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FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. HB 422

Revision Date: February 23, 1994
Title: "An Act relating to custody and visitation rights."
Sponsor: Representative Bunde
Requestor: Representative Bunde

Department Affected: Department of Law
BRU: Prosecution
Component: All
COMPONENT SERIAL NO. 0085 through 0090

EXPENDITURES/REVENUES:

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND &						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX

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

REVENUE						
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FUNDING:

1002 Federal						
1003 GF Match						
1004 GF						
1005 GF/Program						
1006 GF/MHTIA						
OTHER						
TOTAL	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX

POSITIONS:

FULL-TIME	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX
PART-TIME						
TEMPORARY						

Estimate of current year (FY94) impact: _____

ANALYSIS: (Attach a separate page if necessary.)
Please see the attached analysis.

Prepared by: Richard I. Pegues, Director
Division: Administrative Services Division

Phone: 465-3672
Date: February 23, 1994

Approved by Commissioner: Bruce M. Botelho, Attorney General
Agency: Department of Law

Date: February 23, 1994

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FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. HB 422

ANALYSIS CONTINUATION:

Section 1 of this bill amends AS 11.41 to provide that a person commits the crime of custodial interference in the third degree if, being a relative of a child under 18 years of age or a relative of an incompetent person and knowing that the person has no right to do so, the person intentionally takes, entices, or keeps that child or incompetent person from a lawful custodian.

Custodial interference in the third degree would also apply to a person being a lawful custodian of a child under 18 years of age and knowing that the person has no legal right to do so, the person takes, entices, or keeps the child with the intent of denying access to the child by another person during a time when the other person has the legal right under court order to be with the child. And, this provision would also apply to a person who fails to comply with an order to allow visitation with the child by another person after being found in contempt for failure to comply with a visitation order, or a person who has engaged in a pattern of intentional violation of court orders to allow visitation by another person with the child.

Affirmative defenses to the crime are provided in the bill including: the defendant's purpose was to protect the child or the defendant from imminent physical harm; the complainant has failed for a protracted period of time to exercise the complainant's rights to physical custody or access to the child, or failed to give any notice to the defendant or a desire to resume exercise of the complainant's right to physical custody or access; the acts giving rise to the charges were consented to by the complainant; and the defendant, after providing or making a good faith to provide notice to the person entitled to access to the child, failed to provide access due to reasons that a reasonable person would believe were directly related to the welfare of the child.

Custodial interference in the third degree would be a class B misdemeanor, except that a person previously convicted of the same offense would be guilty of a class A misdemeanor upon conviction for a second or additional offense.

Current state law provides for the crimes of custodial interference in the first degree and custodial interference in the second degree. The latter crime requires that a person being a relative, keeps a child or incompetent person from a lawful custodian for a protracted period of time. The former crime includes the same elements and the person causes the victim to be removed from the state.

Section 2 of this bill amends the state's child custody laws, AS 25.20, to provide for a comprehensive child visitation schedule between a custodial parent and a visiting parent. The schedule includes visitation on alternating weekends, school summer vacation, school spring vacation, Mother's Day and Father's Day weekends, Wednesday for school age children, and Christmas and Thanksgiving vacations. The schedule is also specific as to travel distance between parents, the day of week and the hour of the day when visitation periods are to begin and end, as may be appropriate for the various specified vacations, Wednesdays, weekends, and three-day weekends.

This section also provides that a court shall include as a condition to a custody or visitation order requirement that a party intending to relocate the temporary or permanent residence of a child shall give advance written notice of the intention to either the court or the other party, or both, at least 60 days before the intended relocation.

Heretofore, courts have had wide latitude to fashion child custody and visitation schedules, taking into account the welfare of a child and the circumstances of the parents. However, under the bill, courts would be required to fashion a visitation schedule as similar as possible to that set out in the bill in a manner that would least likely cause harm or detriment to a child after consideration of the circumstances, finances of each parent, and the age and need of the child.

In view of the specific visitation requirements set out in the bill, which go to the very hour when a visitation will begin and end, and where even a minor delay would be a criminal offense, the department is concerned that its criminal prosecutors will be dragged into civil domestic relations disputes between the parents of dependent children.

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. HB 422

ANALYSIS CONTINUATION:

is not unusual for people left unhappy and embittered after a failed marriage to seek to punish their former spouses, and they often use their own children for this purpose. This bill could encourage that to happen.

There are currently about 1,600 divorces, dissolutions, and annulments each year in Alaska that involve dependent children, and for which the provisions of this bill would apply. The bill would also apply to past child custody orders if application of the visitation schedule proposed in the bill results in an increase of visitation time of at least 25 percent in an existing child custody order.

We cannot say exactly how many child custody orders will fall within the bill's provisions immediately, but it will certainly be several thousand within a few years. Of this number, the complaints of custodial interference in the third degree may number in the hundreds within a few years. The Department of Law's prosecutors, who are already trying to deal with substantial increases in violent crime during a time of reduced resources, cannot afford to become involved in disputes that are, for the most part, civil and personal in nature. Because of the uncertainty of the number of potential complaints, we cannot determine an accurate fiscal impact, but it could become substantial in a short time.



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

DATE: 3-18-94

PLACE: Capitol Room 106

SUBJECT OF MEETING:
 *HB 291: CONSUMER PROTECTION INTERN PROGRAM
 — BILLS HELD (NETZ)
 HB 488: RESTRICT STUDENT LOANS TO ALASKA SCHOOLS
 HB 422: CHILD CUSTODY; VISITATION RIGHTS
 * INDICATES FIRST PUBLIC HEARING

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?		WHAT SUBJECT/ WHICH BILL?
GHERMIE GORU	Alaska Women's Lobby	P.O. Box 22156 Juneau	99802		463-6744	<input checked="" type="radio"/>	<input type="radio"/>	HB 422
						<input type="radio"/>	<input type="radio"/>	
						<input type="radio"/>	<input type="radio"/>	
						<input type="radio"/>	<input type="radio"/>	
						<input type="radio"/>	<input type="radio"/>	
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						<input type="radio"/>	<input type="radio"/>	
						<input type="radio"/>	<input type="radio"/>	

H/HESS ROLL CALL FORM

BILL HB 791 DATE 3/18/94
 TAPE 94-File B NUMBER 089
 SUBJECT OF VOTE TO PASS HB 791 OUT OF COMMITTEE WITH
INDIVIDUAL RECOMMENDATIONS

MEMBER	YEA	NAY	ABS
Rep. Cynthia Toohey	—	✓	—
Rep. Con Bunde	✓	—	—
Rep. Gary Davis	✓	—	—
Rep. Al Vezey	✓	—	—
Rep. Pete Kott	✓	—	—
Rep. Harley Olberg	—	—	—
Rep. Bettye Davis	—	—	—
Rep. Irene Nicholia	—	—	—
Rep. Tom Brice	—	—	—
TOTAL	<u>4</u>	<u>1</u>	—

+++++

BILL CSHB 422 DATE 3/18/94
 TAPE 94-File B NUMBER 130
 SUBJECT OF VOTE TO PASS CSHB 422 OUT OF COMMITTEE
WITH INDIVIDUAL RECOMMENDATIONS

MEMBER	YEA	NAY	ABS
Rep. Con Bunde	✓	—	—
Rep. Gary Davis	✓	—	—
Rep. Al Vezey	✓	—	—
Rep. Pete Kott	✓	—	—
Rep. Harley Olberg	—	—	—
Rep. Bettye Davis	—	—	—
Rep. Irene Nicholia	—	—	—
Rep. Tom Brice	—	—	—
Rep. Cynthia Toohey	—	✓	—
TOTAL	<u>4</u>	<u>1</u>	—

8-LS1606K
Lauterbach
3/16/94

CS FOR HOUSE BILL NO. 422(HES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVE BUNDE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to custody and visitation rights."

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

3 * Section 1. AS 11.41 is amended by adding a new section to read:

4 Sec. 11.41.340. CUSTODIAL INTERFERENCE IN THE THIRD DEGREE.

5 (a) A person commits the crime of custodial interference in the third degree if

6 (1) being a relative of a child under 18 years of age or a relative of an
7 incompetent person and knowing that the person has no legal right to do so, the person
8 intentionally takes, entices, or keeps that child or incompetent person from a lawful
9 custodian; or

10 (2) being a lawful custodian of a child under 18 years of age and
11 knowing that the person has no legal right to do so, the person

12 (A) fails to comply with an order to allow visitation with the
13 child by another person after being found in contempt for failure to comply
14 with a visitation order; or

1 (B) has engaged in a pattern of intentional violation of court
2 orders to allow visitation by another person with the child.

3 (b) The defendant has an affirmative defense to conviction under (a) of this
4 section if the defendant shows by clear and convincing evidence that

5 (1) the defendant's purpose was to protect the child or the defendant
6 from imminent physical harm, the belief in the existence of the imminent physical
7 harm was reasonable, and the defendant sought the assistance of law enforcement
8 personnel, a public agency, or the court of any state before, or within a reasonable
9 time after, committing the acts giving rise to the charges;

10 (2) the complainant had, before the defendant committed the acts giving
11 rise to the charge, failed for a protracted period of time to exercise the complainant's
12 rights to physical custody or access to the child, failed to give reasonable notice to the
13 defendant of a desire to resume exercise of the complainant's rights to physical
14 custody or access, and neither failure was the result of the defendant's denial of access
15 to the complainant or denial to the complainant of knowledge of the whereabouts of
16 the defendant;

17 (3) the acts giving rise to the charges were consented to by the
18 complainant; or

19 (4) the defendant, after providing or making a good faith effort to
20 provide notice to the person entitled to access to the child, failed to provide access to
21 the child due to reasons that a reasonable person would believe were directly related
22 to the welfare of the child, and allowed access to the child in accordance with the
23 court order within a reasonable period of time.

24 (c) Custodial interference in the third degree is a class B misdemeanor except
25 that a person convicted under this section after previously being convicted under this
26 section or under a law in another jurisdiction with substantially similar elements is
27 guilty of a class A misdemeanor.

28 * Sec. 2. AS 25.20 is amended by adding new sections to read:

29 Sec. 25.20.102. NOTICE OF RELOCATION. (a) The court shall include as
30 a condition of a custody or visitation order a requirement that a party intending to
31 relocate the temporary or permanent residence of a child shall give advance written

1 notice of the intention to the court and the other party at least 30 days before the
2 intended relocation. The notice must be in the form and contain the information that
3 the court considers necessary under the circumstances.

4 (b) Notwithstanding (a) of this section, a party is not required to give 30 days'
5 notice of an intent to relocate a child to temporary residence in a shelter or safe home
6 that is part of a domestic violence or sexual assault program, as defined in
7 AS 18.66.900. However, the relocating party shall notify the other party of the
8 relocation within 24 hours after entering the shelter or safe home unless

9 (1) the other party is the alleged perpetrator of the domestic violence
10 or sexual assault causing the relocation; or

11 (2) the acceptance policy of the shelter or safe home prohibits the
12 relocating party from divulging the location of the shelter or safe home.

13 (c) Notwithstanding (a) of this section, a party is not required to give 30 days'
14 advance notice of relocation, but is required to give notice as soon as possible, upon
15 relocating a child

16 (1) due to eviction by a landlord;

17 (2) for the purpose of obtaining medical care for the party or a member
18 of the party's immediate family for an emergency life-threatening condition as certified
19 by a physician; or

20 (3) for the purpose of visiting a relative who is in an emergency life-
21 threatening condition as certified by a physician.

22 Sec. 25.20.104. MINIMUM VISITATION SCHEDULE. (a) Except as
23 provided in (b) and (c) of this section, in a proceeding in which child custody is
24 awarded to one parent and visitation rights are awarded to the other parent, including
25 a dissolution proceeding under AS 25.24.200(a) but excluding a dissolution proceeding
26 under AS 25.24.200(b), the court shall award the visiting parent the following
27 visitation rights:

28 (1) 29.5 percent of the days and nights of the year, with specific days
29 and nights determined by the parents, except as provided in (2) - (4) of this subsection;

30 (2) the Thanksgiving period every other year;

31 (3) the school Christmas vacation period occurring before 9:00 o'clock

1 in the morning on December 25th in the years in which the visiting parent has
2 visitation during the Thanksgiving vacation period;

3 (4) the school Christmas vacation period occurring after 9:00 o'clock
4 in the morning on December 25th in the years in which the visiting parent does not
5 have visitation during the Thanksgiving vacation period.

6 (b) The court may vary from the requirements under (a) of this section if, after
7 consideration of the age, circumstances, and needs of the child, the court finds that
8 adherence to the requirements would cause harm or detriment to the child. The court
9 may vary from the requirements under (a)(3) - (4) of this section upon agreement of
10 the parents or upon a finding that the travel required between the residences of the
11 parent would make the schedule in (a)(3) - (4) of this section impracticable. If the
12 court makes a finding of impracticability, the court shall award the visiting parent the
13 entire school Christmas vacation period in the years when the visiting parent does not
14 have Thanksgiving visitation rights under (a)(2) of this section. A variation under this
15 subsection must be based solely on evidence in the record. The court shall find the
16 facts specially and include an explanation of its reasoning for ordering a variance
17 under this subsection.

18 (c) The court shall decrease the percentage specified in (a)'1) of this section
19 at the request of the parent with visitation rights.

20 (d) In this section,

21 (1) "school Christmas vacation period" means from 6:00 o'clock in the
22 evening on the last day of school before the beginning of the school Christmas
23 vacation period until 8:00 o'clock in the evening on the day before the resumption of
24 the school year, if a child is not in school, "school Christmas vacation period" means
25 the vacation period of the public school system where the custodial parent resides;

26 (2) "Thanksgiving period" means from 6:00 o'clock in the evening on
27 the Wednesday before Thanksgiving until 8:00 o'clock in the evening on the following
28 Sunday;

29 (3) "visiting parent" means the parent who does not have physical
30 custody of the child according to a court order.

31 * Sec. 3. AS 25.20.110 is amended by adding a new subsection to read:

1 (c) Intentional noncompliance with a court order to allow visitation with a
2 child, a finding of contempt for noncompliance with a court order to allow visitation
3 with a child, or a conviction of custodial interference in the third degree under
4 AS 11.41.340 constitutes a rebuttable presumption that there has been a change in
5 circumstances justifying a modification under (a) of this section if the modification is
6 in the child's best interests.

7 * Sec. 4. AS 25.20.115 is amended to read:

8 Sec. 25.20.115. ATTORNEY FEE AWARDS IN CUSTODY AND
9 VISITATION MATTERS. Except as provided in AS 25.20.140(e), in [IN] an action
10 to modify, vacate, or enforce that part of an order providing for custody of a child or
11 visitation with a child, the court may, upon request of a party, award attorney fees and
12 costs of the action. Except as provided in AS 25.20.140(e), in [IN] awarding
13 attorney fees and costs under this section, the court shall consider the relative financial
14 resources of the parties and whether the parties have acted in good faith.

15 * Sec. 5. AS 25.20.140 is amended by adding new subsections to read:

16 (d) In addition to monetary damages under (b) of this section, the court may

17 (1) order that the parent with visitation rights be given additional
18 visitation time with the child equal to or more than the amount of time missed because
19 of the other parent's noncompliance with visitation orders; if the custodial parent has
20 previously, within three years, been found in contempt for noncompliance with an
21 order allowing visitation, the additional amount of visitation time ordered under this
22 paragraph shall be equal to at least twice the amount of time missed because of the
23 noncompliance;

24 (2) award to the parent with visitation rights reasonable expenses
25 incurred by the parent to locate or return a child and an additional sum in liquidated
26 damages in the amount of \$100; however, if the custodial parent has previously, within
27 three years, been found in contempt for noncompliance with an order to allow
28 visitation, the liquidated damages under this paragraph shall be \$250.

29 (e) If the court finds that an action under this section was brought in bad faith,
30 the court shall order the moving party to pay to the nonmoving party all costs, full
31 reasonable attorney fees, and liquidated damages of \$100.

1 * Sec. 6. AS 25.24.210(e) is amended to read:

2 (e) If the petition is filed by both spouses under AS 25.24.200(a), the petition
3 must state in detail the terms of the agreement between the spouses concerning the
4 custody of children, child support, visitation, spousal maintenance and tax
5 consequences, if any, and fair and just division of property, including retirement
6 benefits. Agreements on visitation rights must meet the requirements of
7 AS 25.20.104. Agreements on spousal maintenance and property division must fairly
8 allocate the economic effect of dissolution and take into consideration the factors listed
9 in AS 25.24.160(a)(2) and (4). In addition, the petition must state

- 10 (1) the respective occupations of the petitioners;
11 (2) the income, assets, and liabilities of the respective petitioners at the
12 time of filing the petition;
13 (3) the date and place of the marriage;
14 (4) the name, date of birth, and current marital, educational, and
15 custodial status of each child born of the marriage or adopted by the petitioners who
16 is under the age of 19;
17 (5) whether the wife is pregnant;
18 (6) whether either petitioner requires medical care or treatment;
19 (7) whether a domestic violence complaint has been filed during the
20 marriage by a member of the household;
21 (8) whether either petitioner has received the advice of legal counsel
22 regarding a divorce or dissolution;
23 (9) other facts and circumstances that the petitioners believe should be
24 considered;
25 (10) that the petition constitutes the entire agreement between the
26 petitioners; and
27 (11) any other relief sought by the petitioners.

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

29 (b) If the petition is filed under AS 25.24.200(a) and is subject to
30 AS 25.24.220(h), the court may grant the spouses a fina' decree of dissolution and
31 shall order other relief as provided in this section if the court, upon consideration of

1 the information contained in the petition and the testimony of the spouse or spouses
2 at the hearing, finds that

3 (1) the spouses understand fully the nature and consequences of their
4 action;

5 (2) the written agreements between the spouses concerning child
6 custody, child support, and visitation comply with the requirements of AS 25.20.104
7 and are in the best interest of the children of the marriage, constitute the entire
8 agreement of the parties on child custody, child support, and visitation, and, as
9 between the spouses, are just;

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

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

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

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

20 * Sec. 8. MODIFICATION OF EXISTING ORDERS. The enactment of AS 25.20.104
21 under sec. 2 of this Act constitutes a change in circumstances requiring modification of an
22 order under AS 25.20.110(a) that was made before the effective date of this Act if

23 (1) a parent requests modification;

24 (2) application of AS 25.20.104 would result in an increase of visitation time;

25 and

26 (3) the modification is in the best interests of the child.

8-LS1606E-
Lauterbach
3/11/94

CS FOR HOUSE BILL NO. 422()
IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVE BUNDE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to custody and visitation rights."

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

3 * Section 1. AS 11.41 is amended by adding a new section to read:

4 Sec. 11.41.340. CUSTODIAL INTERFERENCE IN THE THIRD DEGREE.

5 (a) A person commits the crime of custodial interference in the third degree if

6 (1) being a relative of a child under 18 years of age or a relative of an
7 incompetent person and knowing that the person has no legal right to do so, the person
8 intentionally takes, entices, or keeps that child or incompetent person from a lawful
9 custodian; or

10 (2) being a lawful custodian of a child under 18 years of age and
11 knowing that the person has no legal right to do so, the person

12 (A) takes, entices, or keeps the child with the intent of denying
13 access to the child by another person during a time when the other person has
14 the legal right under court order to be with the child;

1 (B) fails to comply with an order to allow visitation with the
2 child by another person after being found in contempt for failure to comply
3 with a visitation order; or

4 (C) has engaged in a pattern of intentional violation of court
5 orders to allow visitation by another person with the child.

6 (b) The defendant has an affirmative defense to conviction under (a) of this
7 section if the defendant shows by clear and convincing evidence that

8 (1) the defendant's purpose was to protect the child or the defendant
9 from imminent physical harm, the belief in the existence of the imminent physical
10 harm was reasonable, and the defendant sought the assistance of law enforcement
11 personnel, a public agency, or the court of any state before, or within a reasonable
12 time after, committing the acts giving rise to the charges;

13 (2) the complainant had, before the defendant committed the acts giving
14 rise to the charge, failed for a protracted period of time to exercise the complainant's
15 rights to physical custody or access to the child, failed to give any notice to the
16 defendant of a desire to resume exercise of the complainant's rights to physical
17 custody or access, and neither failure was the result of the defendant's denial of access
18 to the complainant or denial to the complainant of knowledge of the whereabouts of
19 the defendant;

20 (3) the acts giving rise to the charges were consented to by the
21 complainant; or

22 (4) the defendant, after providing or making a good faith effort to
23 provide notice to the person entitled to access to the child, failed to provide access to
24 the child due to reasons that a reasonable person would believe were directly related
25 to the welfare of the child, and allowed access to the child in accordance with the
26 court order within a reasonable period of time.

