibility of the parties or their counsel to notify the court that such a matter is at issue. Upon notification, the court shall determine whether the minor **or other child** should have legal representation or other services and shall make a finding on the record before trial. If the parties are indigent or temporarily without funds, the court shall appoint the office of public advocacy. The court shall notify the office of public advocacy if the office is required to provide legal representation or other services. The court shall enter an order for costs, fees, and disbursements in favor of the state and may further order that other services be provided for the protection of the minor **or other child**.

* Sec. 9. AS 25.24.310(c) is amended to read:

(c) Instead of, or in addition to, appointment of an attorney under (a) of this section, the court may, upon the motion of either party or upon its own motion, appoint an attorney or other person or the office of public advocacy to provide guardian ad litem services to a **child** [MINOR] in any legal proceedings involving the **child's** [MINOR'S] welfare. The court shall require a guardian ad litem when, in the opinion of the court, representation of the **child's** [MINOR'S] best interests, to be distinguished from preferences, would serve the welfare of the **child** [MINOR]. The court in its order appointing a guardian ad litem shall limit the duration of the appointment of the guardian ad litem to the pendency of the legal proceedings affecting the **child's** [MINOR'S] interests, and shall outline the guardian ad litem's responsibilities and limit the authority to those matters related to the guardian's effective representation of the **child's** [MINOR'S] best interests in the pending legal proceeding. The court shall make every reasonable effort to appoint a guardian ad litem from among persons in the community where

the **child's** [MINOR'S] parents or the person having legal custody or guardianship of the **child's** [MINOR'S] person reside. When custody, support, or visitation is at issue in a divorce, it is the responsibility of the parties or their counsel to notify the court that such a matter is at issue. Upon notification, the court shall determine if the **child's** [MINOR'S] best interests need representation or if the minor **or other child** needs other services and shall make a finding on the record before trial. If one or both of the parties is indigent or temporarily without funds the court shall appoint the office of public advocacy. The court shall notify the office of public advocacy if the office is required to provide guardian ad litem services. The court shall enter an order for costs, fees, and disbursements in favor of the state and may further order that other services be provided for the protection of the **child** [MINOR].

* **Sec. 10.** AS 25.24 is amended by adding a new section to read:

Sec. 25.24.320. POSTSECONDARY EDUCATIONAL SUPPORT. (a) When issuing an order for support under AS 25.24.140(a)(3) or 25.24.170(a), the court shall provide for four years of reasonable postsecondary educational support for children of the marriage while they are

(1) unmarried;

(2) under the age of 26; and

(3) at least half-time students in good standing in a career education program, college, or university that qualifies for the use of scholarship loans under AS 14.43.120(b).

(b) When determining what would be reasonable postsecondary educational support under this section, the court shall consider

(1) the earnings, income, and resources of the parents, including real and personal property;

(2) the financial needs and resources, physical and emotional condition, and educational needs of the child; and

(3) the standard of living, including the likely educational attainment, the child would have enjoyed had the marriage stayed intact.

* **Sec. 11.** AS 25.27.070(a) is amended to read:

(a) In a proceeding in which the court has ordered either or both parents to pay for the support of a [MINOR] child, the court may, on its own motion or motion of a party or the agency on behalf of a party, after notice and an opportunity for hearing, order either parent or both parents to assign to the custodian of the child that portion of salary or wages of either parent

due them currently and in the future sufficient to pay the amount ordered by the court for the support, maintenance, nurture, and education of the [MINOR] child.

* **Sec. 12.** AS 25.27.130(b) is amended to read:

(b) To establish or enforce an order of support, based on the subrogation of the state, the agency is not limited to the amount of assistance being granted to the [MINOR] child.

* **Sec. 13.** The changes made by this Act constitute a material change in circumstances for purposes of a motion to modify a child support determination under AS 25.20.110.