

HB

93

Task Force on Mediation
for the Supreme Court of Alaska

June 8, 1990


Chief Justice Warren W. Matthews
Alaska Supreme Court
303 K Street
Anchorage, Alaska 99501

Dear Chief Justice Matthews:

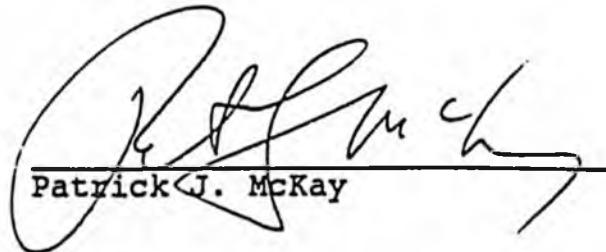
We are pleased to transmit to you the final report of the
Mediation Task Force.


Sincerely,



Honorabile Miesje Steinkruger
Co-Chair


Stephanie J. Cole
Co-Chair


Honorable Michael I. Jeffery


Patrick J. McKay


Marla N. Greenstein


Pam Kirk


Jepeane Moore

Executive Summary

In the Alaska Court System's fiscal year 1989 budget appropriation document (May 1988), the Alaska State Legislature inserted the following provision:

It is the legislature's intent that the court system educate judges, attorneys and the public on the potential benefits of mediation. The court system should evaluate and quantify the potential benefits to the consumers as well as the court system of mediation, as an option.

In December 1988, Chief Justice Warren Matthews appointed a Task Force on Mediation, and asked the task force members to focus on the uses, availability and limits of mediation, and to issue a report on the subject to the supreme court. Fairbanks Superior Court Judge Niesje Steinkruger and Deputy Administrative Director Stephanie Cole were designated co-chairs for the task force. Other members were Patrick J. McKay, an attorney in private practice; Pam Kirk, representing the Alaska Dispute Settlement Association; Marla N. Greerstein, an attorney with research administrative experience in alternate dispute resolution programs; Barrow Superior Court Judge Michael I. Jeffery; and Jeneane Moore, serving as task force reporter.

The task force held seven meetings between February 24, 1989 and May 29, 1990. The task force's final report includes the history of mediation in Alaska and current practices within the court system, and makes 10 recommendations to the supreme court:

1. The Alaska Court System should undertake a mediation pilot project.
2. Efforts should be made to provide for a wider distribution of an existing public information pamphlet about mediation, and the Alaska Court System should ask the Alaska Bar Association to form a standing committee on Alternative Dispute Resolution. The Alaska Court System should consider preparing public service announcements about mediation for radio broadcasts in rural Alaska.
- * 3. The Alaska Court System should seek a statutory change to AS 25.20.090 to ensure the confidentiality of the mediation process.
4. The Alaska Court System should adopt a new court rule allowing for expanded use of mediation.
5. The Alaska Court System should make training about mediation available to judges.

6. The Alaska Court System should encourage judges to utilize mediation settlement techniques.
7. The Alaska Court System should consider imposing a requirement in pretrial orders that attorneys advise their clients of available alternative dispute resolution services.
8. A system should be developed which allows for the provision of mediation services to indigents.
9. The Alaska Court System should support local efforts throughout Alaska to establish and implement mediation and conciliation programs.
10. The Alaska Supreme Court should appoint a standing committee on mediation.

The task force also recommends that the court system ask the Alaska Bar Association to form a standing committee on Alternate Dispute Resolution, consisting of attorney members who are interested in fostering mediation services in Alaska.

The task force recommends that the court system consider preparing public service announcements for radio broadcasts in rural Alaska, suggesting mediation as an alternative to court action.

3. Confidentiality in mediation

Currently, AS 25.20.090 ("Factors for consideration in awarding shared child custody") reads, in pertinent part:

In determining whether to award shared custody of a child the court shall consider....

(7) any findings and recommendations of a neutral mediator;...