27 (c) Custodial interference in the third degree is a class B misdemeanor except
28 that a person convicted under this section after previously being convicted under this
29 section or under a law in another jurisdiction with substantially similar elements is
30 guilty of a class A misdemeanor.

31 * Sec. 2. AS 25.20 is amended by adding new sections to read:

1 Sec. 25.20.102. NOTICE OF RELOCATION. The court shall include as a
2 condition of a custody or visitation order a requirement that a party intending to
3 relocate the temporary or permanent residence of a child shall give advance written
4 notice of the intention to the court and the other party at least 60 days before the
5 intended relocation. The notice must be in the form and contain the information that
6 the court considers necessary under the circumstances.

7 Sec. 25.20.104. MINIMUM VISITATION SCHEDULE. (a) Except as
8 provided in (b) and (c) of this section, in a proceeding in which child custody is
9 awarded to one parent and visitation rights are awarded to the other parent, the court
10 shall award the visiting parent at least the following visitation rights:

11 (1) 29.5 percent of the days and nights of the year, with specific days
12 and nights determined by the parents, except as provided in (2) - (4) of this subsection;

13 (2) the Thanksgiving period every other year;

14 (3) the school Christmas vacation period occurring before 9:00 o'clock
15 in the morning on December 25th in the years in which the visiting parent has
16 visitation during the Thanksgiving vacation period;

17 (4) the school Christmas vacation period occurring after 9:00 o'clock
18 in the morning on December 25th in the years in which the visiting parent does not
19 have visitation during the Thanksgiving vacation period.

20 (b) The court may vary from the requirements under (a) of this section if, after
21 consideration of the age, circumstances, and needs of the child, the court finds that
22 adherence to the requirements would cause harm or detriment to the child. A variation
23 under this subsection must be based solely on evidence in the record. The court shall
24 find the facts specially and include an explanation of its reasoning for ordering a
25 variance under this subsection.

26 (c) The court shall decrease the percentage specified in (a)(1) of this section
27 at the request of the parent with visitation rights.

28 (d) In this section,

29 (1) "school Christmas vacation period" means from 6:00 o'clock in the
30 evening on the last day of school before the beginning of the school Christmas
31 vacation period until 8:00 o'clock in the evening on the day before the resumption of

1 the school year; if a child is not in school, "school Christmas vacation period" means
2 the vacation period of the public school system where the custodial parent resides;

3 (2) "Thanksgiving period" means from 6:00 o'clock in the evening on
4 the Wednesday before Thanksgiving until 8:00 o'clock in the evening on the following
5 Sunday;

6 (3) "visiting parent" means the parent who does not have physical
7 custody of the child according to a court order.

8 * Sec. 3. AS 25.20.110 is amended by adding a new subsection to read:

9 (c) Intentional noncompliance with a court order to allow visitation with a
10 child, a finding of contempt for noncompliance with a court order to allow visitation
11 with a child, or a conviction of custodial interference in the third degree under
12 AS 11.41.340 constitutes a rebuttable presumption that there has been a change in
13 circumstances justifying a modification under (a) of this section if the modification is
14 in the child's best interests.

15 * Sec. 4. AS 25.20.115 is amended to read:

16 Sec. 25.20.115. ATTORNEY FEE AWARDS IN CUSTODY AND
17 VISITATION MATTERS. Except as provided in AS 25.20.140(e), in [IN] an action
18 to modify, vacate, or enforce that part of an order providing for custody of a child or
19 visitation with a child, the court may, upon request of a party, award attorney fees and
20 costs of the action. Except as provided in AS 25.20.140(e), in [IN] awarding
21 attorney fees and costs under this section, the court shall consider the relative financial
22 resources of the parties and whether the parties have acted in good faith.

23 * Sec. 5. AS 25.20.140 is amended by adding new subsections to read:

24 (d) In addition to monetary damages under (b) of this section, the court may

25 (1) order that the parent with visitation rights be given additional
26 visitation time with the child equal to or more than the amount of time missed because
27 of the other parent's noncompliance with visitation orders; if the custodial parent has
28 previously, within three years, been found in contempt for noncompliance with an
29 order allowing visitation, the additional amount of visitation time ordered under this
30 paragraph shall be equal to at least twice the amount of time missed because of the
31 noncompliance;

1 (2) award to the parent with visitation rights reasonable expenses
2 incurred by the parent to locate or return a child and an additional sum in liquidated
3 damages in the amount of \$100; however, if the custodial parent has previously, within
4 three years, been found in contempt for noncompliance with an order to allow
5 visitation, the liquidated damages under this paragraph shall be \$250.

6 (e) If the court finds that an action under this section was brought in bad faith,
7 the court shall order the moving party to pay to the nonmoving party all costs, full
8 reasonable attorney fees, and liquidated damages of \$100.

9 * Sec. 6. MODIFICATION OF EXISTING ORDERS. The enactment of AS 25.20.104
10 under sec. 2 of this Act constitutes a change in circumstances requiring modification of an
11 order under AS 25.20.110(a) that was made before the effective date of this Act if application
12 of AS 25.20.104 would result in an increase of visitation time of at least 25 percent and the
13 modification is in the best interests of the child.

DIVISION OF LEGAL SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101


130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

March 16, 1994

SUBJECT: Changes in CSHB 422(HES) (Work Order No. 8-LS1606(K))

TO: Representative Con Bunde
ATTN: Pattie Swenson

FROM: Terri Lauterbach 
Legislative Counsel

Enclosed is the draft version of CSHB 422(HES) that you requested. This memorandum will explain the changes in this CS, compared to the "E" version of the bill that the HESS committee considered on Monday and last Friday.

Section 1. There were concerns expressed in testimony that the penalties in section 1 could apply to a one-time failure to allow visitation or to a situation where visitation was denied out of concern for the safety of the children. To address that concern, the language at page 1, lines 12 - 14, of the "E" version has been deleted from the HES CS. That language would have applied the penalties when a person

takes, entices, or keeps the child with the intent of denying access to the child by another person during a time when the other person has the legal right under court order to be with the child.

Under the HES CS, criminal penalties could still be applied in cases where visitation is denied after a previous finding of contempt by a court or if there is a pattern of intentional violation of court orders to allow visitation.

There was also a concern by a witness about the type of notice that must be given by a noncustodial parent who wants to resume visitation rights after a long period of failing to exercise visitation rights. On page 2, line 12, of the previous CS, the term was "any notice." In the HES CS, this has been changed to "reasonable notice" (page 2, line 12). The "reasonableness" of the notice given would be determined by a court (or jury) when the custodial parent presents this defense in a prosecution.

Section 2.

Sec. 25.20.102. NOTICE OF RELOCATION. The notice requirement of this section has been changed from 60 days' notice to 30 days' notice and exceptions have been provided in (b) and (c) for shelters, evictions, emergency medical needs, and the need to visit relatives with emergency medical conditions.

Sec. 25.20.104. MINIMUM VISITATION SCHEDULE. The ambiguity of the previous CS as to whether the minimum schedule is applicable in dissolution cases has been clarified. The HES CS provides that the minimum schedule is applicable to dissolutions except in cases where a spouse is absent and cannot be located after reasonable efforts. This exception means that 29.5 percent visitation rights would not have to be awarded to a parent who has abandoned the family.

The parties in a dissolution where both parents are present could still agree to visitation that is less than 29.5 percent, but this clarification ensures that the parent with visitation rights has the right to 29.5 percent if that parent wants it.

The phrase "at least" has been deleted from the last line of the lead-in language in subsection (a). Since this section covers only situations where custody is awarded to one parent and visitation rights to the other parent, the concept of visitation above 29.5 percent has no meaning. (Above 29.5 percent would be shared custody, not visitation rights.) Therefore, the phrase "at least" had no meaning. Removing the phrase does not limit the court's discretion to award shared custody in appropriate circumstances. Shared custody is not governed by this minimum visitation schedule.

The other change in this section concerns the Christmas visitation schedule. There was some concern that splitting every Christmas vacation in half was not always best. Therefore, subsection (b) provides that the parents may agree to a different Christmas visitation schedule for any reason they want to. It also provides that, even without an agreement of the parents, a court may award alternate Christmas vacations to the visiting parent upon a finding that travel considerations make an annual split impracticable.

Sections 3 - 5. No changes.

Sections 6 - 7. These sections are new to the bill. They implement the clarification described under section 2 in this memorandum as to the applicability of the minimum visitation schedule to dissolution proceedings.

Section 6 states that parental agreements in a dissolution that is filed by both parents must comply with AS 25.20.104. Section 7 requires the court, before approving a dissolution, to make a finding that the custody/visitation agreement complies with AS 25.20.104. This will not require that all dissolution proceedings result in 29.5

Representative Con Bunde
March 16, 1994
Page 3

percent visitation rights. Since AS 25.20.104 includes a provision that a visiting parent may request less than 29.5 percent visitation rights, a visiting parent may also make that request in a dissolution proceeding. Therefore, a visitation schedule of less than 29.5 percent can still comply with AS 25.20.104.

Section 8. This section is changed so that there is no longer a threshold requirement that a visitation modification under this bill result in a 25% increase in visitation time. In the HES CS, a modification is justified if the minimum schedule in AS 25.20.104 would result in any increase in the visitation time.

This section is also clarified by the addition of paragraph (1). It is my understanding that the committee's intent is that modifications under the new minimum schedule will only occur if a parent requests a modification. If parents with old orders are happy with their visitation percentage, there is no need for them to go to court for a change. Section 6 was only intended to help unhappy parents who are seeking to expand their visitation rights. The new language in paragraph (1) allows this result and clarifies that not all orders will automatically be changed by this new law.

I hope this explains the new CS in sufficient detail. Please let me know if I can be of further assistance.

TML:mi
94-061.mai

Enclosure

ASSOCIATION FOR CHILDREN FOR ENFORCEMENT OF SUPPORT

Anchorage Chapter

P. O. Box 92910, Anchorage, AK 99509, 274-2010

March 18, 1994

Dear HESS Committee Members:

I speak for thousands of custodial parents (mostly women) and children around Alaska: this DADS VENGEANCE bill should remain and die in committee. You are not seriously considering Rep. Davis' bill requiring dads to match rights with responsibilities...requiring them to make use of the visitation they wanted. What about Rep. Martin's bill making it a crime to help someone avoid paying child support. If their bills are not good enough to leave this committee - then certainly this piece of DADS VENGEANCE legislation should not either.

Despite minor improvements to ^{CSHB422}~~CSHB~~ since the last hearing, this bill continues to be a "DADS VENGEANCE" bill - making women criminals while "dads" continue to impudently refuse to pay child support. Contrary to emotional testimony, enforcement of the criminal non-support law rarely occurs. Ask the Dept. of Law how many non-custodial parents have been jailed for not paying child support - and you will learn that it rarely, if ever, occurs despite the fact that there are thousands who do not pay their support.

I have heard legislators and others state that the criminal sanctions won't be enforced, so "don't worry about it." That is a smokescreen! Any law can be enforced if someone chooses to do so.

RE: Work draft. p2, lines 10-16: Dad can stay out of his children's lives for years, but if he chooses, then your bill allows him to return and give "reasonable notice" and resume his "rights" as a father, but never having had to face up to his "responsibilities" of being a father. Meanwhile, mom disagrees with his definition of "reasonable notice" - she is still arrested and must argue what was "reasonable" in court.

Additionally, the legislature is not equipped with the expertise or knowledge to determine what kind of visitation is in the best interests of the child - by requiring a minimum amount of visitation. Only the courts can get to the truth in custody and visitation matters - they hear

GLENDA J. STRAUBE

1318 N Street
Anchorage, AK 99501
(H) 278-0840
(FAX) 272-2030

March 15, 1994

Members of the House HESS Committee
Alaska State Legislature

RE: CSHB 422 - Custody and Visitation Rights

Dear Committee Member:

I urge you not to pass out of committee this "dads" bill. I call it such because a "dads" group was responsible for the original work on this bill. The same "dads" group which fights to decrease child support payments and weaken child support laws. They almost accomplished this in the original bill by requiring enough visitation hours so that their child support payments would decrease. Thank you for seeing through that trick and making those necessary changes.

My testimony is not aimed at protecting myself or any selfish reason....my children are grown. I will not be personally affected by this bill. But I have had experience with the issue of visitation. By the way, I believe strongly that, in most cases, children should have access to their parents. But this bill goes way beyond that. Since most custodial parents are moms, I will use that term throughout to indicate custodial parents, and dads to indicate those with visitation rights.

This bill is strictly aimed at placing all power in the hands of dads, while making moms criminals. You may say that this won't happen if the moms behave and allow all the visitation granted by this bill, but you have structured this bill so that if a mom has good reason to believe that her child(ren) will be in danger -- she will first be arrested in front of the children, taken to jail, and face 90 days in jail and a \$1,000 fine. Meanwhile, she must find a lawyer and the burden of proof is on her shoulders. But, never mind, because the damage is already done.

Let me give you an example. There was only one time I denied my children's dad visitation and it was at their insistence. They had told me that their dad was drinking a lot and that they had been in two different one-car accidents with him and they were scared to death. I informed him

Public Testimony - CSHB422

Glenda J. Straube

Page 2

that I just couldn't let them go with him because neither the kids nor I wanted them to face the possibility that the next accident would be fatal. Their dad was very angry and threatened me. Thereafter, he and his wife used that one time denial to continuously tell everyone that I was always keeping the kids from him. The truth was that this occurred only once. But I did tell him that unless he could stop drinking and driving he could not take them with him, but could visit them in a more structured environment.

If this proposed law was in effect, he could have called the police and had me arrested. (He was never drunk when he came to pick them up, so the police would have had to let him take the children.) Meanwhile, my children would be traumatized watching mom carted off in a police car. I was one of the working poor at the time (too poor to afford a lawyer and too much money to get a public defender), like many single mom with kids - especially since most don't see any child support payments. I would then be forced to defend myself (by clear and convincing evidence) that I didn't want to place my children's life in jeopardy. And how would I prove that? My word against his? There were no records of the accidents (he drove away from them)...the kids couldn't, shouldn't or wouldn't testify for me (they would have been with their dad during my incarceration). So, I'm found guilty and sentenced to 90 days in jail.

Now you can say this won't happen, but that's simply bull! You should not be proposing or passing laws which you either think won't be enforced or for which you try and convince the public they won't be enforced. You say "don't worry about it," but in reality there's a lot to be worried about.

Remember the recent case of some nutty guy who wrote his own obituary for the Anchorage Daily News so everyone would think he was dead - and then he left the state. This is the same guy for whom a police officer in Eagle River or the Valley was intervening on behalf of with the mother of his child -- to convince her to let the child go with this man. Under this law, he can now force such a thing. She would have gone to jail and this loony guy would have the child? And are you willing to personally hold yourselves responsible for allowing this to happen? And if my children had died in a car accident with their dad, after you forced me to hand them over....what would you have said to me to make up for that incredible loss?

To sum it up, this is outrageous legislation aimed at making moms criminals - and taking the kids away from their custodial parent while that parent tries to defend themselves. How can you be willing to pass onerous laws aimed at putting these moms once again under the thumbs

Public Testimony - CSHB422

Glenda J. Straube

Page 3

of the dads, yet you laugh at the thought of Terry Martin's bill which would make it a crime to knowingly help someone avoid paying child support.

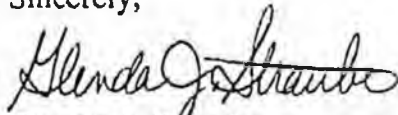
You are placing all the rights in the hands of the dads, with no accompanying responsibilities. You may laugh at Rep. Bettye Davis' bill which would require dads to make use of their visitation, but once again it shows that you wish to give them all the rights - with no responsibilities.

You would make moms criminals for protecting their children or for being set-up by a vengeful dad, while the state refuses to enforce existing criminal sanctions against people (primarily dads) who purposefully deprive their children of support as a way to be vengeful to the ex-spouse or girlfriend.

You would make mom a criminal for refusing to let her kids go with a drug addict...because she doesn't have the money to go to court and change mandatory visitation and he doesn't have a needle sticking out of his arm so mom can't prove he's a drug addict.

In closing, everyone screams that their aren't enough police to deal with violent crime right now, yet you are willing to have them continue mediating domestic disagreements....you will now have them using their precious time arresting moms. You're willing to see them put moms in jail, but you can't even get police to put stalkers in jail.

Sincerely,



Glenda J. Straube

Around the Country

Texas

False Allegations to be Prosecuted

The Texas Department of Protective and Regulatory Services (DPRS) plans to begin prosecuting family members who make false abuse reports, the first state known to announce such a plan.

Janice Caldwell, executive director of the agency, said the plan is designed to concentrate limited resources on serious cases. She said some abuse reports are little more than an effort to get the agency involved in child custody disputes. Making a false claim on child abuse is illegal in Texas, but state law requires people to report "suspected abuse."

Ms. Caldwell said false reports must be prosecuted if the agency is to handle the growing number of child abuse reports. During fiscal 1992, DPRS investigated 107,276 reports of suspected child abuse and neglect—18 percent more than the previous year.

An editorial in the Houston Chronicle September 1, 1993 supported Ms. Caldwell's plan, as have attorneys and child experts from around the country.

CRC General Counsel Mike Oddenino, Arcadia, CA., wrote to Ms. Caldwell that "...children who are not actually abused by an individual are truly abused when they wrongly become the subject of an investigation stemming from a false accusation. Of course, who can measure the grief an adult experiences when falsely charged with what is certainly the most heinous of crimes."

convictions, it would be considered a misdemeanor.

The law, which amends the Illinois Criminal Code, Section 10-5.5, says "Every person who, in violation of the visitation provisions of a court order relating to child custody, detains or conceals a child with the intent to deprive another person of his or her rights to visitation shall be guilty of unlawful visitation interference."

The bill was signed into law by Governor Jim Edgar on July 20, 1993.

Ann Danner, CRC coordinator in Illinois, credits CRC activist Jeff Strang who worked with CRC Illinois affiliates (Family Illinois) to educate legislators about the needs of children regarding enforcement of visitation.

"We hope this law will set a precedent for other states to follow," said Danner.

She said the next step is to work with police and states attorney's offices in enforcing this new law.

Illinois

Illinois has passed a law that makes visitation interference a crime. If a parent denies access (visitation), the police will be able to issue the denying parent a citation to appear in court on a petty offense. The consequence would be a fine, but after three

New Directory of Organizations Now Available

Copies of CRC's new "Parenting International Directory," the fifth edition of its directory, is available in hard copy (updated annually) and on IBM 5 1/4" and 3 1/2" disks (updated semi-annually). The cost is \$12.00 for either format for CRC members, and \$15.00 for non-members.

The directory features:

- * a state by state listing, in zip code order, of parenting groups within a state;
- * a special section that lists national organizations involved in parenting issues;
- * a list of abbreviations of terms used in the directory.

Because CRC does a great deal of networking, and constantly updates its data base, the directory can be relied on for accuracy.

The directory can be a valuable resource in making referrals around the country to and from your organization.

Order your copy now from CRC.

Child Support Bills

Continued from page 9

* expand the Parent Locator System to include visitation orders. At present, the Parent Locator System can only be used to find the location of parents who owe financial child support, and in parental kidnapping cases.

The bill implements many of the recommendations of the Interstate Child Support Commission's report which was issued in 1992.

The Senate Finance Committee, which has jurisdiction over the bill, can be reached by phone at (202) 224-4515.

CRC's View

CRC has decided to oppose S. 689 and H.R. 1600, following consultation with our state chapter coordinators, because increased government regulation of only the financial child support aspects are worsening the problem for children.

CRC's position is based partly on the following:

• "From a federal budget perspective, Child Support Enforcement is an expensive disappointment," says a report issued in June, 1992 by Republican House members E. Clay Shaw, Nancy L. Johnson and Fred Grandy.

• A report provided by the General Accounting Office at the request of Congresswomen Marge Roukema and Barbara Kennelly and Senator Bill Bradley, released January 9, 1992 stated that 66 percent of mothers with a child support award who did not receive payment from the fathers say it is because the fathers were unable to pay. This data is not reflected in the legislation.



