HB

52

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. 58HB52

Revision Date: February 3, 1992
Title: Act relating to child support for children who are not minors
Sponsor: Ulmer, D. 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	52.8	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)

	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
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:

	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
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. Rexwinkel
Agency: Department of Revenue
Date: 2/3/92

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBP, 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.

TDM:tmr

Alaska State Legislature

HOUSE OF REPRESENTATIVES

REPRESENTATIVE FRAN ULMER

MEMORANDUM
April 21, 1992

TO: Senator Arliss Sturgulewski, Chair
Senate Health, Education and Social Services Committee

FROM: Rep. Fran Ulmer

RE: SSHB 52(am), relating to child support for non-minors

SSHB 52 makes a small adjustment to child support statutes in order to provide child support for unmarried, 18 year old children who are living as dependents and actively pursuing a high school diploma. Support may be 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 or would allow the state to collect child support as repayment for assistance received by those families whose 18 year old children are still in school.

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).

SSHB 52 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.

SSHB 52 was amended in the House to allow child support for 18 year old children to be paid directly to the child on terms considered appropriate by the court or the Child Support Enforcement Agency. This provision was included in the bill with the assumption that the 18 year old child was old enough to responsibly administer child support funds himself. However, because the custodial parent is, by law, the "administrator" of all child support funds paid on behalf of the child, he or she can be held liable for the disposition of funds paid directly to the 18 year old child. I would urge the committee to adopt the attached amendment which removes the custodial parent as administrator of child support paid directly to the 18 year old child.

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

The concept for this legislation was recommended by the Family Support Task Force. SSHB 52 has a positive impact on the state's finances and will result in a net gain of $10.9.

Alaska State Legislature

HOUSE OF REPRESENTATIVES

REPRESENTATIVE FRAN ULMER

MEMORANDUM
April 3, 1992

TO: Rep. Arliss Sturgulewski, Chair
Senate Health, Education and Social Services Committee

FROM: Rep. Fran Ulmer

RE: SSHB 52, child support for post-majority children

I would like to request a hearing for SSHB 52, authorizing child support for unmarried, 18 year old, dependent children actively pursuing a high school diploma. Support may be authorized until the child finishes high school or reaches 19 years of age, whichever comes earlier. Passage of this bill will eliminate the current practice of dependent 18 year old children receiving public assistance from the state because their child support has stopped.

I hope the Senate HESS Committee will find room on its agenda soon to hear this bill.

Thank you for your consideration of this request.

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

Sponsor Substitute for HB 52 (am)
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. Allows court ordered child support for unmarried 18 year old children to be paid directly to the child on terms considered appropriate by the court.

Section 10. Allows child support established administratively by the Child Support Enforcement Agency to be paid directly to the child on terms considered appropriate by the agency.

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.

adopted

7-LS0438\J.1
Lauterbach
04/21/92

AMENDMENT

OFFERED IN THE SENATE

TO: SSHB 52 am

Page 5, after line 21:

Insert a new bill section to read:

"* **Sec. 10.** AS 25.27.060(a) is amended to read:

(a) **Unless otherwise provided under AS 25.24.910 or AS 25.27.061, an** [AN] order of support establishes a relationship by which the custodian of the child is the administrator for the purposes of administering child support on behalf of the child. The court shall carefully consider the need for support, the ability of both parents to meet such support obligations, the extent to which the parents supported the child before divorce, and the economic ability of the parents to pay after separation and divorce. The court shall also consider the effect on the support obligation of a change in custodian. The need of the child for support shall be considered regardless of the sex of the parent awarded custody of the child."

Renumber the following bill sections accordingly.

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.

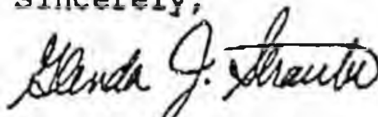
To say the least, the senior year in high school is <u>the most</u> expensive year in a child's life. It is already sad to watch so many of them go without the basic needs, much less the humiliation of not being able to afford to engage in any senior social activities - for lack of funds.

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
Volunteer Coordinator

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 CON-
TINUE 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,

Steve Struble

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.

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 situation 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 responsibilities 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 or 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.

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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 PO. 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); Guidelines 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).