The task force suggests that this statute as currently written endangers the mediation process and runs contrary to the majority view that mediation communications be kept confidential. The majority view also does not envision a mediator making a recommendation about the resolution of a dispute, should mediation be terminated without agreement. The mediator's role is to guide the parties to a mutual decision, and not to impose a decision (even in the form of a recommendation) upon the parties if they cannot reach a decision.

The task force recommends that the court system seek a statutory change which would substitute the term "custody investigator" for the term "neutral mediator." The findings and recommendations of a custody

investigator are more appropriate for the court's consideration.

In the future it may be necessary to adopt statutes to provide specifically for the confidentiality of mediation sessions.

4. Expanded authority for mediation

Currently, references in state statutes to the court's authority to refer cases to mediation are limited to specific types of cases (for example, divorces.) The task force recommends that the supreme court adopt the following court rule, which would enable courts to refer to mediation all types of civil cases when a judge determines that such a referral would be appropriate:

Proposed Civil Rule 10

Mediation

(a) Application. At any time after a complaint is filed, a party may file a motion with the court requesting mediation of the action for the purpose of achieving mutually agreeable settlement. The motion must address how the mediation should be conducted as specified in paragraph (b), including the names of any acceptable mediators. The court may order mediation in response to such a motion, or on its own motion, whenever it determines that mediation may result in a settlement of the action.

(b) Order. A court order of mediation must state:



Alaska Court System
State of Alaska

OFFICE OF ADMINISTRATIVE DIRECTOR

CHARLES S. CHRISTENSEN III
Staff Counsel

February 15, 1991

303 K Street
Anchorage, AK 99501
(907) 264-8228

The Honorable Georgianna Lincoln
Co-Chairman, House HESS Committee
P.O. Box V
Juneau, Alaska 99811

Dear Representative Lincoln:

I am writing to request that the HESS Committee schedule a hearing on House Bill 93, relating to the factors for consideration in awarding shared child custody, at its earliest convenience. This bill was introduced at the request of the Alaska Court System.

In December, 1988, Chief Justice Warren Matthews created the Task Force on Mediation in response to an instruction from the Fifteenth Legislature. The purpose of the task force was to evaluate the potential benefits of mediation to consumers and to the court system. In its report, issued in June, 1990, the task force recommended the statutory change contained in HB 93.

Currently, AS 25.20.090 reads in pertinent part:

In determining whether to award shared custody of a child the court shall consider

. . . .

(7) any findings and recommendations of a neutral mediator;

. . . .

After study, the task force concluded that this statute as currently written endangers the mediation process and runs

Court System correspondence

The Honorable Pat Carney
February 15, 1991
Page 2

contrary to the majority view that mediation communications be kept confidential. The majority view also does not envision a mediator making a recommendation about the resolution of a dispute, should mediation be terminated without agreement. The mediator's role is to guide the parties to a mutual decision, and not to impose a decision (even in the form of a recommendation) upon the parties if they cannot reach a decision.

To correct this problem, HB 93 would substitute the term "custody investigator appointed by the court" for the term "neutral mediator." The court system currently employs custody investigators who are appointed in specific cases to assist the court in obtaining the facts needed to make custody decisions. The findings and recommendations of a custody investigator are more appropriate for a court's consideration than are the findings of a neutral mediator.

Thank you for your courtesy. Please contact me if you have any questions or comments concerning this legislation.

Very truly yours,



C. S. Christensen III
Staff Counsel

CSC:bh

TO: PATTI BEARDMAN;
HOUSE HESS COMM.

PLEASE DISTRIBUTE
TO COMMITTEE MEMBERS



February 18, 1991

THANKS,
STEVE
STRUBE

Representative Georgianna Lincoln, Co-Chair
House HESS Committee
PO Box V
Juneau, Ak. 99811

Re: House Bill 93

Dear Representative Lincoln,

The purpose of this letter is to inform you that we are strongly opposed to House Bill 93: An act relating to the factors to be considered when awarding shared child custody.