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

DATE: 3/15/94

PLACE: Capitol Room 106

SUBJECT OF MEETING:
 * HB 316: EXTEND BOARD OF BARBERS & HAIR DRESSERS
 HB 422: CHILD CUSTODY & VISITATION RIGHTS
 * INDICATES FIRST PUBLIC MEETING

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?		WHAT SUBJECT/ WHICH BILL?
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
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						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	

TCN: 40507 DATE & TIME: 03/15/94 15:45 TO 17:00 STATUS:7 STATS: IN

*** UNDER SUMMARY ***

SPONSOR: HB# HOUSE HEALTH, EDUCATION AND SOCIAL SERV CHAIRS: TOCHET
PURPOSE: PUB PUBLIC HEARING LEGISLATIVE BURDE
CONTACT: LYNN TEL#: (907)463-6825
CHAIRING SITE: JUNEAU CAPITOL CAP106

SPONSOR REMARKS(PUB): TESTIMONY:Y ALLOWED 2 MINUTE LIMIT
TESTIMONY WILL BE TAKEN WITH A 2 MINUTE LIMIT. MODERATORS TO STRICTLY ENFORCE.
TOP REQUESTED ON 03/15/94 AND HAS 3 UPDATES

*** AGENDA ***

1 HB 422 CHILD CUSTODY AND VISITATION RIGHTS

*** PARTICIPATING LIOS ***

ANC ANCHORAGE 715 N 4TH. \$200 LOCATION STAFF
FBX FAIRBANKS 119 N CUSHMAN ST LOCATION STAFF
JNU JUNEAU CAPITOL CAP106 LOCATION STAFF
MAT MATSU 165 E PARKS HWY. LOCATION STAFF

*** VOLUNTEER & OFFNET SITES ***

222 OFF OFFNET 1 ANCHORAGE STEPHANI HOBRIE (907)349-5826

PARTICIPANTS IN: ANCHORAGE

ANC

1 GLINDA STRAUBE TSFY, HB 422
1318 N ST ANCHORAGE AK 99501 (907)278-9840
2 KARLY HUNTINGTON TSFY, HB 422
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3 JIN ARNESEN TSFY, HB 422
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4 STEVE CULVER TSFY, HB 422
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5 RUSS BLONE TSFY, HB 422
PO BOX 241936 ANCHORAGE AK 99523 (907)349-4051
6 GARY MAXWELL TSFY, HB #22
PO BOX 92083 ANCHORAGE AK 99509 (907)274-7358
7 KEKI BASLER TSFY, HB 422
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8 MICHELLE JANSEN TSFY, HB 422
PO BOX 242481 ANCHORAGE AK 99524 (907)248-4818
9 DIANA ALCANTRA TSFY, HB 422
17421 TEKLANIKA EAGLE RIVER AK 99577 (907)696-4446

PARTICIPANTS IN: FAIRBANKS

FBX

1 FAITH TAYE TSFY, HB 422
717 9TH AVE. FAIRBANKS AK 99701 (907)452-6770

PARTICIPANTS IN: JUNEAU

JNU

1 TO OBSERVE OBSV. ALL ITEMS
2 TO OBSERVE OBSV. ALL ITEMS
3 TO OBSERVE OBSV. ALL ITEMS
4 TO OBSERVE OBSV. ALL ITEMS
5 TO TESTIFY TSFY. ALL ITEMS
6 TO TESTIFY TSFY. ALL ITEMS
7 TO TESTIFY TSFY. ALL ITEMS

TCN: 40507 DATE & TIME: 03/15/94 15:45 TO 17:00 STATUS:7 STATS: IN

PARTICIPANTS IN: JUNEAU

JNU

8 TO TESTIFY TSFY. ALL ITEMS

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TO
TO

TESTIFY
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TSFY. ALL ITEMS
TSFY. ALL ITEMS

PARTICIPANTS IN: MATSU

MAT

1 MS TRACY
POB 375731
2 MS JANNY
POB 379535
3 MR BRIAN
POB 379535

BRISKILL
STEELE
STEELE

WAZILLA
WAZILLA
WAZILLA

TSFY. HB 422
AK 99687 (907)373-1448
TSFY. HB 422
AK 99687 (907)373-3261
OSBY. HB 422
AK 99687 (907)373-3261

PARTICIPANTS IN: OFFNET 1

ZZZ OFF

1 STEPH
RCBRIDE

TSFY. HB 422
AK (907)1000-0000

1
8-LS1606E.1 ✓
Lauterbach
3/12/94

A M E N D M E N T

OFFERED IN THE HOUSE

BY REPRESENTATIVE BUNDE

TO: CSHB 422() Draft 8-LS1606E

Page 3, line 10:

Delete "at least"

2

8-LS1606E.2 ✓
Lauterbach
3/12/94

A M E N D M E N T

OFFERED IN THE HOUSE

BY REPRESENTATIVE BUNDE

TO: CSHB 422() Draft 8-LS1606E

Page 3, line 22, after "child.":

Insert "The court may vary from the requirements under (a)(3) - (4) of this section upon agreement of the parents or upon a finding that the travel required between the residences of the parents would make the schedule in (a)(3) - (4) of this section impracticable. If the court makes a finding of impracticability, the court shall award the visiting parent the entire school Christmas vacation period in the years when the visiting parent does not have Thanksgiving visitation rights under (a)(2) of this section."

#3

8-LS1606E.3 ✓
Lauterbach
3/12/94

A M E N D M E N T

OFFERED IN THE HOUSE

BY REPRESENTATIVE BUNDE

TO: CSHB 422() Draft 8-LS1606E

Page 5, line 12:

Delete "of at least 25 percent"

A M E N D M E N T

OFFERED IN THE HOUSE

BY REPRESENTATIVE TOOHEY

TO: CSHB 422() Draft 8-LS1606E

Page 3, line 1, after "RELOCATION.":

Insert "(a)"

Page 3, after line 6:

Insert a new subsection to read:

"(b) Notwithstanding (a) of this section, a party is not required to give 60 days' notice of an intent to relocate a child to temporary residence in a shelter or safe home that is part of a domestic violence or sexual assault program, as defined in AS 18.66.900. However, the relocating party shall notify the other party of the relocation within 24 hours after entering the shelter or safe home unless

(1) the other party is the alleged perpetrator of the domestic violence or sexual assault causing the relocation; or

(2) the acceptance policy of the shelter or safe home prohibits the relocating party from divulging the location of the shelter or safe home."

A M E N D M E N T #5

OFFERED IN THE HOUSE

BY REPRESENTATIVE B.DAVIS

TO: CSHB 422() Draft 8-LS1606E

Page 3, line 1, after "RELOCATION.":

Insert "(a)"

Page 3, line 4:

Delete "60"

Insert "30"

Page 3, after line 6:

Insert new subsections to read:

"(b) Notwithstanding (a) of this section, a party is not required to give 30 days' notice of an intent to relocate a child to temporary residence in a shelter or safe home that is part of a domestic violence or sexual assault program, as defined in AS 18.66.900. However, the relocating party shall notify the other party of the relocation within 24 hours after entering the shelter or safe home unless

(1) the other party is the alleged perpetrator of the domestic violence or sexual assault causing the relocation; or

(2) the acceptance policy of the shelter or safe home prohibits the relocating party from divulging the location of the shelter or safe home.

(c) Notwithstanding (a) of this section, a party is not required to give 30 days' advance notice of relocation, but is required to give notice as soon as possible, upon relocating a child

(1) due to eviction by a landlord;

(2) for the purpose of obtaining medical care for the party or a member of the party's immediate family for an emergency life-threatening condition as certified by a physician; or

(3) for the purpose of visiting a relative who is in an emergency life-threatening condition as certified by a physician."

A M E N D M E N T #6

OFFERED IN THE HOUSE

BY REPRESENTATIVE B.DAVIS

TO: CSHB 422() Draft 8-LS1606E

Page 1, line 10, after "(2)":

Insert "except as provided in (b) of this section,"

Page 2, after line 5:

Insert a new subsection to read:

"(b) A person may not be convicted under (a)(2) of this section for an act or omission that occurred before the person was ordered to participate in mediation under AS 25.20.085 for a dispute over visitation rights involving the same child whose visitation schedule underlies the allegations under (a)(2) of this section."

Reletter the following subsections accordingly.

Page 2, after line 30:

Insert new bill sections to read:

** Sec. 2. AS 25.20.080(a) is amended to read:

(a) At any time within 30 days after a petition for child custody is filed under AS 25.20.060 or a petition to enforce visitation rights is filed, the court may order the parties to submit to mediation. Each party shall have the right to challenge peremptorily one mediator appointed.

* Sec. 3. AS 25.20.080(c) is amended to read:

(c) If the mediator determines that mediation efforts are unsuccessful, the mediator shall terminate mediation and notify the court that mediation efforts have failed. The custody or visitation proceeding, as applicable, shall proceed in the usual manner.

* Sec. 4. AS 25.20.080(d) is amended to read:

(d) Upon submission of the parties to mediation under this section, a pending child custody or visitation proceeding shall be stayed for a period of 30 days or until the court is notified that mediation efforts have failed. All court orders made during the pending [CUSTODY] proceeding remain in effect during the period of mediation."

Renumber the following bill sections accordingly.

Page 5, line 10:

Delete "sec. 2"

Insert "sec. 5"



House of Representatives

SPONSOR STATEMENT
CSHB 422

“An Act relating to custody and visitation rights.”

The divorce rate has risen rapidly since the mid 1960's. The nation has experienced many social problems that can be directly related to a child lacking a relationship with two parents. Children of divorced parents have the right to maintain a relationship with both parents, and gain the benefits that each has to offer.

The amount of child visitation ordered by a court is the greatest concern to many parents. The amount of visitation ordered by the court is directly related to the amount of child support a non-custodial parent will have to pay. This bill is not an opportunity to lower child support payments. It is an opportunity for non-custodial parents to gain access to their children and to have an ongoing relationship with them.

This proposed legislation provides minimum visitation guidelines for parents who do not have shared custody or joint custody of their children. Present statutes do not include any type of minimum visitation guidelines. This hole in the statutes often results in the children being placed in the center of an emotional argument.

CSHB 422 contains some improvements. The significant changes include flexibility for visitation times, and the ability of a parent to enforce court ordered visitation has been strengthened.

Section 1 of HB 422 and CSHB 422 are identical. This section enumerates the circumstances in which a person can be charged with custodial interference in the third degree. Additionally, this section clarifies when custodial interference in the third degree is a class B misdemeanor or a class A misdemeanor.

Both versions of HB 422 include a provision for notice of relocation. The CS requires the court and the visiting parent to be notified 60 days in advance of the custodial parents move. The notice must contain the information the court considers necessary.

The original form of HB 422 provides visitation guidelines based on the age of the children, their geographical location, and the time of year or day of the week. CSHB 422 has deleted any reference to the age of a child. All children should have access to both parents regardless of age.

The original HB 422 set minimum visitation guidelines for weekends, holidays, and school vacations. These references are deleted in the CS in favor of a more flexible schedule based on percentage of time (29.5%). In addition, a visiting parent has the right to decrease the amount of visitation time if desired. The reason 29.5% visitation is used is to avoid any decrease in the child support payment. If a child is with the visiting parent more than 30% of the time the payment of child support is calculated differently, and the payment is usually decreased.

Both the HB 422 and CSHB 422 address intentional noncompliance with a court order to allow visitation in section 3. The CS includes custodial interference with visitation as a change in circumstance that will allow a parent to modify a visitation order. Usual reasons for modification of a visitation order are financial problems or illness of a child. Custodial interference will be a new consideration.

Section 4 of both versions of this legislation remain the same. Attorney fee awards may be awarded after consideration of the financial resources of the parties.

Section 5 of HB 422 and CSHB 422 are the same in their intent. CSHB 422 allows the visiting parent to be awarded at least twice the amount of visitation time that has been denied because of custodial interference, as well as monetary damages. This section will be a deterrent to people who would deny access to children without good reason.

The passage of this legislation will be a step forward for children. Parents are divorced, children are not. The intent of this legislation is to exclude children as a tool in negotiations during and after a divorce. They deserve the attention of both parents in a consistent manner. I urge your positive support of this proposed legislation.

8-LS1606E-
Lauterbach
3/11/94

CS FOR HOUSE BILL NO. 422()
IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVE BUNDE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to custody and visitation rights."

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

3 * Section 1. AS 11.41 is amended by adding a new section to read:

4 Sec. 11.41.340. CUSTODIAL INTERFERENCE IN THE THIRD DEGREE.

5 (a) A person commits the crime of custodial interference in the third degree if

6 (1) being a relative of a child under 18 years of age or a relative of an
7 incompetent person and knowing that the person has no legal right to do so, the person
8 intentionally takes, entices, or keeps that child or incompetent person from a lawful
9 custodian; or

10 (2) being a lawful custodian of a child under 18 years of age and
11 knowing that the person has no legal right to do so, the person

12 (A) takes, entices, or keeps the child with the intent of denying
13 access to the child by another person during a time when the other person has
14 the legal right under court order to be with the child;

1 (B) fails to comply with an order to allow visitation with the
2 child by another person after being found in contempt for failure to comply
3 with a visitation order, or

4 (C) has engaged in a pattern of intentional violation of court
5 orders to allow visitation by another person with the child.

6 (b) The defendant has an affirmative defense to conviction under (a) of this
7 section if the defendant shows by clear and convincing evidence that

8 (1) the defendant's purpose was to protect the child or the defendant
9 from imminent physical harm, the belief in the existence of the imminent physical
10 harm was reasonable, and the defendant sought the assistance of law enforcement
11 personnel, a public agency, or the court of any state before, or within a reasonable
12 time after, committing the acts giving rise to the charges;

13 (2) the complainant had, before the defendant committed the acts giving
14 rise to the charge, failed for a protracted period of time to exercise the complainant's
15 rights to physical custody or access to the child, failed to give any notice to the
16 defendant of a desire to resume exercise of the complainant's rights to physical
17 custody or access, and neither failure was the result of the defendant's denial of access
18 to the complainant or denial to the complainant of knowledge of the whereabouts of
19 the defendant;

20 (3) the acts giving rise to the charges were consented to by the
21 complainant; or

22 (4) the defendant, after providing or making a good faith effort to
23 provide notice to the person entitled to access to the child, failed to provide access to
24 the child due to reasons that a reasonable person would believe were directly related
25 to the welfare of the child, and allowed access to the child in accordance with the
26 court order within a reasonable period of time.

27 (c) Custodial interference in the third degree is a class B misdemeanor except
28 that a person convicted under this section after previously being convicted under this
29 section or under a law in another jurisdiction with substantially similar elements is
30 guilty of a class A misdemeanor.

31 * Sec. 2. AS 25.20 is amended by adding new sections to read:

1 Sec. 25.20.103. NOTICE OF RELOCATION. The court shall include as a
2 condition of a custody or visitation order a requirement that a party intending to
3 relocate the temporary or permanent residence of a child shall give advance written
4 notice of the intention to the court and the other party at least 60 days before the
5 intended relocation. The notice must be in the form and contain the information that
6 the court considers necessary under the circumstances.

7 Sec. 25.20.104. MINIMUM VISITATION SCHEDULE. (a) Except as
8 provided in (b) and (c) of this section, in a proceeding in which child custody is
9 awarded to one parent and visitation rights are awarded to the other parent, the court
10 shall award the visiting parent at least the following visitation rights:

11 (1) 29.5 percent of the days and nights of the year, with specific days
12 and nights determined by the parents, except as provided in (2) - (4) of this subsection;

13 (2) the Thanksgiving period every other year;

14 (3) the school Christmas vacation period occurring before 9:00 o'clock
15 in the morning on December 25th in the years in which the visiting parent has
16 visitation during the Thanksgiving vacation period;

17 (4) the school Christmas vacation period occurring after 9:00 o'clock
18 in the morning on December 25th in the years in which the visiting parent does not
19 have visitation during the Thanksgiving vacation period.

20 (b) The court may vary from the requirements under (a) of this section if, after
21 consideration of the age, circumstances, and needs of the child, the court finds that
22 adherence to the requirements would cause harm or detriment to the child. A variation
23 under this subsection must be based solely on evidence in the record. The court shall
24 find the facts specially and include an explanation of its reasoning for ordering a
25 variance under this subsection.

26 (c) The court shall decrease the percentage specified in (a)(1) of this section
27 at the request of the parent with visitation rights.

28 (d) In this section,

29 (1) "school Christmas vacation period" means from 6:00 o'clock in the
30 evening on the last day of school before the beginning of the school Christmas
31 vacation period until 8:00 o'clock in the evening on the day before the resumption of

1 the school year, if a child is not in school, "school Christmas vacation period" means
2 the vacation period of the public school system where the custodial parent resides;

3 (2) "Thanksgiving period" means from 6:00 o'clock in the evening on
4 the Wednesday before Thanksgiving until 8:00 o'clock in the evening on the following
5 Sunday;

6 (3) "visiting parent" means the parent who does not have physical
7 custody of the child according to a court order.

8 * Sec. 3. AS 25.20.110 is amended by adding a new subsection to read:

9 (c) Intentional noncompliance with a court order to allow visitation with a
10 child, a finding of contempt for noncompliance with a court order to allow visitation
11 with a child, or a conviction of custodial interference in the third degree under
12 AS 11.41.340 constitutes a rebuttable presumption that there has been a change in
13 circumstances justifying a modification under (a) of this section if the modification is
14 in the child's best interests.

15 * Sec. 4. AS 25.20.115 is amended to read:

16 Sec. 25.20.115. ATTORNEY FEE AWARDS IN CUSTODY AND
17 VISITATION MATTERS. Except as provided in AS 25.20.140(e), in [IN] an action
18 to modify, vacate, or enforce that part of an order providing for custody of a child or
19 visitation with a child, the court may, upon request of a party, award attorney fees and
20 costs of the action. Except as provided in AS 25.20.140(e), in [IN] awarding
21 attorney fees and costs under this section, the court shall consider the relative financial
22 resources of the parties and whether the parties have acted in good faith.

23 * Sec. 5. AS 25.20.140 is amended by adding new subsections to read:

24 (d) In addition to monetary damages under (b) of this section, the court may
25 (1) order that the parent with visitation rights be given additional
26 visitation time with the child equal to or more than the amount of time missed because
27 of the other parent's noncompliance with visitation orders; if the custodial parent has
28 previously, within three years, been found in contempt for noncompliance with an
29 order allowing visitation, the additional amount of visitation time ordered under this
30 paragraph shall be equal to at least twice the amount of time missed because of the
31 noncompliance;

1 (2) award to the parent with visitation rights reasonable expenses
2 incurred by the parent to locate or return a child and an additional sum in liquidated
3 damages in the amount of \$100; however, if the custodial parent has previously, within
4 three years, been found in contempt for noncompliance with an order to allow
5 visitation, the liquidated damages under this paragraph shall be \$250.

6 (e) If the court finds that an action under this section was brought in bad faith,
7 the court shall order the moving party to pay to the nonmoving party all costs, full
8 reasonable attorney fees, and liquidated damages of \$100.

9 * **Sec. 6. MODIFICATION OF EXISTING ORDERS.** The enactment of AS 25.20.104
10 under sec. 2 of this Act constitutes a change in circumstances requiring modification of an
11 order under AS 25.20.110(a) that was made before the effective date of this Act if application
12 of AS 25.20.104 would result in an increase of visitation time of at least 25 percent and the
13 modification is in the best interests of the child.

February 26, 1994

Rep. Con Bunde, House HESS Co-chair
Senator Steve Rieger, Senate HESS, chair
Other legislators



Re: HB 422 VISITATION (PARENTING) GUIDELINES LEGISLATION

Dear Legislators,

Recent newspaper articles that appeared in the Juneau Empire have attacked Rep. Con Bunde in regards to HB 422, which details the parenting arrangements for families after a separation or divorce.

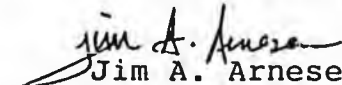
The views expressed by a small vocal minority, whose only concern is the collection of child support, does not address the more important issue of continued parenting, which will benefit both children and parents alike. Child support is not a substitute for parenting, as it is only a part of the equation.

Study after study, have indicated that the most critical aspect in the well-being and best interest of our children, relates to the continued parenting factor. While we have guidelines for child support awards, we lack appropriate guidelines for parenting arrangements (visitation). This is necessary due to the lack of uniform awards in parenting, which have unduely burdoned parents and the court system alike, in a wave of litigation. This litigation causes further hardship on all parties involved and is not in the best interest of the children.

Some factors to consider are:

- ** Parents with shared parenting arrangements pay their support in full and on time over 80-90% of the time.
- ** Parents without shared parenting, pay support less than 45% of the time, usually caused by parental interference.
- ** 80% of the children that get into trouble with the justice system come from single parent families, families where both parents are not in the picture.
- ** The importance of parenting is the single most critical aspect in the well-being and psychological health of our children and our future citizens.
- ** Terminology - "Custody" term used for prisoners
"Visitation" used in hospitals/funerals
"Parenting" - appropriate terminology

We support Rep. Con Bunde in his honorable intentions and wisdom in the introduction of this legislation for the benefit of all.