As the law now stands both parties can utilize the services of a neutral mediator to make recommendations to the court regarding if shared child custody is in the best interest of the child(ren), or the court may appoint the Custody Investigator's Office to make the recommendation.

This bill would eliminate the option for parents to use a neutral mediator, and would require the Custody Investigator's Office to handle all cases.

We believe it would be a serious mistake to require judges and parents to use only the custody investigators that work for the court system because they are not accountable for their decisions, are biased against fathers, and carry out their investigations in secrecy without either party having the option to record the interviews or to rebutt allegations made by the investigators.

On the other hand, neutral mediators in private practice are held accountable for their work, and if they are biased the public simply stops using them and finds one with a good reputation for objectivity.

The Custody Investigator's Office must be moved out of the secrecy of the court system before they are given any additional power over families and children in Alaska. This fact is stated clearly in testimony taken by the Senate Family Law Review Task Force. We would be happy to provide that information to you upon request.

We appreciate the opportunity to offer input on this important issue, and we recommend that this bill be tabled. It is bad public policy.

Sincerely,

Steven P. Strube

Steven P. Strube, President of P.O. Box 521155, Big Lake, AK 99652

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*****
*
* DELIVER TO: LHSCHES
*
* ORIGINAL
* SENT: 03/08/91 TIME: 09:51
* FROM: LIOCROG
* SUBJECT: 91-03-030,FS,CUSTODY,3/8
* PRINT DATE: 03/08/91 TIME: 09:51
*
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SUBJECT LINE TO READ: TC NO.; PL FS;SHORT SUBJECT;DATE

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T/C NO: 91-03-030
DATE: 3/8
SPONSOR: H HESS
SUBJECT: CHILD CUSTODY
MODERATOR: JUDY
SITE: ANCHORAGE

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FINAL STATISTICS

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*****
TO TESTIFY
NAMES/REPRESENTING ADDRESS PHONE BILL NO.
1. JIM COLVER POB 10040 99510 561-7669/745-8474 HB 93
2.
3.

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*****
TO OBSERVE:
NAME/ REPRESENTING ADDRESS PHONE BILL NO.
1.
*****

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TESTIFIED: 1
UNABLE: 0
OBSERVED: 0
TOTAL: 1

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START TIME: 8:30 END TIME: 9:15

*
* DELIVER TO: LHSCHE\$
*
* ORIGINAL
* SENT: 03/08/91 TIME: 09:50
* FROM: LTCCKTN
* SUBJECT: 91-03-030;FS;CHILD CUSTDY;3-8
* PRINT DATE: 03/08/91 TIME: 09:50
*

T/C NO: 91-03-030
DATE: MARCH 8, 1991
SPONSOR: HOUSE HEALTH, EDUCATION AND SOCIAL SERVICES
SUBJECT: HB 93, CHILD CUSTODY INVESTIGATORS
MODERATOR: JUNE ROBBINS
SITE: KETCHIKAN

FINAL STATS

OBSERVED

NAME/RERESNTING	ADDRESS	PHONE	BILL NO.
1. J. PATRICK TANNER,	3250 DENALI 1, KTN	225-0416	HB 93

TESTIFIED: 0
UNABLE: 0
OBSERVED: 1
TOTAL: 1

START TIME: 9:05 AM

END TIME: 9:15 AM

*
* DELIVER TO: LHSCHES *
*
* ORIGINAL *
* SENT: 03/08/91 TIME: 10:01 *
* FROM: LTCCSOL *
* SUBJECT: 91-03-030;FS-HB93;3-8 *
* PRINT DATE: 03/08/91 TIME: 10:02 *
*

SUBJECT LINE TO READ: TC NO.;SHORT SUBJECT;DATE

T/C NO: 91-03-030
DATE: 3-8-91
SPONSOR: HOUSE HESS
SUBJECT: HB93 CHILD CUSTODY INVESTIGATORS
MODERATOR: ALYSON
SITE: SOLDOTNA

FINAL STATS

WE HAD NO PARTICIPANTS AND DID NOT DIAL INTO THE TELECONFERENCE

*
* DELIVER TO: LHSCHES *
*
* ORIGINAL *
* SENT: 03/07/91 TIME: 10:08 *
* FROM: LTCCSOL *
* SUBJECT: 91-03-012:FS-HB50,93,136;3-7 *
* PRINT DATE: 03/07/91 TIME: 10:08 *
*

SUBJECT LINE TO READ: TC NO.,SHORT SUBJECT,DATE

T/C NO: 91-03-012
DATE: 3-7-91
SPONSOR: HOUSE HEALTH EDUCATION AND SOCIAL SERVICES
SUBJECT: HB50,93,136
MODERATOR: ALYSON
SITE: SOLDOTNA

FINAL STATS

WE HAD NO PARTICIPANTS AND DID NOT DIAL INTO THE TELECONFERENCE

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*****
*
* DELIVER TO: LHSCHES
*
* ORIGINAL
* SENT: 03/07/91 TIME: 10:26
* FROM: LIOCMIL
* SUBJECT: 91-03-012;FS;CHILD;3/7
* PRINT DATE: 03/07/91 TIME: 10:26
*
*****

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SUBJECT LINE TO READ: TC NO.; FL FS;SHORT SUBJECT;DATE

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T/C NO: 91-03-012
DATE: 3/7
SPONSOR: H HESS
SUBJECT: CHILDREN'S TRUST
MODERATOR: JUDY
SITE: ANCHORAGE

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FINAL STATISTICS

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*****
TO TESTIFY
NAMES/REPRESENTING ADDRESS PHONE BILL NO.
1. PAT WILLIAMS/CHILD ADVOCACY NETWORK HB 50
2. RICHARD HERMOSILLO HB 93/136
*****

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TO OBSERVE:
NAME/ REPRESENTING ADDRESS PHONE BILL NO.
1. SUE MILES FOB 772196 ER 696-0604 50,93,136
*****

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TESTIFIED: 2
UNABLE: 0
OBSERVED: 1
TOTAL: 3

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START TIME: 8:30 END TIME: 10:00

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* DELIVER TO: LHSCHES
*
* ORIGINAL
* SENT: 03/07/91 TIME: 10:50
* FROM: LTCCMAT
* SUBJECT: 012 FS HHESS FAM 3/7/91
* PRINT DATE: 03/07/91 TIME: 10:50
*
*****

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SUBJECT LINE TO READ: TC NO,; PL/FS;SHORT SUBJECT;DATE

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T/C NO: 91-03-012
DATE: 3/7/91
SPONSOR: H HESS
SUBJECT: HOUSE BILLS 50, 93, AND 136-FAMILY
MODERATOR: MARY
SITE: MAT-SU LIO

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FINAL STATS

TESTIFIED:

NAME/REPRESENTING	ADDRESS	PHONE	BILL NO.
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1	EMIL PORTSCHELLER JR NATIONAL-CENTER-FOR-FAMILIES-AND-CHILDREN	POB 1645 PALMER	99645 746-3011
2	JIM COLVER	POB 427 PALMER	99645 745-8474

3

OBSERVED

NAME/REPRESENTING	ADDRESS	PHONE	BILL NO.
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1			
2			

TESTIFIED: 2
UNABLE:
OBSERVED:
TOTAL: 2

START TIME: 8:30 AM END TIME: 10

HOUSE COMMITTEE REPORT

(7)
Date Referred: February 1, 1991

FURTHER REFERRALS:

Judiciary

Date of Committee Action: 3-8-91

The HEALTH, EDUCATION AND SOCIAL SERVICES Committee considered:

HB 93

HOUSE BILL NO. 93

CHILD CUSTODY INVESTIGATORS

"An Act relating to the factors to be considered when awarding shared child custody."