Jim A. Arnesen, President



Alaska State Legislature

House of Representatives
COMMITTEE ON HEALTH, EDUCATION
AND SOCIAL SERVICES

SUBJECT OF MEETING:
* HB 422: CHILD CUSTODY AND VISITATION RIGHTS

DATE: 3/11/94

PLACE: Capitol Room 106

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?	WHAT SUBJECT/ WHICH BILL?
<i>Jayne Anderson</i>	<i>CVSA</i>	<i>Box 111200 Anchorage</i>	<i>99810</i>		<i>465-4356</i>	<input checked="" type="radio"/> Y <input type="radio"/> N	<i>HB 422</i>
<i>Sherris Gow</i>	<i>Alaska Women's Lobby</i>	<i>P.O. Box 850 Anchorage AK</i>	<i>99527</i>		<i>463-6744</i>	<input checked="" type="radio"/> Y <input type="radio"/> N	<i>HB 422</i>
						<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	

ASSOCIATION FOR CHILDREN FOR ENFORCEMENT OF SUPPORT
Anchorage Chapter
P. O. Box 92910, Anchorage, AK 99509. 274-2010

March 18, 1994

Dear HESS Committee Members:

I speak for thousands of custodial parents (mostly women) and children around Alaska: this DADS VENGEANCE bill should remain and die in committee. You are not seriously considering Rep. Davis' bill requiring dads to match rights with responsibilities...requiring them to make use of the visitation they wanted. What about Rep. Martin's bill making it a crime to help someone avoid paying child support. If their bills are not good enough to leave this committee - then certainly this piece of DADS VENGEANCE legislation should not either.

Despite minor improvements to ^{CSHB422} ~~CSHB422~~ since the last hearing, this bill continues to be a "DADS VENGEANCE" bill - making women criminals while "dads" continue to impudently refuse to pay child support. Contrary to emotional testimony, enforcement of the criminal non-support law rarely occurs. Ask the Dept. of Law how many non-custodial parents have been jailed for not paying child support - and you will learn that it rarely, if ever, occurs despite the fact that there are thousands who do not pay their support.

I have heard legislators and others state that the criminal sanctions won't be enforced, so "don't worry about it." That is a smokescreen! Any law can be enforced if someone chooses to do so.

RE: Work draft, p2, lines 10-16: Dad can stay out of his children's lives for years, but if he chooses, then your bill allows him to return and give "reasonable notice" and resume his "rights" as a father, but never having had to face up to his "responsibilities" of being a father. Meanwhile, mom disagrees with his definition of "reasonable notice" - she is still arrested and must argue what was "reasonable" in court.

Additionally, the legislature is not equipped with the expertise or knowledge to determine what kind of visitation is in the best interests of the child - by requiring a minimum amount of visitation. Only the courts can get to the truth in custody and visitation matters - they hear



Alaska State Legislature

HEALTH EDUCATION & SOCIAL SERV.
JUDICIARY
FINANCE

Please enter into the record my testimony to the _____ committee name

committee on HB 422(a), dated 1-31-94
bill/subject

I AM A FULL TIME SINGLE PARENT WITH CUSTODY OF MY TWO TEEN AGE BOYS, AND I URGE YOU TO PASS HB 422 FOR THE SAKE OF ALL CHILDREN IN THE STATE OF ALASKA.

TOO OFTEN, CHILDREN ARE USED AS PAWNS OR WEAPONS BY THE CUSTODIAL PARENT, AND THE VICTIM IS THE CHILD, DEPRIVED OF THE CHANCE TO LOVE & BE LOVED BY THE NON-CUSTODIAL PARENT. I BELIEVE HB 422 WILL GIVE THAT PARENT A TOOL TO GAIN ACCESS TO THEIR CHILDREN.

NO LAW IS PERFECT ALL THE TIME FOR ALL THE PEOPLE, BUT HB 422 WILL UNDOUBTEDLY BE A VERY IMPORTANT MEASURE FOR THE CHILDREN IN THIS STATE.

Signed: [Signature] STEPHEN STOLL
Testifier

Representing (Optional)
1001 TURK CIRC. WASILLA 99654

Address
907 373 3447

Phone No.

October 28, 1993



TO: ALL LEGISLATORS,

FROM: Jim A. Arnesen, President
Alaska Family Support Group, Inc.
P.O. Box 111691-1691
Anchorage, Ak 99511
(907) 344-7707 Fax 344-9540

RE: PROPOSED LEGISLATION (enclosed)

Dear Legislator,

Please find enclosed, proposed legislation and information relating thereto.

The focus of our group is to promote positive changes to the family law system. I believe the proposals enclosed will benefit parents and children at very small cost, if any. While one of the proposed bills is a major addition, the other three are small in comparison.

The first proposal has to do with Visitation Guidelines for divorcing parents and other non-married parents. Rather than include the four pages in this packet, please refer to the latest newsletter we sent to you. You will find the full proposal on pages 6-10 of the Fall issue of our newsletter.

All of the proposals are family oriented and are designed to rectify some of the problems that frequently come up. The cause of much of the ongoing litigation tying up our court system dockets, with the resultant increase in costs to our court system and parents can be addressed through the proposals.

Briefly stated, here is a short summary;

MINIMUM VISITATION GUIDELINES: Similar to child support guidelines, these are a guide to follow in awarding child visitation. They set a standard to be followed with the best interest's of the child in mind, as well as, enforcement provisions and penalties.

CHILD REGISTRATION BILL: This short proposal would require parents to register their child in schools, day care facilities, etc. under the true name of the child. This would help to alleviate the problems with "missing children", parental abductions, and related failure to adhere to visitation schedules.

AFSG P.O. BOX 111691, ANCHORAGE, AK 99511-1691 (907) 344-7707 274-7358

ALASKA FAMILY SUPPORT GROUP - JIM ARNESEN

October 28, 1993
Legislative Proposals
Page two

WORKER'S COMPENSATION LEGISLATION: The proposal would rectify the discriminatory approach presently applied, wherein only married parents or parents that claim the exemption on their tax returns receive the additional funds for dependents. The bill specifically will allow for parents that are supporting their children through child support to receive the same amounts as other parents, because in such cases those parents are deemed to be supporting dependents, and are entitled to the same amount.

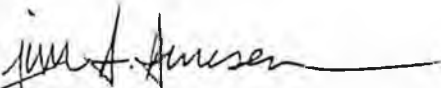
WAGE GARNISHMENT LIMIT BILL: This bill would prohibit garnishing wages to the point of not allowing an obligor enough monies upon which to subsist. Even obligors need funds to live on, and some states recognize this by imposing garnishment limits.

All of the proposals represent positive steps to correcting the many areas of concern that affect children and their parents.

It is my hope that you will seriously consider these proposals and introduce them yourselves, or support them if you are not in a position to introduce them.

If you have any questions, feel free to write or call me.

Respectfully,



Jim A. Arnesen
President

Enclosures: Introductions to the proposals, proposed legislation, proposed changes to statutory language.

cc: all Legislators

Dear Legislators,

Re: MINIMUM VISITATION GUIDELINES LEGISLATION
(A proposal based upon the Texas Model)

There exists a dire need for visitation guidelines and the enforcement of visitation rights. It is conservatively estimated that over 10,000 children in Alaska are denied a relationship with their "other" parent, due to custodial interference, every year. This is atrocious !

On the one hand, we have repressive enforcement of child support obligations, calculated through formulas specified in our Child Support Guidelines. And we all are aware of the consequences if we fail to pay.

So why don't we have visitation guidelines and enforcement as well ? It makes perfect sense to do so. The U.S. Census Bureau statistics show:

- * Fathers w/joint custody pay 90.2% of the child support owed
- * Fathers w/good visitation pay 79.1% of the child support owed
- * Fathers w/neither (above) pay 44.5% of the child support owed

The statistics tell us a story. That when a parent has a relationship with their children, child support gets paid. The big push the last few years has been in the area of child support enforcement, but it has done little to correct the problem of non-payment. In fact, the problem is growing and will get worse. Support compliance is related to visitation !

The answer is to do what other states are doing. Create visitation guidelines and enforce visitation ! Michigan enforces visitation with the same vengence and vigor as support. Texas recently enacted minimum visitation guidelines with enforcement provisions. New Jersey prosecutes custodial interference seriously, and has penalties of up to 5 years, which have been imposed on violaters. For some, such violations constitute basis for a change in custody. The parent most likely to encourage visitation and an ongoing relationship with the other parent is the one that should have custody.

In the latest newsletter we sent to you, you can find the proposed MINIMUM VISITATION GUIDELINES, on pages 6-10. There is also an article describing Michigan's Visitation Program which is administered through their "Friend of the Court" system.

I will expect that those legislators that can introduce this important legislation will do so, and others will support this much needed legislation!!!

Thank you, Jim A. Arnesen, Pres. Alaska Family Support Group

Study Finds Connection Between Support and Visitation

The "complex interconnection between child support and visitation problems, especially in usual, maternal custody situations" has been confirmed by a report issued by Jessica Pearson, director for the Center for Policy Research, Denver, Colorado.

The report was based on interviews with 700 couples and a study of five visitation programs (Wayne County, Michigan; Maricopa County, Arizona; Lee County, Florida; Wyandotte County, Kansas; and Los Angeles, California).

The report concluded such things as:

- * "the dramatically different complaints residential and nonresidential parents make about visitation";
- * "unspecified visitation orders should be avoided";
- * "quality enforcement programs and ancillary services (are needed) to deal with the many safety concerns of residential parents"; and

* "modest improvement in child support payment patterns" (were reported), along with "a significant drop in access relitigation in Kansas, but no change in child support relitigation."

The five sites that were studied offer different types of visitation programs, including expedited complaint procedures, supervised visitation, warning letters, telephone monitoring of visitation, mediation, and group education.

The 700 couples who were studied used these programs in 1989 and 1990.

The 193 page report, which includes a copy of all data collection instruments, is available from the Center for Policy Research, 1720 Emerson Street, Denver, CO 80218 for \$15.00 a copy.

The study was based on a grant from the State Justice Institute, Alexandria, Virginia.

Texas

Access Enforcement

A change in Court Rule 308a in Texas encourages the courts to investigate any charge of denial of access in much the same manner that the courts investigate child support violations — by the appointment of an attorney. Court rules affect the everyday behavior of judges and do not require legislative approval.

Jimmy Boyd of the Texas Children's Rights Coalition, attributes this emphasis on access enforcement in the court rules to:

1. Passage of S.B. 188 — the minimum access/visitation bill. This new law, passed by the legislature in 1989, is the first time that any legislature in the U.S. has set minimum access (visitation) standards. Under the guideline in S.B. 188, a judge must give a parent about 33 percent of the time with the child on a year-round basis. A judge may give more visitation than this, but he can not go below that amount, without good reason. Because S.B. 188 creates a rebuttable presumption, the judge must state the reason for any variation.

2. Passage of S.B. 826 — the Texas "Friend of the Court" bill which provides for the enforcement of visitation orders using an attorney ad litem system. The court is expected to assess attorney's fees against the person who

violates the visitation order.

The court rule, 308a (Suits Affecting the Parent-Child Relationship) states:

"When the court has ordered child support or possession of or access to a child and it is claimed that the order has been violated, the person claiming that a violation has occurred shall make this known to the court. The court may appoint a member of the bar to investigate the claim to determine whether there is reason to believe that the court order has been violated. If the attorney in good faith believes that the order has been violated, the attorney shall take the necessary action as provided under Chapter 14, Family Code. On a finding of a violation, the court may enforce its order as provided in Chapter 14, Family Code.

"Except by order of the court, no fee shall be charged by or paid to the attorney representing the claimant. If the court determines that an attorney's fee should be paid, the fee shall be adjudged against the party who violated the court's order. The fee may be assessed as costs of court, or awarded by judgment, or both."

New Jersey

Access Law Strengthened

A law that toughens New Jersey's child custody, visitation, and parental kidnapping provisions took effect in November, 1990.



Assemblywoman
Marlene Ford

The law raises interference with visitation to a crime of the third degree, punishable by up to five years in prison and \$7,500 in a fine.



Assemblyman
John Doyle

The interference can occur by a person who takes or detains a minor child in order to conceal him and thereby deprive the child's parent,

guardian or lawful custodian of custody or visitation.

In addition to the penalties, a person who is convicted of any offense under this law is required to make restitution of all reasonable expenses and costs including counsel fees incurred by the other parent securing the child's return.

"The laws are clear. No parent has the right to cut off another parent from their child," said Governor Jim Florio, in signing the bill.

The New Jersey Council for Children's Rights supported this bill, and thanks the sponsors, Assemblywoman Marlene Lynch Ford, and Assemblyman John Paul Doyle.

Second Class Citizens



By Jim Arnesen

Non-custodial parents are treated as "second class citizens" by the legislature, the courts and society, with results that discriminate against them. A few examples of the glaring inequities faced by non-custodial parents are presented here.

Legal representation is biased in favor of custodial parents. We constantly hear of cases where free legal services are offered to mothers (usually custodial parent), but not to fathers (usually non-custodial parent). While I do not wish to inflame the gender issue, these are cases of gender discrimination that are prevalent here in Alaska and around the country. Accused criminals are afforded free legal representation and proper due process, but not law-abiding non-custodial parents.

Another common discrimination occurs when a non-custodial parent has to apply for Unemployment or Worker's Compensation Insurance. For married persons, an additional amount is awarded for each dependent in the home, to assist in the support of dependents.

On the other hand, the additional amount for dependents for unmarried parents is not allowed unless the unmarried parent is the parent that claims the dependent on their tax return. Usually, non-custodial parents are not able to do that, even though they support their children through child support payments. All parents that are supporting children should be afforded the same and equal treatment.

When married parents go to the bank to finance a purchase, whether it be a home, car, boat, etc., the amount of monies expended for the support of their children is not a consideration for qualifying purposes. They usually receive the loans applied for. There is no implied "child support."

But when a non-custodial parent goes to the bank for the same financing,

they are frequently disqualified due to the "child support" payments they have to make. The child support payments are considered a debt that reduces the ability to repay the loan. Additionally, the recipient of child support is able to use the support payments as if it were income in the review of a loan. Support of children, should be considered similarly for both married and unmarried parents.

Married parents are not legally required to send their children to college. While many children do go on to college, most find it necessary to obtain financing for educational advancement. Sometimes the parents will pay for, or assist in the matter, when they can afford to do so.

In the case of non-custodial parents, however, there are cases where they can be ordered to pay for college education. In most of these cases, the custodial parent's income is rarely considered, and the burden falls squarely upon the non-custodial parent. It does appear discriminatory, in that only divorced parents are ordered to send their children to college. This should apply equally to all parents or none at all!

A quick look at the Child Support

Guidelines will show that, in most cases, only the non-custodial parent's income is considered in determining the amount of child support. In too many cases, the child support guidelines are followed too strictly, not allowing enough flexibility for the circumstance involved. Both parent's incomes should always be considered!

The most common complaint is parental interference in visitation matters. While the courts and the Child Support Enforcement agencies vigorously enforce monetary support, very little is ever done to enforce parental support (visitation orders). Visitation should be enforced just as vigorously as child support. Parental support is equally important, if not more, than child support!

The list goes on. The Civil Rights Movement of the 1960s and the Women's Movement of the 1970s delivered equality to many. However, non-custodial parents did not benefit. There are many other situations where non-custodial parents are faced with discrimination. This is why we are organized. Our legislative proposals attempt to remedy some of these problems. You can become part of the solution by assisting in our efforts!

New Jersey Mom Cited in Child Custody Case

A 31-year old Elizabeth woman was indicted on charges of interference with custody after she disappeared with her 18-month old son. Union County Assistant Prosecutor Brian Gillet said the case was referred to the Child Abuse Unit in March 1992 by the Family Court after the husband complained that his wife had taken their son.

Investigation of the case showed the defendant obtained an order from the Family Court granting her custody of the then one-month old son, in January 1991. Under the terms of the order, the father was permitted to have custody of his son on the first and third weekend of every month and one day during a week.

When the father went to pick up his son on Dec. 6, 1991, he found the wife was gone, her telephone disconnected and that she had quit her employment.

In April of 1992, Superior Court Judge Mac Hunter awarded the father full custody of his son, but the child's whereabouts remain unknown.

The first count of the indictment covers the period of Dec. 6, 1991 to April 13, 1992, and the second count covers the time the mother kept her son from his father from April to present.

The woman could receive up to five years in prison on each count. Interference with Custody is a third degree offense with mandatory jailing.

FORUM

Visitation boosts payments

Visitation is a key factor in achieving a high level of child-support collections. This factor is sadly disregarded by our state and the Child Support Enforcement Division.

Michigan, which has enforced visitation since 1919, enjoys the highest level of collections in the country, currently at 77 percent. It enforces visitation with the same vengeance as monetary child support. It recognizes the correlation between monetary support and visitation, and its parents and children benefit.

In stark contrast, Alaska, which does not actively enforce visitation, can boast only a meager 16 percent collection rate. CSED refuses to get involved in any visitation matter. Its use of enforcement procedures without considering the merits of visitation enforcement is doomed to failure.

The U.S. Census Bureau came out with statistics that clearly show the correlation between visitation and support:

Parents with joint custody pay 90.2 percent of the support on time.

Parents with good visitation pay 79.1 percent of the support on time.

Parents with neither of the above pay 44.5 percent of the support.

Payment of monetary child support is directly correlated to parental support (visitation). The lack of, or interference with, visitation is crucially more important or equal to a child's overall needs, as is child support. More than 10,000 Alaska children are denied access to a parent each year. Should we continue to emphasize child-support compliance, and ignore the important parenting aspects that will produce beneficial results for all?

— Jim A. Arnesen, president
Alaska Family Support Group

SUBJECT STATUTES - SUPPORT AND VISITATION ENFORCEMENT ACT	SECTION 9000 DATE 12-01-86
PREPARED BY STATE COURT ADMINISTRATIVE OFFICE	CHAPTER 1 PAGE 9079

SUPPORT AND VISITATION ENFORCEMENT ACT, MCL 552.601 to 552.650

AN ACT to supplement statutes which provide for the enforcement of support and visitation orders with respect to divorce, separate maintenance, paternity, child custody, and spouse support; to prescribe the powers and duties of the circuit court and friend of the court; to prescribe certain duties of certain employers and other sources of income; to provide for penalties and remedies; and to repeal certain acts and parts of acts.

552.601. Short title

Sec. 1. This act shall be known and may be cited as the "support and visitation enforcement act".

552.602. Definitions

Sec. 2. As used in this act:

(a) "Employer" means any individual, sole proprietorship, partnership, association, or private or public corporation, the United States or any federal agency, this state or any political subdivision of this state, any other state or a political subdivision of another state, or any other legal entity which hires and pays an individual for his or her services.

(b) "Friend of the court act" means Act No. 294 of the Public Acts of 1982, being sections 552.501 to 552.535 of the Michigan Compiled Laws.

(c) "Income" means any of the following:

(i) Commissions, earnings, salaries, wages, and other income due or to be due in the future from his or her employer and successor employers.

(ii) Any payment due or to be due in the future from a profit-sharing plan, pension plan, insurance contract, annuity, social security, unemployment compensation, supplemental unemployment benefits, and worker's compensation.

(iii) Any amount of money which is due to the payer under a support order as a debt of any other individual, partnership, association, or private or public corporation, the United States or any federal agency, this state or any political subdivision of this state, any other state or a political subdivision of another state, or any other legal entity which is indebted to the payer.

(d) "Office of child support" means the office of child support established in section 2 of Act No. 174 of the Public Acts of 1971, being section 400.232 of the Michigan Compiled Laws.

(e) "Office of the friend of the court" means the agency created in section 3 of the friend of the court act, being section 552.503 of the Michigan Compiled Laws.

SUBJECT STATUTES - SUPPORT AND VISITATION ENFORCEMENT ACT (cont'd.)	SECTION 9000 DATE 12-01-86
PREPARED BY STATE COURT ADMINISTRATIVE OFFICE	CHAPTER 1 PAGE 9080

(f) "Order of income withholding" means an order entered by the circuit court providing for the withholding of a payer's income to enforce a child support order pursuant to this act.

(g) "Payer" means a person who is ordered by the circuit court to pay support.

(h) "Political subdivision" means a county, city, village, township, educational institution, school district, or special district or authority of the state or of a local unit of government.

(i) "Recipient of support" means the following:

(i) The spouse, if the support order orders support for the spouse.

(ii) The custodial parent or guardian, if the support order orders support for a minor child.

(iii) The state department of social services, if support has been assigned to the department.

(j) "Referee" means a person who is designated as a referee pursuant to the friend of the court act.

(k) "Source of income" means an employer or successor employer or any other individual or entity that owes or will owe income to the payer.

(l) "Support" means either of the following:

(i) The payment of money for a child or a spouse ordered by the circuit court, whether the order is embodied in an interim, temporary, permanent, or modified order or judgment. Support may include payment of the expenses of medical, dental, and other health care, child care expenses, and educational expenses.

(ii) The payment of money ordered by the circuit court under the paternity act, Act No. 205 of the Public Acts of 1956, being sections 722.711 to 722.730 of the Michigan Compiled Laws, for the necessary expenses incurred by or for the mother in connection with her confinement or of other expenses in connection with the pregnancy of the mother.

(m) "Support order" means any order entered by the circuit court for the payment of support, whether or not a sum certain.

552.604. Provisions for order of income withholding; notice; effective date

Sec. 4. (1) After July 1, 1983, each support order entered or modified by the circuit court shall provide for an order of income withholding.

SUBJECT STATUTES - SUPPORT AND VISITATION ENFORCEMENT ACT (cont'd.)	SECTION 9000 DATE 12-01-86
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(3) An order of commitment under section 35 shall separately state both of the following:

(a) The amount of arrearage under the support order.

(b) The amount to be paid in order to be released from the order of commitment.

(4) A commitment shall continue until the amount ordered to be paid under subsection (2) (b) or (3) (b) is paid but shall not exceed 45 days for the first adjudication of contempt of 90 days for any subsequent adjudication of contempt.

(5) The court may further direct that any portion or all of the earnings of the payer in the facility or institution shall be paid to and applied for support until the payer has complied with the order of the court, until the payer is released pursuant to this section from an order of commitment, or until the further order of the court. If it appears that the state or county department of social services, or a local office of the state department of social services, has contributed towards the support of the minor child or children during the period of noncompliance with the order of the court, the court, in the contempt proceedings, may order all or part of any lump sum payment to the office of the friend of the court or county clerk to be paid to that department or local office not to exceed the amount of the contribution made by that department or local office. The court may order the money paid to the person or persons entitled to the money in weekly or monthly installments by the office of the friend of the court or county clerk to the extent that the court considers installments necessary for support.

¹Section 552.633 or 552.635.

552.639. Violation of terms of commitment; escape

Sec. 39. (1) If a payer is committed to jail under section 33 (b) or 35 (2)¹ and violates the conditions of the court, the court shall commit the payer to the county jail without the privilege provided under section 33 (b) or 35 (2) for the balance of the period of the commitment imposed by the court.

(2) If a payer is committed to jail under section 33 (b) or 35 (2) and fails to return to the place of confinement within the time prescribed, the payer shall be considered to have escaped from custody and shall be guilty of a misdemeanor, punishable by imprisonment for not more than 1 year.

¹Section 552.633(b) or 552.635(2).

SUBJECT STATUTES - SUPPORT AND VISITATION ENFORCEMENT ACT (cont'd.)	SECTION 9000 DATE 12-01-86
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552.641. Visitation violations; sanctions

Sec. 41. (1) Except as provided in subsection (2), the friend of the court shall do 1 or more of the following in a dispute concerning visitation of a minor child:

(a) Apply a makeup visitation policy established under section 42.¹

(b) Commence civil contempt proceedings under section 44.¹

(c) Petition the court for a modification of existing visitation provisions to ensure visitation, unless contrary to the best interests of the child. A written report and recommendation shall accompany the petition.

(2) The friend of the court shall not invoke any option under subsection (1) if the parties resolve their dispute through an informal joint meeting or through domestic relations mediation as provided under section 11 or 13³ of the friend of the court act.

¹Section 552.642.

²Section 552.644.

³Section 552.511 or 552.513.

557.642. Makeup visitation policy for wrongful denial of visitation

Sec. 42. (1) Not later than 180 days after the enactment date of this amendatory act, each circuit shall formulate a makeup visitation policy under which a noncustodial parent who has been wrongfully denied visitation is able to make up the visitation at a later date. The policy shall not apply until it is approved by the chief circuit judge or only circuit judge of the circuit.

(2) Before a makeup visitation policy is applied in a particular case, the office of the friend of the court shall send to both parties a notice, by ordinary mail to the person's last known address, that the policy will be applied in their case.

(3) A makeup visitation policy formulated and approved under this section shall include all of the following:

(a) Makeup visitation shall be the same type and duration of visitation as the visitation that was denied, including but not limited to weekend visitation for weekend visitation, holiday visitation for holiday visitation, weekday visitation for weekday visitation, and summer visitation for summer visitation.

(b) Makeup visitation shall be taken within 1 year after the wrongfully denied visitation occurred.

SUBJECT STATUTES - SUPPORT AND VISITATION ENFORCEMENT ACT (cont'd.)	SECTION 9000 DATE 12-01-86
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(c) The time of the makeup visitation shall be chosen by the noncustodial parent.

(4) Beginning upon approval of a makeup visitation policy formulated pursuant to subsection (1), the office of the friend of the court shall keep an accurate record of alleged visitation arrears and the noncustodial parent shall give to the office written notice of an alleged, wrongfully denied visitation within 7 days of alleged denial.

(5) Beginning upon approval of a makeup visitation policy formulated pursuant to subsection (1), if a wrongfully denied visitation is alleged and the friend of the court determines that action should be taken under section 41 (1) (a),¹ the following shall apply:

(a) The office of the friend of the court shall give to the custodial parent within 5 days after receipt of the notice of denied visitation under subsection (4) a notice, which shall contain the following statement in bold-face type of not less than 12 points:

"FAILURE TO RESPOND IN 7 DAYS TO THE OFFICE OF THE FRIEND OF THE COURT SHALL BE CONSIDERED AS AN AGREEMENT THAT VISITATION WAS WRONGFULLY DENIED AND THAT OFFICE WILL ADJUST THE ACCOUNT OF VISITATION ARREARS ACCORDINGLY."

(b) If the custodial parent makes a timely reply contesting the alleged wrongful denial of visitation, a hearing shall be held by a referee or a circuit judge after notice is given to both parties.

(c) The referee or judge shall determine whether visitation was wrongfully denied.

(d) If the hearing provided under subdivision (b) is held before a referee, either party shall be entitled to a de novo hearing before a circuit court judge as provided in section 7 (5) of the friend of the court act, being section 552.507 of the Michigan Compiled Laws.

(e) After a final determination that visitation was wrongfully denied, the office of the friend of the court shall adjust the visitation arrears account accordingly.

(f) The noncustodial parent shall give to the office of the friend of the court and custodial parent a written notice of makeup visitation at least 1 week before a makeup weekday or weekend visitation or at least 30 days before a makeup holiday or makeup summer visitation.

¹Section 552.641(1)(a).

SUBJECT STATUTES - SUPPORT AND VISITATION ENFORCEMENT ACT (cont'd.)	SECTION 9000 DATE 12-01-86
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552.644. Contempt action for visitation violations; sanctions

Sec. 44. (1) If the office of the friend of the court determines that action should be taken under section 41 (1) (b),¹ the office of the friend of the court shall commence a civil contempt proceeding to resolve a dispute concerning visitation of a minor child by filing with the circuit court a petition for an order to show cause why either parent who has violated a visitation order should not be held in contempt.

(2) If the court finds that either parent has violated a visitation order, the court shall find that parent in contempt and may do 1 or more of the following:

(a) Require additional terms and conditions consistent with the court's visitation order.

(b) After notice to both parties and a hearing, if requested by a party, on any proposed modification of visitation, modify the visitation order to meet the best interests of the child.

(c) Order that makeup visitation be provided for the noncustodial parent to take the place of wrongfully denied visitation.

(d) Order the parent to pay a fine of not more than \$100.00.

(e) Commit the parent to the county jail.

(f) Commit the parent to the county jail with the privilege of leaving the jail, during such hours as the court determines and under such supervision as the court considers necessary, for the purpose of allowing the parent to go to and return from his or her place of employment.

(3) A commitment under subsection (2) (e) or (f) shall not exceed 45 days for the first finding of contempt or 90 days for any subsequent finding of contempt.

(4) A parent committed under subsection (2) (e) or (f) shall be released if the court has reasonable cause to believe that the parent will comply with the visitation order.

¹Section 552.641(1)(b).

552.646. Commitment of visitation violator

Sec. 46. (1) If a custodial parent is committed to jail under section 44 (2) (e)¹ and violates the conditions of the court, the court shall commit the person to the county jail without the privilege provided under section 44 (2) (e) for the balance of the period of commitment imposed by the court.

SUBJECT STATUTES - SUPPORT AND VISITATION ENFORCEMENT ACT (cont'd.)	SECTION 9000 DATE 12-01-86
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(2) If a custodial parent is committed to jail under section 44 (2) (e) and fails to return to the place of confinement within the time prescribed, the custodial parent shall be considered to have escaped from custody and shall be guilty of a misdemeanor, punishable by imprisonment for not more than 1 year.

¹Section 552.644(2)(e).

552.648. Repealer

Sec. 48. Act No. 239 of the Public Acts of 1913, being sections 552.201 to 552.203 of the Compiled Laws of 1970, is repealed.

552.649. Contingent effectiveness

Sec. 49. This act shall not take effect unless the following bills of the 81st Legislature are enacted into law:

- (a) House Bill No. 4870.
- (b) House Bill No. 4873.
- (c) House Bill No. 5257.

552.650. Effective date

Sec. 50. Except as provided in section 49, this act shall take effect July 1, 1983.

SUBJECT STATUTES - UNIFORM CHILD CUSTODY JURISDICTION ACT	SECTION 9000 DATE 12-01-86
PREPARED BY STATE COURT ADMINISTRATIVE OFFICE	CHAPTER 1 PAGE 9096

UNIFORM CHILD CUSTODY JURISDICTION ACT, MCL 600.641 to 600.673

Table of Jurisdictions Wherein Act Has Been Adopted

For text of Uniform Act, and variation notes and annotation materials for adopting jurisdictions, see Uniform Law Annotated, Master Edition, Volume 9.

Jurisdiction	Statutory Citation
Alabama	Code 1975, 30-3-20 to 30-3-44.
Alaska	AS 25.30.010 to 25.30.910.
Arizona	A.R.S. 8-401 to 8-424.
Arkansas	Ark. Stats. 34-2701 to 34-2725.
California	West's Ann. Cal. Civ. Code 5150 to 5174.
Colorado	C.R.S. 14-13-101 to 14-13-126.
Connecticut	C.G.S.A. 46b-90 to 46b-114.
Delaware	13 Del.C. 1901 to 1925.
Dist. of Columbia	D.C. Code 1981, 16-4501 to 16-4524.
Florida	West's F.S.A. 61.1302 to 61.1348.
Georgia	O.C.G.A. 19-9-40 to 19-9-64.
Hawaii	HRS 583-1 to 583-26.
Idaho	IC 32-1101 to 32-1126.
Illinois	S.H.A. ch. 40, 2101 to 2126.
Indiana	West's A.I.C. 31-1-11.6-1 to 31-1-11.6-25.
Iowa	I.C.A. 598A.1 to 598A.25.
Kansas	K.S.A. 38-1301 to 38.1326.
Kentucky	KRS 403.400 to 403.630.
Louisiana	LSA-R.S. 13:1700 to 13:1724.
Maine	19 M.R.S.A. 801 to 825.
Maryland	Code, Family Law, 9-201 to 9-224.
Massachusetts	M.G.L.A. c. 209B, 1 to 14.
Michigan	M.C.L.A. 600.651 to 600.673.
Minnesota	M.S.A. 518A.01 to 518A.25.
Mississippi	Code 1972, 93-23-1 to 93-23-47.
Missouri	V.A.M.S. 452.440 to 452.550.
Montana	MCA 40-7-101 to 40-7-125.
Nebraska	R.R.S. 1943, 43-1201 to 43-1225.
Nevada	N.R.S. 125A.010 to 125A.250.
New Hampshire	RSA 458-A:1 to 458-A:25.
New Jersey	N.J.S.A. 2A:34-28 to 2A:34-52.
New Mexico	NMSA 1978, 40-10-1 to 40-10-24.
New York	McKinney's Domestic Relations Law, 75-a to 75-z
North Carolina	G.S. 50A-1 to 50A-25.
North Dakota	NDCC 14-14-01 to 14-14-26.

SUBJECT STATUTES - UNIFORM CHILD CUSTODY JURISDICTION ACT (cont'd.)	SECTION 9000 DATE 12-01-86
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Jurisdiction	Statutory Citation
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Ohio	R.C. 3109.21 to 3109.37.
Oklahoma	10 Okl. St. Ann. 1601 to 1628.
Oregon	ORS 109.700 to 109.930.
Pennsylvania	42 Pa.C.S.A. 5341 to 5366.
Rhode Island	Gen. Laws 1956, 15-14-1 to 15-14-26.
South Carolina	Code 1976, 20-7-782 to 20-7-830.
South Dakota	SDCL 26-5A-1 to 26-5A-26.
Tennessee	T.C.A. 36-1301 to 36-1325.
Texas	V.T.C.A. Family Code 11.51 to 11.75.
Utah	U.C.A. 1953, 78-45c-1 to 78-45c-26.
Vermont	15 V.S.A. 1031 to 1051.
Virginia	Code 1950, 20-125 to 20-146.
Washington	West's RCWA 26.27.010 to 26.27.910.
West Virginia	Code, 48-10-1 to 48-10-26.
Wisconsin	W.S.A. 822.01 to 822.25.
Wyoming	W.S. 1977, 20-5-101 to 20-5-125.

600.651. Purposes; short title

Sec. 651. (1) The general purposes of sections 651 to 673¹ are to:

(a) Avoid jurisdictional competition and conflict with courts of other states in matters of child custody which have in the past resulted in the shifting of children from state to state with harmful effects on their well-being.

(b) Promote cooperation with the courts of other states so that a custody decree or judgment is rendered in that state which can best decide the case in the interest of the child.

(c) Assure that litigation concerning the custody of a child take place ordinarily in the state with which the child and his family have the closest connection and where significant evidence concerning his care, protection, training, and personal relationships is most readily available, and that courts of this state decline the exercise of jurisdiction when the child and his family have a closer connection with another state.

(d) Discourage continuing controversies over child custody in the interest of greater stability of home environment and of secure family relationships for the child.

(e) Deter abductions and other unilateral removals of children undertaken to obtain custody awards.

SUBJECT STATUTES - UNIFORM CHILD CUSTODY JURISDICTION ACT (cont'd.)	SECTION 9000 DATE 12-01-86
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(f) Avoid relitigation of custody decisions of other states in this state insofar as feasible.

(g) Facilitate the enforcement of custody decrees or judgments of other states.

(h) Promote and expand the exchange of information and other forms of mutual assistance between the courts of this state and those of other states concerned with the same child.

(i) Make uniform the law of those states which substantially conforms to sections 651 to 673.

(2) Sections 651 to 673 shall constitute the "uniform child custody jurisdiction act" and shall be construed to promote the general purposes stated in this section.

¹Sections 600.651 to 600.673.

600.652. Definitions

Sec. 652. As used in sections 651 to 673:¹

(a) "Contestant" means a person, including a parent, who claims a right to custody or visitation rights with respect to a child.

(b) "Custody determination" means a court decision and court orders and instructions providing for the custody of a child, including visitation rights. Custody determination does not include a decision relating to child support or other monetary obligation of a person.

(c) "Custody proceeding" includes proceedings in which a custody determination is 1 of several issues, such as an action for divorce or separation, and includes child neglect and dependency proceedings.

(d) "Decree or judgment" or "custody decree or judgment" means a custody determination contained in a judicial decree or order made in a custody proceeding, and includes an initial decree or judgment and a modification decree or judgment.

(e) "Home state" means the state in which the child immediately preceding the time involved lived with his or her parents, a parent, or a person acting as parent, for at least 6 consecutive months, and in the case of a child less than 6 months old the state in which the child lived from birth with any of the persons mentioned. Periods of temporary absence of the named persons are counted as part of the 6-month or other period.

(f) "Initial decree or judgment" means the first custody decree or judgment concerning a particular child.

SUBJECT	SECTION 9000	DATE 12-01-86
STATUTES - CONSUMER CREDIT PROTECTION ACT	CHAPTER 2	PAGE 9109
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STATE COURT ADMINISTRATIVE OFFICE		

SEC. 303 OF TITLE III, CONSUMER CREDIT PROTECTION ACT, 15 USC 1673

15 USCS 1673. Restriction on garnishment

Sec. 1673. (a) ~~Maximum~~ allowable garnishment. Except as provided in subsection (b) and in section 305 [15 USCS 1675], the maximum part of the aggregate disposable earnings of an individual for any workweek which is subject to garnishment may not exceed

- (1) 25 per centum of his disposable earnings for that week, or
- (2) the amount by which his disposable earnings for that week exceed thirty times the Federal minimum hourly wage prescribed by section 6(a)(1) of the Fair Labor Standards Act of 1938 [29 USCS 206(a)(1)] in effect at the time the earnings are payable,

whichever is less. In the case of earnings for any pay period other than a week, the Secretary of Labor shall by regulation prescribe a multiple of the Federal minimum hourly wage equivalent in effect to that set forth in paragraph (2).

(b) Exceptions. (1) The restrictions of subsection (a) do not apply in the case of-

(A) any order for the support of any person issued by a court of competent jurisdiction or in accordance with an administrative procedure, which is established by State law, which affords substantial due process, and which is subject to judicial review.

(B) any order of any court of the United States having jurisdiction over cases under chapter 13 of title 11 of the United States Code [11 USCA 1301 et seq.]

(C) any debt due for any State or Federal tax.

(2) The maximum part of the aggregate disposable earnings of an individual for any workweek which is subject to garnishment to enforce any order for the support of any person shall not exceed-

(A) where such individual is supporting his spouse or dependent child (other than a spouse or child with respect to whose support such order is used), 50 per centum of such individual's disposable earnings for that week; and

(B) where such individual is not supporting such a spouse or dependent child described in clause (A), 60 per centum of such individual's disposable earnings for that week;

except that, with respect to the disposable earnings of any individual for any workweek, the 50 per centum specified in clause (A) shall be deemed to be 55 per centum and the 60 per centum specified in clause (B) shall be deemed to be 65 per centum, if and to the extent that such earnings are subject to garnishment to enforce a support order with respect to a period which is prior to the twelve-week period which ends with the beginning of such workweek.

SUBJECT STATUTES - CONSUMER CREDIT PROTECTION ACT (cont'd.)	SECTION 9000 DATE 12-01-86
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(c) Execution or enforcement of garnishment order or process prohibited. No court of the United States or any State, and no State (or officer or agency thereof), may make, execute, or enforce any order or process in violation of this section.

(May 29, 1986, P. L. 90-321, Title III, 303, 82 Stat. 163; May 23, 1977, P. L. 95-30, Title V, 501(e)(1)-(3), 91 Stat. 161; Nov. 6, 1978, P. L. 95-598, Title III, 312(a), 92 Stat. 2676.)

NOTICE PURSUANT TO N.J.S. 2C:13-4 AS AMENDED

NEW JERSEY
STATUTES

This Order provides for certain provisions relating to custody and visitation of minor children. You are hereby advised that it is a crime of the third degree to interfere with the custody or visitation of a minor child. The maximum sentence which could be imposed for violation of this statute is imprisonment from three (3) to five (5) years and a fine of up to Seven Thousand Five Hundred (\$7,500.00) Dollars.

You are further advised that the presumption of non-imprisonment which normally applies to a first offense for a crime of the third degree, does not apply in cases where a party is found guilty of interfering with custody or visitation.

You are further advised that if the child is taken, detained, enticed or concealed outside the United States; then interference with custody or visitation is a crime of the second degree, for which you are subject to imprisonment for a period of not less than five (5) nor more

5

than ten (10) years, as well as a fine of up to One Hundred Thousand (\$100,000.00) Dollars.

NOV-16-1993 13:33 FROM

TO

915073448540 P.02

2C:13-2. Criminal restraint

Notes of Decisions

Admissibility of evidence 1
Involuntary servitude 3
Sentence and punishment 2

1. Admissibility of evidence

In prosecution for sexual assault, burglary, kidnapping, criminal restraint, terroristic threats, criminal coercion, and aggravated assault, trial court did not err by admitting out-of-court and in-court identification of defendant by victim. *State v. Ficy*, 191 N.J. Super. 326, 476 A.2d 884 (A.D. 1984).

2. Sentence and punishment

Circumstances of defendant's kidnapping of and aggravated sexual assault upon victim and of de-

endant's prior record warranted imposition of ten-year mandatory minimum parole ineligibility periods in conjunction with concurrent sentences of 20 years each to adult diagnostic and treatment center. *State v. Chapman*, 93 N.J. 532, 472 A.2d 559 (1984).

3. Involuntary servitude

Federal agent's action of assisting in apprehending fugitive's girl friend and restraining her for period of five to six hours before releasing her unharmed, in attempt to make her reveal fugitive's whereabouts could not be described as criminal restraint by holding another in condition of involuntary servitude, as State failed to show coerced or forced labor or service. *State v. Marchand*, 227 N.J. Super. 52, 345 A.2d 819 (A.D. 1988) certification granted 113 N.J. 384, 550 A.2d 485, affirmed 114 N.J. 569, 553 A.2d 1122.