RECOMMENDATIONS:

be replaced with CS HB93 (HES) the same title
 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 _____

fiscal note(s) _____

zero fiscal note AK Court System

zero fiscal note(s) _____

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

	Check appropriate column:	Do Not Pass	No Rec	Amend
_____ (CARNEY)				
Betty Davis	<u>J. G. Gonzalez</u> (GONZALES)		<input checked="" type="checkbox"/>	
	<u>Mark Hanley</u> (HANLEY)		<input checked="" type="checkbox"/>	
<u>Cheri Davis</u>	<u>Mary Miller</u>		<input checked="" type="checkbox"/>	

_____ (LINCOLN)
CO-Chairman's Signature

HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

DATE 3/8/91

JOINT _____

TAPE # 20

JOINT _____

TIME CALLED TO ORDER 8:34 am/pm

TIME ADJOURNED 9:25AM

ROLL CALL:	PRES	ABST	TIME ARRVD	JOINT MEMBERS PRESENT:
Rep. Patrick Carney	✓			
Rep. Georgiana Lincoln	✓			
Rep. Bettye Davis	✓	X		<u>late 8:44 AM</u>
Rep. Cheri Davis	✓			
Rep. John Gonzales	✓			
Rep. Mark Hanley	✓			<u>late 8:36am</u>
Rep. Mary Miller	✓			

AGENDA: Continuation of bills previously heard.

BILL NO.	SHORT TITLE	ACTION TAKEN
<u>HB93</u>	<u>Child Custody Investigators</u>	<u>MOVED CSNB93(HFS)-DOPSS</u>

OTHER:

SPECIAL ANNOUNCEMENTS: Teleconference w/ Anchorage

HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

DATE 3/7/91

JOINT _____

TAPE # 18

JOINT _____

TIME CALLED TO ORDER 8:35 (am/pm)

TIME ADJOURNED 10:05 A.M.

ROLL CALL:	PRES	ABST	TIME ARRVD	JOINT MEMBERS PRESENT:
Rep. Patrick Carney	✓			
Rep. Georgiana Lincoln	✓			
Rep. Bettye Davis	✓			
Rep. Cheri Davis	✓			
Rep. John Gonzales	✓			
Rep. Mark Hanley	✓			late @ 8:38 AM
Rep. Mary Miller	✓			late @ 8:37 AM

AGENDA:

BILL NO.	SHORT TITLE	ACTION TAKEN
*HB 50①	Approp.: Children's Trust Fund	Passed w/ ind. recommendations
*HB 93③	Child Custody Investigators	Need to be heard Fri Mar 8 th
*HB 136②	Misc. Divorce and Custody Laws	Passed w/ ind. recommendations

OTHER:

Rep. Fran Ulmer

SPECIAL ANNOUNCEMENTS: Teleconference bet. Juneau, Anch,
Portland, Soldotna + Chicago

7-LS0563NG ✓
Lauterbach
3/6/91

CS FOR HOUSE BILL NO. 93 (HES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

Offered:

Referred:

Sponsor(s): HOUSE JUDICIARY COMMITTEE BY REQUEST

A BILL

FOR AN ACT ENTITLED

1 "An Act eliminating a requirement that a court consider the findings and recommendations
2 of a neutral mediator when awarding shared child custody."

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

4 * Section 1. AS 25.20.090 is amended to read:

5 Sec. 25.20.090. FACTORS FOR CONSIDERATION IN AWARDING SHARED CHILD
6 CUSTODY. In determining whether to award shared custody of a child, the court shall consider

7 (1) the child's preference if the child is of sufficient age and capacity to form a
8 preference;

9 (2) the needs of the child;

10 (3) the stability of the home environment likely to be offered by each parent;

11 (4) the education of the child;

12 (5) the advantages of keeping the child in the community where the child
13 presently resides;