2C:13-3. False imprisonment

Law Review Commentaries

Implied culpability terms in an offense definition. "Gap filler" provisions. (1982) 13 Rutgers L.J. 773.

2C:13-4. Interference with custody

Custody of children. A person, including a parent, guardian or other lawful custodian, is guilty of interference with custody if he:

(1) Takes or detains a minor child with the purpose of a. recalling the minor child and thereby depriving of the child's other parent of custody or visitation of the minor child; or

(2) After being served with process or having actual knowledge of an action affecting marriage or custody but prior to the issuance of a temporary or final order determining custody and visitation rights to a minor child, takes, detains, entices or conceals the child within or outside the State for the purpose of depriving, the child's other parent of custody or visitation, or to evade the jurisdiction of the courts of this State;

(3) After being served with process or having actual knowledge of an action affecting the protective services needs of a child pursuant to Title 9 of the Revised Statutes in an action affecting custody, but prior to the issuance of a temporary or final order determining custody rights of a minor child, takes, detains, entices or conceals the child within or outside the State for the purpose of evading the jurisdiction of the courts of this State; or

(4) After the issuance of a temporary or final order specifying custody, visitation or joint custody rights, takes, detains, entices or conceals a minor child from the other parent in violation of the custody or visitation order.

Interference with custody is a crime of the third degree but the presumption of non-imprisonment set forth in subsection e. of N.J.S. 2C:44-1 for a first offense of a crime of the third degree shall not apply. However, if the child is taken, detained, enticed or concealed outside the United States, interference with custody is a crime of the second degree.

b. Custody of committed persons. A person is guilty of a crime of the fourth degree if he knowingly takes or entices any committed person away from lawful custody when he is not privileged to do so. "Committed person" means, in addition to anyone committed under judicial warrant, any orphan, neglected or delinquent child, mentally defective or insane person, or other dependent or incompetent person

Last additions in text indicated by underline; deletions by strikeouts

entrusted to another's custody by or through a recognized social agency or otherwise by authority of law.

c. It is an affirmative defense to a prosecution under subsection a. of this section, which must be proved by clear and convincing evidence, that:

(1) The actor reasonably believed that the action was necessary to preserve the child from imminent danger to his welfare. However, no defense shall be available pursuant to this subsection if the actor does not, as soon as reasonably practicable but in no event more than 24 hours after taking a child under his protection, give notice of the child's location to the police department of the municipality where the child resided, the office of the county prosecutor in the county where the child resided, or the Division of Youth and Family Services in the Department of Human Services;

(2) The actor reasonably believed that the taking or detaining of the minor child was consented to by the other parent, or by an authorized State agency; or

(3) The child, being at the time of the taking or concealment not less than 14 years old, was taken away at his own volition and without purpose to commit a criminal offense with or against the child.

d. It is an affirmative defense to a prosecution under subsection a. of this section that a parent having the right of custody reasonably believed he was fleeing from imminent physical danger from the other parent, provided that the parent having custody, as soon as reasonably practicable:

(1) Gives notice of the child's location to the police department of the municipality where the child resided, the office of the county prosecutor in the county where the child resided, or the Division of Youth and Family Services in the Department of Human Services; or

(2) Commenced an action affecting custody in an appropriate court.

e. The offenses enumerated in this section are continuous in nature and continue for so long as the child is concealed or detained.

f. (1) In addition to any other disposition provided by law, a person convicted under subsection a. of this section shall make restitution of all reasonable expenses and costs, including reasonable counsel fees, incurred by the other parent in securing the child's return.

(2) In imposing sentence under subsection a. of this section the court shall consider, in addition to the factors enumerated in chapter 44 of Title 2C of the New Jersey Statutes:

(a) Whether the person returned the child voluntarily; and

(b) The length of time the child was concealed or detained.

g. As used in this section, "parent" means a parent, guardian or other lawful custodian of a minor child.

Amended by L. 1982, c. 199, § 1, eff. Dec. 15, 1982; L. 1990, c. 204, § 1, eff. Nov. 14, 1990.

Assembly Judiciary Law and Public Safety Committee Statement

Assembly, No. 2847—L. 1990, c. 101

The Assembly Judiciary, Law and Public Safety Committee reports favorably and with committee amendments Assembly Bill No. 2847.

This bill would revise the law concerning the criminal offense of interfering with custody of a minor child.

Currently, N.J.S. 2C:13-4 provides that a person commits a crime of the fourth degree if he knowingly takes or entices a child under the age of 18 from the custody of the parent, guardian or other lawful custodian of the child, when the person has no privilege to do so, or when he does so in violation of a court order. However, this provision only protects the custody rights of a parent who has obtained custody pursuant to a court order. It does not deal with the problem of parental kidnappings which take place before a legal order is entered.

Last additions in text indicated by underline; deletions by strikeouts

This bill would address the issue by providing that a person, including a parent, guardian, or other lawful custodian, commits the crime of interfering with custody if he:

(1) Takes or detains a minor child in order to conceal him and thereby deprive the child's parent, guardian, or lawful custodian of custody or visitation, or

(2) After being served with process or having actual knowledge of an action affecting marriage or custody but prior to the issuance of a temporary or final order determining custody or visitation rights to a minor child, takes or conceals the child for the purpose of depriving the other parent, guardian or lawful custodian of custody or visitation, or to evade the court's jurisdiction; or

(3) After being served with process or having actual knowledge of an action affecting the protective services needs of a minor child pursuant to Title 9 of the New Jersey Statutes in an action affecting custody, but prior to a final order determining custody rights, takes or conceals the child to evade the court's jurisdiction; or

(4) After the issuance of a temporary or final order specifying custody or visitation rights, takes or conceals a minor child from the other parent, guardian or lawful custodian in violation of the order.

The bill would also upgrade the crime of interfering with custody, making it a crime of the third degree. A crime of the third degree is punishable by term of imprisonment of three to five years, or a fine up to \$7,600, or both. In addition to these penalties, a person convicted of violating the law would be required to make restitution of all reasonable expenses and costs, including reasonable counsel fees, incurred by the other parent in securing the child's return.

The committee amended the bill to provide that the presumption of non-imprisonment for a first offender who commits a crime of the third degree shall not apply to the third degree crime of interference with custody. If the child is taken, detained, enticed or concealed outside the United States then the crime is increased to a crime of the second degree. The committee also set an outside limit of 24 hours as a "reasonably practicable" time for the time in which a parent must act by giving notification to the proper authorities in order for the affirmative defense in subsection c. of N.J.S. 2C:13-4 to be available.

Senate Judiciary Committee Statement

Assembly, No. 1183—L.1982, c. 195

Presently, interference with custody is graded as a crime of the fourth degree if the person who interferes is not the child's parent or equivalent relation and if the person acts knowingly or with reckless disregard for the child's safety. In all other circumstances, interference with custody is graded as a disorderly persons offense. These other circumstances include the common situation where the noncustodial parent removes the child from the parent with legal custody to another state. Extradition from the other state is not possible because extradition is only permissible for indictable offenses and disorderly persons offenses are nonindictable offenses. To remedy the problem of extradition in those circumstances, Assembly Bill No. 1183 would classify interference with custody under all circumstances as a crime of the fourth degree.

Historical and Statutory Notes

1982 Legislation

The 1982 amendment deleted provisions in the former fourth paragraph of subsec. a which classified the offense as a crime of the fourth degree where the actor was a parent or equivalent rela-

tion acting with knowledge that conduct would cause serious alarm, and classifying the offense in all other cases as a disorderly persons offense.

1990 Legislation

L. 1990, c. 104, § 1, added subsec. a and entitled former subsec. a which defined offense as

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knowingly taking or enticing a child under age 18 from custody of parent, guardian or other lawful custodian, without privilege to do so, or in violation of court order, provided affirmative defense that the actor believed the child to be in danger or that the child, at least 10 years old, was taken with the child's consent and without criminal purpose, created a presumption of knowledge of the child's age, and designated the offense as a crime of the fourth degree, and added subsec. c to g.

2C:13-5. Criminal coercion

Notes of Decisions

1. Admissibility of evidence

In prosecution for sexual assault, burglary, kidnapping, criminal restraint, terroristic threats,

Notes of Decisions

Indictment and Information 2

2. Indictment and Information

Interference with custody count of indictment would be dismissed absent evidence before grand jury that defendant had knowledge of custody order at time he took child from mother. State v. Butlerston, 234 N.J. Super. 606, 561 A.2d 312 (L. 1988)

criminal coercion, and aggravated assault, trial court did not err by admitting out-of-court and in-court identifications of defendant by victim. State v. Frey, 194 N.J. Super. 326, 476 A.2d 824 (A.D. 1984)

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INTRODUCTION TO A BILL CONCERNING MINIMUM VISITATION GUIDELINES AND ENFORCEMENT

Divorce in its simplest terms can be separated into three areas of possible contention between parents. These are (1) financial consideration, (2) custody of children and (3) visitation by the noncustodial parent. Children are often the real victims of all three and are frequently held "hostage" by the custodial parent depriving them of the emotional security of a two-parent family. It truly goes against the nature of parenthood to depend upon the cleverness of an attorney, the honesty of an angered spouse and the discretions of the court system to be assured reasonable visitation to your own children.

"Visitation rights are essential legal rights of both the child and the parents involved in a divorce. The right of the noncustodial parent and their child or children to have access to each other after divorce is a fundamental, joint right of the parent and child with a basis in constitutional case law, which has held that the rights to raise, have access to, and care for one's own children are more precious than property rights, are essential; and that the right to be with one's children is a natural right with a higher moral claim than any economic right. In the past, the right of visitation has virtually always been raised on behalf of the parent; however, the child's right to visitation is also protected by constitutional law."¹

Much of the anger, frustration, and futility felt by the noncustodial parent as well as the expense incurred in their efforts to obtain visitation could very well be removed by specific action of our legislature. By following the enlightened example of Texas in which the Texas legislature set minimum guidelines for visitation, rather than allowing terms of visitation to be set by the arbitrary decisions of the courts would accomplish this very thing.

Regarding visitation, generally the guidelines adopted by the Texas legislature provide that, among other things, noncustodial parents are to have the first, third, and fifth weekends of the month from after school on Friday to Monday morning, Wednesday evening from after school until 8:00 pm and in alternating years, a week at spring break, a week at Thanksgiving, and a week before and after Christmas which every other year includes Christmas day. There is also a provision for four weeks in the summer. This is an extensive bill and contains many other substantial parts. A bill similar to the Texas bill would go far to alleviate fears of either parent concerning visitation. The knowledge of both parents prior to separation and divorce that specific laws apply which would guarantee the noncustodial parent certain minimum visitation would remove one area of possible contention. Both parents have the parental right of access to their children and they should know what this is before decisions are made which will influence their life.

The major considerations of this Bill which the NJCCR is submitting for your consideration are as follows.

The noncustodial parent has visitation:

- The first, third and fifth weekend of each month starting after school Friday until Monday morning or a time frame as mutually agreed by the parties and put into an order
- Every Wednesday from after school until school the following day. The weekend of Father's Day if the visiting parent is the father or the weekend of Mother's Day if the visiting parent is the mother
- For one half the school spring break
- Alternating Christmas vacation periods until 8:00 pm on the day prior to the resumption of the school year
- The school Thanksgiving vacation period on alternating years
- On alternating holidays
- 45 consecutive days during summer vacation period or at the election of the visiting parent, two separate periods of consecutive days which total 45 days.

This is considered an extremely important bill by NJCCR and along with financial considerations, lays the cornerstone for a program designed to eliminate many of the problems associated with divorce and child custody.

¹An overview of access (visitation) research. Anna D. Keller, "Children in divorced family systems: New approaches." Presentations at NJCCR's Fourth Annual Conference, October 13-15, 1989.

THIS ACT concerning the visitation rights of children and parents shall be known, and may be cited as the "Minimum Standards of Visitation Rights and Enforcement Act." This act revises parts of the statutory laws R.S. 9:2-4 and R.S. 2C:13-4.

The Legislature finds and declares that it is in the public policy of this State to assure minor children of frequent and continuing contact with both parents after the parents have separated or dissolved their marriage, and that it is in the public interest to encourage parents to share the rights and responsibilities of child rearing in order to effect this policy. The Legislature also finds and declares that a parent's right to the preservation of his/her relationship with his/her child (ren) derives from the fact that the parent's achievement of a rich and rewarding life is likely to depend significantly on his or her ability to participate in the rearing of his or her child(ren). A child's corresponding right to protection from interference in the relationship derives from the psychic importance to him or her being raised by loving, responsible, reliable adults. "No bond is more precious and none should be more zealously protected by the law as the bond between parent and child."

MINIMUM STANDARDS OF VISITATION RIGHTS

1. Purposes and Limitations:

(A) **Minimum Standards** --- The standards provided for in this subtitle are intended to guide the courts of this State in determining the minimum period of time for child visitation. Nothing herein shall be construed as limiting the courts of this State from establishing visitation schedules which would provide a greater amount of visitation than that provided for in this subtitle.

(B) **Child Five Years of Age or Older** --- The standards for child visitation provided for in this subtitle shall apply to a child five years of age or older.

(C) **Child Less Than Five Years of Age** --- If a child is less than five years of age, the court shall consider the standards provided for in this subtitle and shall establish a visitation schedule as similar as possible to that provided for by such standards in a manner consistent with the age, circumstances and needs of the child.

(D) **Family With Multiple Children** ---

(1) If the parents have more than one child and all the children of the family are five years of age or older, the standards provided for in this subtitle shall apply.

(2) If the parents have more than one child and one or more of the children of the family is less than five years of age, the court shall consider the standards provided for in this subtitle and shall establish a visitation schedule as similar as possible to that provided for by such standards in a manner consistent to the family, after consideration of the ages, circumstances, and needs of all the children of the family.

2. Definitions:

(A) In this subtitle the following terms have the meanings indicated:

(1) Parent — "Parent" means the natural or adoptive parent of a child.

(2) Custodial Parent --- "Custodial Parent" means:

(A) the parent who has been awarded the sole custody of a child by a court of competent jurisdiction; or

(B) in cases where joint legal custody has been awarded to both parents, that parent who is deemed to have physical custody of the child.

(3) Visiting Parent --- "Visiting parent" means:

(A) the parent who has been awarded the right of visitation with a child by a court of competent jurisdiction; or

(B) in cases where joint legal custody has been awarded to both parents, that parent who is having access to the child.

(4) Parental Rights --- "Parental rights" mean the sum total of the rights of the parent or parents in and to the child as well as the rights of the child in and to the parent or parents. The following are "parental rights" protected to varying degrees by constitution: physical possession of child, which, in case of custodial parent, includes day-to-day care and companionship of child; right to discipline child, which includes right to inculcate in child parent's moral and ethical standards; right to control and manage minor child's earnings; right to control and manage minor child's property; right to be supported by adult child; right to have child bear parent's name; and right to prevent adoption of child without parents' consent. These definitions apply to both parents, not just custodial or noncustodial parents.

(5) Weekend --- "Weekend" means:

(A) in the case of parents who reside 50 miles or less apart, from 6:00 pm Friday until the beginning of the school day on Monday or at the election of the visiting parent from the end of the school day on Friday until the beginning of the school day on Monday.

(B) in the case of parents who reside more than 50 miles but less than 100 miles apart, from 6:00 pm Friday until 8:00 pm Sunday or at the election of the visitation parent from the end of the school day on Friday until 8:00 pm Sunday.

(C) in the case where a weekend period of visitation coincides with a school holiday during the regular school term, or with a Federal, State or local holiday during the school summer vacation period, the weekend period shall extend until 6:00 pm Monday on a Monday holiday or shall begin at 6:00 pm Thursday for a Friday holiday, as applicable.

(5) School Summer Vacation Period -- "School Summer Vacation Period" means the period of time from 6:00 pm on the last day of the spring school term until 8:00 pm on the day prior to the beginning of the fall school term.

(6) School Spring Vacation Period -- "School Spring Vacation Period" means the period of time from 6:00 pm on the last day of school prior to the school spring vacation until 8:00 pm on the day before school resumes.

(7) School Thanksgiving Vacation Period -- "School Thanksgiving Vacation Period" means from 6:00 pm on the Wednesday before Thanksgiving until 8:00 pm on the following Sunday.

(8) Standards -- "Standards" means the minimum visitation periods as noted in minimum visitation, weekends and weekdays and vacation and holiday visitation sections following.

(9) School Christmas Vacation Period -- "School Christmas Vacation Period" means from 6:00 pm on the last day of school prior to the beginning of the school Christmas vacation period until 8:00 pm on the day prior to the resumption of the school year.

3. Minimum Visitation --- Weekends and Weekdays:

In any custody or visitation proceeding the court shall establish, at a minimum, the following visitation schedule:

(A) the first, third, and fifth weekend of each month;

(B) the weekend of Father's Day if the visiting parent is the Father or the weekend of Mother's Day if the visiting parent is the Mother;

(C) each Wednesday evening from end of the school day until school the following morning; and

(D) the vacation and holiday visitation schedule.

4. Vacation and Holiday Visitation:

(A) In addition to the weekend and weekday visitation periods provided for, the court shall also provide for the following periods of visitation during vacations and holidays:

(1) 45 continuous days during the school summer vacation period or, at the election of the visiting parent, two separate periods of consecutive days which total 45 days;

(2) Either one half of the school spring (Easter) vacation period every year or the entire school spring vacation period every other year at the election of the visiting parent;

(3) The school Thanksgiving vacation period every other year; and

(4) The school Christmas vacation period as provided for in subsection (b).

(B) Special Rule for School Christmas Vacation Period --

(1) In those years which the child is with the custodial parent for the Thanksgiving vacation period, the child shall be with the visiting parent from 6:00 pm on the last day of school prior to the beginning of the school Christmas vacation period until 8:00 pm on the day prior to the resumption of the school year;

(2) In those years which the child is with the visiting parent during the Thanksgiving vacation period, the child shall be with the custodial parent from 6:00 pm on December 26th until 8:00 pm on the day prior to the resumption of the school year.

(3) In any case where the parents do not observe Christmas due to religious beliefs, the court, at the request of either of the parents, may make alternative arrangements with regard to the school Christmas vacation period.

5. Parents Who Reside More Than 100 Miles Apart:

If the parents reside more than 100 miles apart and distance and travel time considerations are found by the court to make the standards provided for in their subtitle unworkable, the court shall establish a visitation schedule as similar as possible to that provided for by such standards in a manner that would least likely cause harm or detriment to the child after consideration of the circumstances, and finances of each parent and the age and needs of the child.

6. Variations From Standards:

(A) The court may vary from the standards provided for by this subtitle if after consideration of the age, circumstances and needs of the child the court finds that adherence to such standards would cause harm or detriment to the child.

(B) Any such variation shall be based solely on the evidence presented on the record and the court shall issue written findings of facts and an explanation of its reasoning in varying from the standards provided for in their subtitle.

7. General Terms:

(A) An election to be made by a visiting parent as provided for in this subtitle, shall be made in such manner and at such time as the court deems appropriate under the circumstances.

(B) The court may impose conditions as to travel between the residences of the parents and methods of transferring children at designated times and places as the court may deem necessary and proper under the circumstances of the case.

8. Modifications of Orders:

(A) Subject to the provisions of paragraph (b) of the section, the adoption of the standards provided for in this subtitle may be grounds for requesting a modification of a child visitation order based on a material change in circumstances;

(B) The adoption of the standards provided in this subtitle may not be grounds for requesting a modification of a child visitation award based on a material change in circumstances unless the use of the standards provided for in this subtitle would result in an increase of visitation time of 25 percent or more.

ENFORCEMENT OF VISITATION

Section I:

1. The performance of parental functions and the duty to provide child support are distinct responsibilities in the care of a child. If a party fails to comply with a provision of a decree or temporary order of injunction, the obligation of the other party to make payments for support or maintenance or to permit contact with child is not suspended.

2.

(A) A motion may be filed to initiate a contempt action to coerce a parent to comply with an order establishing residential provisions for a child. If the court finds there is reasonable cause to believe the parent has not complied with the order, the court may issue an order to show cause why the relief requested should not be granted.

(B) If, based on all the facts and circumstances, the court finds after hearing that the parent has not complied with the order establishing residential provisions for the child, the court shall find the parent in contempt of court. Upon a finding of contempt, the court shall order:

(1) The noncomplying parent to provide the moving party additional time with the child. The additional time shall be equal to the time missed with the child, due to the parent's noncompliance;

(2) The parent to pay, to the moving party, all court costs and reasonable attorneys' fees incurred as a result of the noncompliance, and any reasonable expenses in locating or returning a child; and

(3) The parent to pay, to the moving party, a civil penalty of not less than the sum of one hundred dollars.

(4) The court may also order the parent to be imprisoned in the county jail, if the parent is presently able to comply with the provisions of the court-ordered plan and is presently unwilling to comply. The parent may be imprisoned until he or she agrees to comply with the order, but in no event for more than one hundred eighty days.

3. On a second failure within three years to comply with a residential provision of a court-ordered parenting plan, a motion may be filed to initiate contempt of court proceedings according to the procedure set forth in subsection 2(a) and 2(b) of this section. On a finding of contempt under this subsection, the court shall order:

(A) The noncomplying parent to provide the other parent or party additional time with the child. The additional time shall be twice the amount of the time missed with the child, due to the parent's noncompliance;

(B) The noncomplying parent to pay, to the other parent or party, all court costs and reasonable attorney's fees incurred as a result of the noncompliance, and any reasonable expenses incurred in locating or returning a child; and

(C) The noncomplying parent to pay, to the moving party, a civil penalty of not less than two hundred fifty dollars.

(D) The court may also order the parent to be imprisoned in the county jail, if the parent is presently able to comply with the provisions of the court-ordered plan and is presently unwilling to comply. The parent may be imprisoned until he or she agrees to comply with the order but in no event more than one hundred eighty days.

4. For purposes of subsections (1), (2), and (3) of this section, the parent shall be deemed to have the present ability to comply with the establishing residential provision unless he or she establishes otherwise by clear and convincing evidence. The parent shall establish a reasonable excuse for failure to comply with the residential provision of a court-ordered plan by clear and convincing evidence.

5. Any monetary award ordered under subsections (1), (2), and (3) of this section may be enforced, by the party to whom it is awarded, in the same manner as a civil judgment.

6. Subsections (1), (2), and (3) of this section authorize the exercise of the court's power to impose remedial sanctions for contempt of court and is in addition to any other contempt power the court may possess.

7. Upon motion for contempt of court under subsections (1) through (3) of this section, if the court finds the motion was brought without reasonable basis, the court shall order the moving party to pay to the nonmoving party, all costs, reasonable attorney's fees, and a civil penalty of not less than one hundred dollars.

Section II:

1. A relative of a person is guilty of custodial interference in the third degree if, with the intent to deny access to such person by a parent, guardian, institution, agency, or other person having a lawful right to physical custody of such person the relative takes, entices, retains, detains, or conceals the person from a parent, guardian, institution, agency, or other person having a lawful right to physical custody of such person.

2. A parent of a child is guilty of custodial interference in the third degree if:
 - (A) The parent takes, entices, retains, detains, or conceals the child, with the intent to deny access, from the other parent having the lawful right to time with the child pursuant to a court-ordered plan; or
 - (B) The parent has not complied with the residential provisions of a court-ordered plan after a finding of contempt under section 1 (3) of this act; or
 - (C) If the court finds that the parent has engaged in a pattern of willful violations of the court-ordered residential provisions.
3. Nothing in (B) of this subsection prohibits conviction of custodial interference in the third degree under (A) or (C) of this subsection in absence of findings of contempt.
4. The first conviction of custodial interference is a misdemeanor. The second or subsequent conviction of custodial interference in the third degree is a class C felony.

Section III:

1. The court shall not modify a prior custody decree unless it finds, upon the basis of facts that have arisen since the prior decree that a substantial change has occurred in the circumstances of the child or the parents and that the modification is necessary so as not to be to the detriment of the child. In applying these standards, the court shall retain the residential schedule established by the decree unless:
 - (A) The parents agree to the modification;
 - (B) The child has been integrated into the family of the petitioner with the consent of the other parent.
 - (C) The child's present environment is detrimental to the child's physical, mental or emotional health and the harm likely to be caused by a change of environment is outweighed by the advantage of a change to the child; or
 - (D) The court has found the nonmoving parent in contempt of court at least twice within three years because the parent failed to comply with the residential time provisions in the court-ordered plan, or the parent has been convicted of custodial interference in the third degree.
2. A conviction of custodial interference in the third degree under Interference with Custody (2C:13-4(a)) or Contempt of Court (9:2-4 or 2A:10-1 et. seq.) shall constitute a substantial change of circumstances for the purpose of this section.
3. If the court finds that a motion to modify a prior decree has been brought in bad faith, the court shall assess the attorney's fees and court costs of the nonmoving parent against the moving party.

4. If there is a continuing pattern of visitation interference and the court has found the non-moving party in contempt more than three (3) times, the moving party may institute child abuse and cruelty proceedings under 9:6-1 et. seq.

Cruelty of the child will occur under continuing visitation interference and will consist in any of the following acts:

(A) inflicting upon a child unnecessary suffering or pain, either mental or physical by restraining the child unlawfully from seeing his/her other parent;

(B) habitually tormenting, vexing or afflicting a child by continuous or frequent denial of visitation or alienation of noncustodial parents;

(C) any willful act of omission or commission whereby unnecessary pain and suffering, whether mental or physical, is caused or permitted to be inflicted on a child through the denial of frequent and continuing contact with the noncustodial parent; or

(D) exposing a child to unnecessary hardship, fatigue or mental or physical strains that may tend to injure the health or physical or moral well-being of such child by denial of frequent and continuing contact with noncustodial parent or of alienation of the children by one parent against the other parent.

If the court finds that child abuse and/or cruelty have indeed occurred under the above definitions, the court shall consider it to be a change of circumstance and may bring criminal charges against the defendant and/or reverse custody of the child(ren) to the parent who has been interfered against.

Section IV:

1. All court orders containing parenting plan provisions or orders of contempt, entered pursuant to Section I of this act, shall include the following language:

WARNING: VIOLATION OF THE RESIDENTIAL PROVISIONS OF THIS ORDER WITH ACTUAL KNOWLEDGE OF ITS TERMS IS PUNISHABLE BY CONTEMPT OF COURT, AND MAY BE A CRIMINAL OFFENSE (2C:13-4[a]). VIOLATION OF THIS ORDER MAY SUBJECT A VIOLATOR TO ARREST.

Section V:

1. Any reasonable expenses incurred in locating or returning a child shall be assessed against a convicted defendant under Interference with Custody (2C:13-4a) or Contempt of Court (9:2-4 or 2A:10-1 et. seq.).

2. In any prosecution of custodial interference in the third degree, it is a complete defense, if established by the defendant by clear and convincing evidence, that:

(A) The defendant's purpose was to protect the child, or himself or herself from imminent physical harm, that the belief in the existence of the imminent physical harm was reasonable, and that the defendant sought the assistance of the police, sheriff's office,

protective agencies, or the court of any state before committing the acts giving rise to the charges or within a reasonable time thereafter;

(B) The complainant had, prior to the defendant committing the acts giving rise to the crime, for a protracted period of time, failed to exercise his or her rights to physical custody or access to the child under an order granting visitation rights, provided that such failure was not the direct result of the defendant's denial of access to such person;

(C) The acts giving rise to the charges were consented to by the complainant; or

(D) The offender, after providing or making a good faith effort to provide notice to the person entitled to access to the child, failed to provide access to the child due to reasons that a reasonable person would believe were directly related to the welfare of the child, and allowed access to the child in accordance with the court order within a reasonable period of time. The burden of proof that the denial of access was reasonable is upon the person denying access to the child.

3. Consent of a child less than sixteen years of age does not constitute a defense to an action.

Section VI:

1. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NOTIFICATION PRIOR TO RELOCATION OF CHILD

Amends Title 9:2-2 (Child Custody and Visitation) of the the New Jersey Statutes by adding the following section:

Sec. 17. Notification prior to relocation of child

In any custody or visitation proceeding, the court shall include as a condition of any custody or visitation order a requirement that advance written notice be made to either the court, the other party, or both, by any party intending to relocate the temporary and/or permanent residence of a child within 60 days prior to the intended relocation. The court may require that such notice be in such form and contain such information as the court may deem necessary and proper under the circumstances of the case.

CHILD ENROLLMENT IDENTIFICATION BILL

AN ACT relating to the identification required for enrollment in public schools; providing criminal penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW JERSEY:

Identification Required for Enrollment:

1. No later than the 30th day after a parent or other person with custody of a child enrolls the child in a public school, the parent or other person or the school district in which the child most recently attended school shall furnish to the school district:

(A) the child's birth certificate or another document suitable as proof of the child's identity; and

(B) a copy of the child's records from the school the child most recently attended if the child has been previously enrolled in a school in this state or another state.

2. If a child is enrolled under a name other than the child's name as it appears in the identifying document or records, the school district shall notify the missing children and missing persons information clearinghouse of the child's name as shown on the identifying document or records and the name under which the child is enrolled. The information in the notice is confidential and may be released only to a law enforcement agency.

3. If the information required by Subsection 1 of this section is not furnished to the district within the time provided by that subsection, the district shall notify the police department of the city or sheriff's department of the county in which the district is located and request a determination of whether the child has been reported as missing.

4. The State Board of Education may adopt rules necessary to the implementation and enforcement of this section, including rules providing for the types of documents that are suitable for identification purposes under this section.

5. When accepting a child for enrollment, the school district shall inform the parent or other person enrolling the child that presenting a false document or false records under this section is an offense under Section _____ and that enrollment of the child under false documents subjects the person to liability for tuition or costs under Section _____ of this code.

6. A person commits an offense if the person enrolls a child in a public school and fails to furnish an identifying document or record relating to the child on the request of a law enforcement agency conducting an investigation in response to a notification under Subsection 3 of this section. An offense under this subsection is a crime of the fourth degree.

To: Legislative members

From: Daniel Anderson
P.O.Box 92674
Anch, Ak 99509-2674
(907) 248-3470

I would like to ask you to support the proposed legislative changes brought forward by Jim Arnesen, President of the Alaska Family Support Group October 28 1993 .

These proposed changes are a positive step in changing a system in need of repair, the goal is keep it "ALL FOR THE KIDS". That is the mission statement of the Courts , C.S.E.D, and all other agency so let's make changes to support that.

I also believe other issues are still in need of addressing, one would be the ease as to which one can deal with these agencies concerning the children. Improving a little at a time is like a giant step forward.

Please support and help make this effort, some of the changes stated here are thing that no one ever knows about or hears about unless they happen to you or some one close.

I personally am a father of two children that my ex-wife is going to do what ever it takes to keep me from the kids. To date I have not had the backing of the system to change that. It's a battle that I no longer can fight because I can not win. She just gets told to cooperate and once out of court laughs because I still can not see them. Even with a court order for a given day, if she's not home or will not answer the door visitation is over. Call the police and they will not enforce that order either. Is that in the interest of the children

ALL FOR THE KIDS, lets help make it that way please.



03/04/94
16:56:06

PUBLIC OPINION MESSAGE SYSTEM
MEMBER OFFICE BUN Bunde

POMS100
LHSCZAN

From: Ms. Ruth E. Talley
9221 Arlene St #H8

Anchorage

AK 99515

Tel: 248-9206

NON CONSTITUENT

Bill# HB 422 Title: CHILD CUSTODY AND VISITATION RIGHTS
Subject

SUPPORTS THIS LEGISLATION

Message: PLEASE HELP PASS HB 422, MINIMUM VISITATION GUIDELINE LAW. IT WILL
MAKE A GOOD LAW. (CHILD CUSTODY AND VISITATION RIGHTS)

Entered By: LIOCCRI on 3/4/94 PomID 7270 Distribution 9
MSG:
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03/09/94
16:21:30

PUBLIC OPINION MESSAGE SYSTEM
MEMBER OFFICE BUN Bunde

POMS100
LHSCZAN

From: Ms. Keri L. Basler
5800 College Dr

Anchorage AK 99504 Tel: 907-1824

NON CONSTITUENT

Bill# HB 422 Title: CHILD CUSTODY AND VISITATION RIGHTS
Subject

SUPPORTS THIS LEGISLATION

Message: AND HB 354: I AM A CUSTODIAL MOTHER WHO BELIEVES THE INTENTION OF
THESE TWO BILLS ARE A POSITIVE WHEN IT COMES TO THE BEST INTERESTS OF CHILDREN.

PLEASE PROTECT THE CHILDRENS' RIGHTS TO BOTH PARENTS. WE NEED TO STOP
ALLOWING THE LAWS TO TEAR FAMILIES APART. HELP US KEEP FAMILIES TOGETHER.
(CHILD CUSTODY AND VISITATION RIGHTS)

Entered By: LIOCBBN on 3/ 9/94 PomID 7828 Distribution 60
MSG:

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10 years for first degree sexual assault, with the sexual assault sentence made consecutive to the kidnapping sentence, was not excessive. *Wilson v. State*, 670 P.2d 1149 (Alaska Ct. App. 1983).

The court's imposition of consecutive sentences for the two kidnappings and one robbery arising out of the same transaction does not violate double jeopardy. *Walker v. Endell*, 828 F.2d 1378 (9th Cir. 1987), cert. denied, U.S. , 109 S. Ct. 309, 102 L.Ed.2d 328 (1988).

Composite sentence of 12 years for kidnapping, first-degree physical assault, and first-degree sexual assault not too lenient. See *Garrison v. State*, 762 P.2d 465 (Alaska Ct. App. 1988).

Sentence found excessive. — See *Hintz v. State*, 627 P.2d 207 (Alaska 1981).

Composite sentence of 41 years for convictions of sexual assault in the first degree, kidnapping, three counts of assault in the third degree and one count of assault in the fourth degree was excessive;

the defendant should not have received a sentence in excess of 30 years. *Patterson v. State*, 689 P.2d 146 (Alaska 1984).

Applied in *Nukapigak v. State*, 645 P.2d 215 (Alaska Ct. App. 1982); *Bidwell v. State*, 656 P.2d 592 (Alaska Ct. App. 1983); *Inker v. State*, 655 P.2d 1324 (Alaska Ct. App. 1983); *Reynolds v. State*, 664 P.2d 621 (Alaska Ct. App. 1983); *Barry v. State*, 675 P.2d 1292 (Alaska Ct. App. 1984).

Quoted in *Howell v. State*, 728 P.2d 1220 (Alaska Ct. App. 1986).

Stated in *Walker v. Endell*, 850 F.2d 470 (9th Cir. 1987).

Cited in *Nukapigak v. State*, 663 P.2d 943 (Alaska 1983); *Johnson v. State*, 665 P.2d 566 (Alaska Ct. App. 1983); *Nylund v. State*, 716 P.2d 387 (Alaska Ct. App. 1986); *Newsom v. State*, 726 P.2d 561 (Alaska Ct. App. 1986); *Ervin v. State*, 761 P.2d 124 (Alaska Ct. App. 1988); *Robison v. State*, 763 P.2d 1357 (Alaska Ct. App. 1988); *White v. State*, 773 P.2d 211 (Alaska Ct. App. 1989).

Sec. 11.41.320. Custodial interference in the first degree. (a) A person commits the crime of custodial interference in the first degree if the person violates AS 11.41.330 and causes the victim to be removed from the state.

(b) Custodial interference in the first degree is a class C felony. (§ 3 ch 166 SLA 1978)

NOTES TO DECISIONS

Protracted period. — Retention of child in another state for over a year satisfied the "protracted period" requirement. *Gerlach v. State*, 699 P.2d 358 (Alaska Ct. App. 1985).

Necessity defense unavailable. — The trial court did not err in denying defendant the right to rely on a necessity defense in prosecution for custodial interference in the first degree. *Gerlach v. State*, 699 P.2d 358 (Alaska Ct. App. 1985).

Collateral references. — Fiction of loss of services as condition of action for abduction of child, 72 ALR 847.

Kidnapping or other criminal offense by taking or removal of child by, or under

Sentence upheld. — Sentence of five years with three years suspended for custodial interference in the first degree, followed by a five-year suspended imposition of sentence for theft in the second degree, was not excessive, where defendant had seized his children in direct defiance of a court order and it was deemed necessary to impose a substantial suspended sentence in order to deter him from future criminal violations. *Sundelin v. State*, 766 P.2d 1184 (Alaska Ct. App. 1989).

authority of, parent or one in loco parentis, 20 ALR4th 823.

Validity, construction and application of statutes or ordinances regulating sexual performance by child, 21 ALR4th 239.

Sec. 11.41.330. Custodial interference in the second degree. (a) A person commits the crime of custodial interference in the second degree if, being a relative of a child under 18 years of age or a relative of an incompetent person and knowing that the person has no legal right to do so, the person takes, entices, or keeps that child or incompetent person from a lawful custodian with intent to hold the child or incompetent person for a protracted period.

(b) Custodial interference in the second degree is a class A misdemeanor. (§ 3 ch 166 SLA 1978)

NOTES TO DECISIONS

Protracted period. — See note under *State*, 699 P.2d 358 (Alaska Ct. App. same catchline, AS 11.41.320, *Gerlach v. State*, 1985).

Sec. 11.41.370. Definitions. In AS 11.41.300 — 11.41.370, unless the context requires otherwise,

(1) "lawful custodian" means a parent, guardian, or other person responsible by authority of law for the care, custody, or control of another;

(2) "relative" means a parent, stepparent, ancestor, descendant, sibling, uncle, or aunt, including a relative of the same degree through marriage or adoption;

(3) "restrain" means to restrict a person's movements unlawfully and without consent, so as to interfere substantially with the person's liberty by moving the person from one place to another or by confining the person either in the place where the restriction commences or in a place to which the person has been moved; a restraint is "without consent" if it is accomplished

(A) by acquiescence of the restrained person, if the restrained person is under 16 years of age or is incompetent and the restrained person's lawful custodian has not acquiesced in the movement or confinement; or

(B) by force, threat, or deception. (§ 3 ch 166 SLA 1978)

Cross references. — For definition of terms used in this title, see AS 11.81.900.

NOTES TO DECISIONS

Defense that victim was defendant's relative. — The new criminal code, which states in AS 11.41.300(b)(1) that it is an affirmative defense that defendant was a relative of the victim, provides for a broader exemption from the kidnapping

statute than the absolute exemption for the abduction of a minor by his parent under former AS 11.15.260. *Crump v. State*, 625 P.2d 857 (Alaska 1981).

Cited in *Gerlach v. State*, 699 P.2d 358 (Alaska Ct. App. 1985).

NOTES TO DECISIONS

Section removes many common law disabilities. — See same catchline in note to AS 25.15.060.

And enables wife to sue her husband. — See same catchline in note to AS 25.15.060.

Collateral references. — Wife's liability for necessities, 15 ALR 833.

Liability of married woman for articles purchased by her for which husband not liable, 114 ALR 910.

Wife's liability for necessities furnished

husband, 11 ALR4th 1160.

Discrimination against credit applicant on basis of marital status under Equal Credit Opportunity Act (15 USCS §§ 1691 et seq.), 55 ALR Fed. 458.

Sec. 25.15.110. Laws imposing civil disabilities upon married persons repealed. All laws that impose or recognize civil disabilities upon a married person that are not imposed or recognized as existing as to the other spouse are repealed. For any unjust usurpation of property or natural rights a married person has the same right to appeal individually to all courts for redress that the other spouse has. § 21-2-11 ACLA 1949; am § 99 ch 127 SLA 1974)

NOTES TO DECISIONS

The statutes of Alaska remove certain disabilities which at common law attend the wife during her coverture. *Decker v. Keddy*, 148 F. 681 (9th Cir. 1906).

The married woman's common-law disability to bring suit was ended by a series of acts referred to as the Married Woman's Acts. The requirement that suit be brought by the husband when the wife was injured in order that redress be available was thereby ended. *Schreiner v. Fruit*, 519 P.2d 462 (Alaska 1974).

But the statutes do not mean that the husband is answerable to the wife for damages for failure to supply her with the necessities of life, or for any other act of failure of duty connected with or arising from the marital relation. *Decker v. eddy*, 148 F. 681 (9th Cir. 1906).

Wife has independent right to sue for loss of consortium. — See *Schreiner v. Fruit*, 519 P.2d 462 (Alaska 1974).

The basis for recovery is no longer the loss of services, but rather the injury to the conjugal relation. Therefore, the claim for relief for loss of consortium, in both husband and wife, should be given recognition in Alaska. *Schreiner v. Fruit*, 519 P.2d 462 (Alaska 1974).

The interest to be protected is personal to the wife, for she suffers a loss of her own when the care, comfort, companionship, and solace of her spouse is denied her. *Schreiner v. Fruit*, 519 P.2d 462 (Alaska 1974).

Quoted in *Cramer v. Cramer*, 379 P.2d 95 (Alaska 1963).

Chapter 20. Parent and Child.