14 (6) the optimal time for the child to spend with each parent considering

- 1 (A) the actual time spent with each parent;
- 2 (B) the proximity of each parent to the other and to the school in which
- 3 the child is enrolled;
- 4 (C) the feasibility of travel between the parents;
- 5 (D) special needs unique to the child that may be better met by one parent
- 6 than the other;
- 7 (E) which parent is more likely to encourage frequent and continuing
- 8 contact with the other parent;
- 9 (7) [ANY FINDINGS AND RECOMMENDATIONS OF A NEUTRAL
- 10 MEDIATOR;
- 11 (8)] any evidence of domestic violence, child abuse, or child neglect in the
- 12 proposed custodial household or a history of violence between the parents;
- 13 (8) [(9)] evidence that substance abuse by either parent or other members of the
- 14 household directly affects the emotional or physical well-being of the child;
- 15 (9) [(10)] other factors the court considers pertinent.

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

Bill No. HB 93

Revision Date: _____ Department Affected: Alaska Court System
 Title: An Act relating to factors to be BRU: Trial Courts
considered when awarding shared child custody Components: _____
 Sponsor: By Judiciary Committee by request
 Requestor: HESS COMPONENT SERIAL NO.

000 000	000 768
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EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUNDS	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: C. S. Christensen III, Staff Counsel  Phone: 264-8228
 Division: Alaska Court System Date: 03/04/91

Approved by: Arthur H. Snowden, II, Administrative Director  Date: 03/04/91
 Agency: Alaska Court System

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



Alaska State Legislature
House of Representatives
 COMMITTEE ON HEALTH, EDUCATION
 AND SOCIAL SERVICES

DATE: March 7, 1991

PLACE: Capitol Room 106

SUBJECT OF MEETING:

*HB 93 CHILD CUSTODY INVESTIGATORS

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?		WHAT SUBJECT/ WHICH BILL?
<i>[Faint handwritten name]</i>	<i>[Faint handwritten representing]</i>	<i>[Faint handwritten address]</i>	<i>[Faint handwritten zip]</i>		<i>264-8228</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<i>[Faint handwritten subject]</i>
<i>MARIE GORE</i>	<i>Womens LOBBY</i>	<i>F. Bondais</i>	<i>JWO</i>	<i>99802</i>	<i>463-6744</i>	<input type="checkbox"/>	<input type="checkbox"/>	<i>HB 93 - will testify if necessary</i>
						<input type="checkbox"/>	<input type="checkbox"/>	
						<input type="checkbox"/>	<input type="checkbox"/>	
						<input type="checkbox"/>	<input type="checkbox"/>	
						<input type="checkbox"/>	<input type="checkbox"/>	
						<input type="checkbox"/>	<input type="checkbox"/>	
						<input type="checkbox"/>	<input type="checkbox"/>	
						<input type="checkbox"/>	<input type="checkbox"/>	
						<input type="checkbox"/>	<input type="checkbox"/>	
						<input type="checkbox"/>	<input type="checkbox"/>	



Alaska State Legislature
House of Representatives
 COMMITTEE ON HEALTH, EDUCATION
 AND SOCIAL SERVICES

DATE: March 8, 1991

PLACE: Capitol Room 106

SUBJECT OF MEETING:
 *HB93 Child Custody Investigators
 CONTINUATION OF BILLS PREVIOUSLY HEARD

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?	WHAT SUBJECT/ WHICH BILL?
<i>Chris</i> C. S. CHRISTENSEN STAFF COUNSEL	ALASKA COURT SYSTEM	303 K ST. ANCHORAGE	99501		264-5228 463-4773	<input checked="" type="radio"/> Y <input type="radio"/> N	HB 93
						<input type="radio"/> Y <input type="radio"/> N	
						<input type="radio"/> Y <input type="radio"/> N	
						<input type="radio"/> Y <input type="radio"/> N	
						<input type="radio"/> Y <input type="radio"/> N	
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						<input type="radio"/> Y <input type="radio"/> N	
						<input type="radio"/> Y <input type="radio"/> N	
						<input type="radio"/> Y <input type="radio"/> N	
						<input type="radio"/> Y <input type="radio"/> N	