Section

10. Age of majority
20. Arrival at majority upon marriage
30. Duty of parent and child to maintain each other
40. Maintenance and education of minor out of income of the minor's property
45. Legitimacy of children conceived by artificial insemination
50. Legitimation by subsequent marriage, acknowledgment in writing or adjudication
60. Petition for award of child custody
70. Temporary custody of the child

Section

80. Mediation of child custody matter
90. Factors for consideration in awarding shared child custody
100. Reasons for denial to be set out
110. Modification of child custody or visitation
115. Attorney fee awards in custody and visitation matters
120. Closure of custody proceedings and records
130. Access to records of the child
140. Action for failure to permit visitation with minor child

Collateral references. — 10 Am. Jur. 2d, Bastards, § 1 et seq.; 42 Am. Jur. 2d, Infants, §§ 1-5, 28-57; 59 Am. Jur. 2d, Parent and Child, § 1 et seq.

43 C.J.S., Infants, § 1-30; 67A C.J.S., Parent and Child, § 1 et seq.

Sec. 25.20.010. Age of majority. A person is considered to have arrived at majority at the age of 18, and thereafter has control of the person's own actions and business and has all the rights and is subject to all the liabilities of citizens of full age, except as otherwise provided by statute. (§ 20-1-1 ACLA 1949; am § 1 ch 37 SLA 1959; am § 5 ch 63 SLA 1977)

NOTES TO DECISIONS

Legislation amending several provisions of the Children's Act was part of an omnibus age-law bill which resolved ambiguities in several codes and generally harmonized all Alaska Statutes with the policy of a 19-year (now 18-year) age of majority. *Davenport v. McGinnis*, 522 P.2d 1140 (Alaska 1974).

This section does not carry a broad negative implication. *RLR v. State*, 487 P.2d 27 (Alaska 1971).

Nor imply that infants are incompetent in all things. — The age of majority statute does not imply a legislative judgment that infants are incompetent in all things; it means only that persons above the statutory age minimum are competent in all things except as otherwise provided. *RLR v. State*, 487 P.2d 27 (Alaska 1971); *Quick v. State*, 599 P.2d 712 (Alaska 1979).

Regulation prohibiting persons un-

der 19 years from knowingly consuming alcoholic beverages. — Since an administrative regulation prohibiting any person under the age of 19 years from knowingly consuming alcoholic beverages is authorized by statute [see now AS 04.06.090], the regulation comes within the "except as otherwise provided by statute" exception to this section, which gives the age of majority as 18 years. *Michael v. State*, 583 P.2d 852 (Alaska 1978).

Support beyond age of majority. — The legislature did not intend to provide for post-majority educational support in either an original decree or in a modification of the original decree. *Dowling v. Dowling*, 679 P.2d 480 (Alaska 1984).

Stated in *L.A.M. v. State*, 547 P.2d 827 (Alaska 1976); *Lawrence v. Lawrence*, 716 P.2d 142 (Alaska 1986).

Cited in *Streb v. Streb*, 774 P.2d 798 (Alaska 1989).

Collateral references. — Statutory change of age of majority as affecting pre-existing status or rights, 75 ALR3d 228.

Sec. 25.20.020. Arrival at majority upon marriage. A person arrives at the age of majority upon being married according to law, unless the person is under the marriageable age of consent as defined in AS 25.05.171(a), in which case the person reaches majority upon reaching the marriageable age of consent. (§ 20-1-2 ACLA 1949; am § 100 ch 127 SLA 1974)

NOTES TO DECISIONS

Cited in *R.L.R. v. State*, 487 P.2d 27 (Alaska 1971).

Sec. 25.20.030. Duty of parent and child to maintain each other. Each parent is bound to maintain the parent's children when poor and unable to work to maintain themselves. Each child is bound to maintain the child's parents in like circumstances. (§ 21-3-1 ACLA 1949)

Collateral references. — For persons liable for support and burial, see AS 47.25.230.

NOTES TO DECISIONS

A parent is obligated both by statute and at common law to support his or her children, even in the absence of a court order of support. *Matthews v. Matthews*, 739 P.2d 1298 (Alaska 1987).

When parent performs his duty. — The parent performs his duty when he provides for his child whatever is necessary for its suitable clothing and maintenance according to their situation and condition in life. *State v. Langford*, 90 Ore. 251, 176 P. 197 (1918), construing similar Oregon statute.

A parent's duty of support encompasses a duty to reimburse other persons who provide the support the parent owes, belongs to whomever supported the children, and is simply an action on a debt. However, when a custodial parent seeks a modification of a divorce decree which neglected to address either child custody or child support and also seeks reimbursement for past child support expenditures, he or she may join the claims, and bring both by motion in the original divorce action. *Matthews v. Matthews*, 739 P.2d 1298 (Alaska 1987).

State entitled to reimbursement for public assistance. — Although a support order which does not require the noncustodial parent to make any child support payment is not a "support order" under AS 47.23.120(a) (now AS 25.27.120(a)), the Child Support Enforcement Division (CSED) is entitled to reimbursement from the noncustodial parent for public assistance provided to the child in an amount determined by the state in accordance with a formula approved by the federal Secretary of Health and Human Services. *State, Child Support Enforcement Div. v. Gammons*, 774 P.2d 181 (Alaska 1989).

Obligation of father after divorce. — The obligation of the father is, after divorce, exactly the same as it was before dissolution of the marriage contract. *State v. Langford*, 90 Ore. 251, 176 p. 197 (1918), construing similar Oregon statute.

How obligation measured. — The obligation of the father must be measured with reference to his ability, honestly exercised, and with regard to his financial resources. *State v. Langford*, 90 Ore. 251,

176 p. 197 (1918), construing similar Oregon statute.

Mother of decedent in wrongful death action. — Mother of decedent did not have the right to receive directly the proceeds of the wrongful death action as a statutory beneficiary by virtue of this section, which requires each child to maintain his parents when they are poor and unable to work and maintain themselves. In re Estate of Pushruk, 562 P.2d 329 (Alaska 1977).

Although this section establishes a duty running between parent and child under specific factual circumstances, it does not create a right of action in the parent against a third-party tortfeasor. Nor does it establish dependency as a matter of

law. In re Estate of Pushruk, 562 P.2d (Alaska 1977).

Applicability of criminal non-support statute. — The criminal non-support statute, AS 11.51.120, does not extend beyond those individuals expressly or legally responsible for the support of a child by this section and AS 47.25.22; does not apply to step-parents regarding their actual relationship to the step-dren. *Olp v. State*, 738 P.2d 1117 (Alaska App. 1987).

Quoted in *Dowling v. Dowling*, P.2d 480 (Alaska 1984); *Streb v. Streb*, 774 P.2d 798 (Alaska 1989).

Cited in *Malekos v. Chloe Ann Sup. Ct. Op. No. 2580* (File Nos. 15817), P.2d (1982).

Collateral references. — Moral obligation to support, 17 ALR 1307; 79 ALR 1346; 8 ALR2d 787.

Liability of parent for necessities furnished child, 42 ALR 160.

Parent's duty to support, 121 ALR 176.

Statutory family allowance to minor children as affected by previous agreement or judgment for their support, 6 ALR3d 1387.

What voluntary acts of child, other than marriage or entry into military service, terminate parent's obligation to support, 32 ALR3d 1056.

Right of child to enforce provisions for his benefit in parents' separation or prop-

erty settlement agreement, 34 ALR 1357.

Liability of parent for support of institutionalized by juvenile court ALR3d 636.

Validity, construction, and applicability of statute imposing upon step-parent obligation to support child, 75 ALR3d 1159.

Constitutionality of statutory provision requiring reimbursement of public child for financial assistance to aged parents, 75 ALR3d 1159.

Child's right of action for loss of support, training, parental attention, or like, against a third person negligent in juring parent, 11 ALR 4th 549.

Sec. 25.20.040. Maintenance and education of minor out of income of the minor's property. If a minor who has a parent living has property from which income is sufficient for maintenance and education in a manner more expensive than the parent can reasonably afford, considering the situation of the parent's family and all circumstances of the case, the expenses of the minor's maintenance and education may be defrayed out of the income of the property whole or in part, as judged reasonable by the court. The expenses to be allowed accordingly in the settlement of the accounts of the minor guardian. (§ 21-3-2 ACLA 1949; am § 101 ch 127 SLA 1974)

Collateral references. — Responsibility of noncustodial divorced parent to pay for, or contribute to, costs of child's education, 99 ALR3d 322

Sec. 25.20.045. Legitimacy of children conceived by artificial insemination. A child, born to a married woman by means of artificial insemination performed by a licensed physician and consented to in writing by both spouses, is considered for all purposes the natural and legitimate child of both spouses. (§ 1 ch 122 SLA 1975)

Revisor's notes. — Formerly AS 2 C.J.S., Adoption of Persons, § 2.
 20.20.010. Renumbered in 1982. Rights and obligations resulting from
 Collateral references. — 10 human artificial insemination. 83 ALR
 Am. Jur.2d, Bastards, § 1; 59 Am. Jur.2d, 4th 295.
 Parent and Child, § 2.

Sec. 25.20.050. Legitimation by subsequent marriage, acknowledgment in writing or adjudication. (a) A child born out of wedlock is legitimated and considered the heir of the putative parent when (1) the putative parent subsequently marries the undisputed parent of the child; (2) the putative parent acknowledges, in writing, being a parent of the child; or (3) the putative parent is judged by a superior court, upon sufficient evidence, to be a parent of the child. Acceptable evidence includes, but is not limited to, evidence that the putative parent's conduct and bearing toward the child, either by word or act, indicates that the child is the child of the putative parent. That conduct may be construed by the court to constitute evidence of parentage. When indefinite, ambiguous, or uncertain terms are used, the court may use extrinsic evidence to show the putative parent's intent.

(b) The Bureau of Vital Statistics, as custodian of the original certificates of birth of all persons born in the state, is designated as the depository for such acknowledgment and adjudication. The acknowledgment or adjudication shall be forwarded to the bureau in accordance with appropriate regulations of the bureau, and shall be noted on and filed with the corresponding original certificate of birth.

(c) In case of the birth in this state of a child out of wedlock and the legitimation of the child in accordance with this section, at the written request of the parents, or either of them or of the legal guardian, or of the person when of legal age, the Bureau of Vital Statistics shall prepare and place on file a substitute birth certificate, in accordance with the laws and regulations of the bureau pertaining to new certificates of this type.

(d) The results of a blood test, tissue-type test, protein comparison, or other scientifically accepted procedure shall be admitted and weighed in conjunction with other evidence in determining the statistical probability that the putative parent is a legal parent of the child in question. However, a scientifically accepted procedure that establishes a probability of parentage at 95 percent or higher creates a presumption of parentage that may be rebutted only by clear and convincing evidence.

(e) On request of a party in an action in which paternity is tested and to which the state is a party, the court shall order the mother, the child, and the putative father to submit to a blood tissue-type test, protein comparison, or other scientifically accepted procedure designed to determine the statistical probability that the putative parent is a legal parent of the child in question.

(f) If the child support enforcement agency is a party in an action in which paternity is contested, the agency shall request the court to order the tests and procedures described in (e) of this section. The agency may recover the costs of tests as a cost of the action, and that costs may not be recovered from a person who is a recipient under AS 47.25.310 — 47.25.420 (Aid to Families with Dependent Children). (§ 21-3-3 A.C.I.A 1949; am § 1 ch 67 SLA 1957; am § 115 SLA 1957; am § 1 ch 19 SLA 1960; am §§ 3, 4 ch 14 SLA 1989; am § 1 ch 69 SLA 1989)

Cross references. — For effect of the enactment of (e) of this section on Rule 35, Alaska Rules of Civil Procedure, see § 3, ch. 69, SLA 1989 in the Temporary and Special Acts; for provisions relating to registration of birth of a child conceived or born out of wedlock, see AS 18.60.160(d)-(f).

Effect of amendments. — The 1989 amendment, effective November 1, 1989, added subsections (e) and (f).

Opinions of attorney general. — This section allows a substitute birth certificate when there is legitimation of the child by intermarriage (providing proof is offered that the marriage was between the parents of the child), as well as by court adjudication alone. 1959 Op. Att'y Gen., No. 29.

Only the third method of legitimation is specifically vested in the court. 1962 Op. Att'y Gen., No. 13.

By implication, the Bureau of Vital Statistics has the power and duty to make its own determination of the fulfillment of the first two conditions of legitimation. 1962 Op. Att'y Gen., No. 13.

Necessarily involved in legitimation is the administrative determination of illegitimacy at the time an original birth certificate is filed. 1962 Op. Att'y Gen., No. 13.

For application of presumption of legitimacy to validity of original birth certificate, see 1962 Op. Att'y Gen., No. 13.

For right of child to legitimation procedures, see 1962 Op. Att'y Gen., No. 13.

An admission under oath or in writing

of paternity, in a foreign action, is recognized as satisfying the requirements of subdivision (a) (2) of this section if the father acknowledges his paternity child as a method of legitimation. Op. Att'y Gen., No. 13.

The bureau should recognize 1st marriages as sufficient under subdivision (a)(1) of this section to establish a subsequent intermarriage as a basis for legitimation. 1962 Op. Att'y Gen., No. 13.

For suggested standards of proof to establish that the man subsequently marrying a mother is the father of her child for purposes of issuing a substitute birth certificate legitimating the child under subdivision (a) (1), see 1962 Op. Att'y Gen., No. 13.

For discussion of what constitutes sufficient written acknowledgment of paternity under subdivision (a)(2), see 19 Op. Att'y Gen., No. 13.

Erroneous entries in the original certificates of children born to mothers naming the father are significant if the mother's acknowledgment of paternity corroborating the effect of a subsequent intermarriage or written acknowledgment of paternity by the father can be established that the entry made by the mother or at her request has no other evidentiary value. 1962 Op. Att'y Gen., No. 13.

Legitimation may be effected by a man even though the acknowledged father is married to another woman, the general policy of the statute. 19 Op. Att'y Gen., No. 13.

NOTES TO DECISIONS

When acknowledgment of paternity can be filed. — Under the existing provisions of subsection (a) of this section and AS 20.16.040(a) (now AS 25.23.040(a)), an acknowledgment of paternity can be filed at any time before the entry of a decree of adoption. In re L.A.H. 597 P.2d 613 (Alaska 1979).

The filing of an adoption petition does not preclude the biological father from thereafter filing a written acknowledgment of his paternity of the subject child, thereby legitimizing him. In re L.A.H., 597 P.2d 613 (Alaska 1979).

Interpretation of the relevant statutes precludes additional consideration of the best interests of the child in determining whether a father may legitimize the

adopteo during the pendency of an adoption proceeding and so foreclose adoption absent his consent. In re L.A.H., 597 P.2d 613 (Alaska 1979).

Establishment, preclusion order on question of paternity. — The superior court had discretion to enter an establishment-preclusion order on the question of paternity, where the alleged father willfully violated the court's order by providing false evidence. Dade v. State, Child Support Enforcement Div. ex rel. Lovett, 725 P.2d 706 (Alaska 1986).

Applied in S.L.W. v. Alaska Workmen's Comp. Bd., 490 P.2d 12 (Alaska 1971).

Cited in Bunes v. Gillen, 781 P.2d 985 (Alaska 1989).

Collateral references. — 10 Am. Jur. 2d, Bastards, §§ 45-59, 74-132.

Proofs, generally, 2 Am. Jur. POF, pp. 445-453, 607-624; 14 Am. Jur. POF2d, pp. 727-763; 19 Am. Jur. POF2d, pp. 1-44.

Legitimation by subsequent marriage, 27 ALR 1121.

Paternity, legitimacy, or legitimation as determined in action for divorce, separation, or annulment upon vacating or opening decree, 65 ALR2d 1390.

Race or color of child as admissible in evidence on issue of legitimacy or paternity, or as basis of rebuttal or exception to presumption of legitimacy, 32 ALR3d 1303.

Presumption of legitimacy of child born after annulment, divorce, or separation, 46 ALR3d 158.

Propriety of exhibition of child to jury to show family resemblance or lack of it on issue of paternity, 55 ALR3d 1087.

Death of putative father as precluding action for determination of paternity or child support, 58 ALR3d 188.

Admissibility, in disputed paternity

proceedings, of evidence to rebut mother's claim of prior chastity, 59 ALR3d 659.

Statute of limitations in illegitimacy or bastardy proceedings, 59 ALR3d 685.

Long-arm statutes, obtaining jurisdiction over nonresident parent in filiation or support proceeding, 76 ALR3d 708.

Legitimation by marriage to natural father of child born during mother's marriage to another, 80 ALR3d 219.

Proof of husband's impotency or sterility as rebutting presumption of legitimacy, 84 ALR3d 495; 14 Am. Jur. POF2d, pp. 409-481.

Who may dispute presumption of legitimacy of child conceived or born during wedlock, 90 ALR3d 1032.

Right of indigent defendant in paternity suit to have assistance of counsel at state expense, 4 ALR4th 353.

Right of illegitimate child to maintain action to determine paternity, 19 ALR4th 1082.

Right to jury trial paternity proceedings, 51 ALR4th 665.

Sec. 25.20.060. Petition for award of child custody. (a) If there is a dispute over child custody, either parent may petition the superior court for resolution of the matter under AS 25.20.060 — 25.20.130. The court shall award custody on the basis of the best interests of the child. In determining the best interests of the child, the court shall consider all relevant factors including those factors enumerated in AS 25.24.150(c).

(b) Neither parent, regardless of the question of the child's legitimacy, is entitled to preference in the awarding of custody.

(c) The court may award shared custody to both parents if shared custody is determined by the court to be in the best interests of the child. An award of shared custody shall assure that the child frequent and continuing contact with each parent to the maximum extent possible. (§ 6 ch 63 SLA 1977; am § 5 ch 88 SLA 1982)

Editor's notes. — Section 1, ch. 88, SLA 1982, provides: "LEGISLATIVE INTENT. (a) The legislature finds that it is generally desirable to assure a minor child frequent and continuing contact with both parents after the parents have separated or dissolved their marriage and that it is in the public interest to encourage parents to share the rights and responsibilities of child rearing. While actual physical custody may not be practical or

appropriate in all cases, it is the intent of the legislature that both parents have opportunity to guide and nurture the child and to meet the needs of the child on an equal footing beyond the constraints of support or actual custody.

(b) The legislature also finds that it is in the best interests of a child to encourage parents to implement their own child-rearing agreements outside of the court setting

NOTES TO DECISIONS

Joint custody. — The mere existence of a custody agreement is not sufficient evidence of a couple's ability to cooperate to warrant joint custody. Wolf v. Wolf, 741 P.2d 1187 (Alaska 1987).

There was ample evidence in the record to support a trial court's finding that the parties could not cooperate to the extent necessary to make a joint custody arrangement work, despite the father's argument, that both his and his wife's joint concern for their son's developmental problems, a court-ordered pretrial custody arrangement, and an earlier custody agreement evinced their ability to cooperate for the benefit of the children. Wolf v. Wolf, 741 P.2d 1187 (Alaska 1987).

Abuse of discretion by trial court. — The trial court abused its discretion in not awarding both parents shared custody of their child where the evidence indicates that the only area of irreconcilable conflict between the parents concerned what form of day care would be best for their child; resolution of the day care issue does not require denial of joint-legal custody which the Alaska legislature recognizes as the favored course. Bell v. Bell, 794 P.2d 97 (Alaska 1990).

Rights of nonparents. — The policy

supporting shared parental custody applies equally when the custody disputes arise between a parent and a nonparent. Carter v. Novotny, 779 P.2d 1195 (Alaska 1989).

A nonparent who has a significant connection with the child has standing to assert a claim for custody. Bunes v. Gillen, 781 P.2d 985 (Alaska 1989).

The purpose of this section is to establish standards for the adjudication of custody disputes between parents in a nondisruptive setting. It does not imply that the superior court lacks jurisdiction to adjudicate custody disputes between a parent and a nonparent. Such disputes are civil matters over which the superior court has jurisdiction. Bunes v. Gillen, 781 P.2d 985 (Alaska 1989).

Quoted in S.N.E. v. R.I.B., 699 P.2d 875 (Alaska 1985); McClain v. McClain, 716 P.2d 381 (Alaska 1986); McDonald v. McDonald, 718 P.2d 467 (Alaska 1986); Garding v. Garding, 767 P.2d 183 (Alaska 1989).

Cited in Miller v. Miller, 739 P.2d 1204 (Alaska 1987); House v. House, 779 P.2d 1204 (Alaska 1989).

Collateral references. — 10 Am. Jur. 2d, Bastards, §§ 60-66. Pleadings in custody litigation, 22 Am. Jur. Trials, pp. 347-516.

Modification of child support order as justified by change in circumstances, 1 Am. Jur. POF2d, pp. 1-63.

Court's power in *habeas corpus* proceedings relating to custody of child to adjudicate questions as to child's support, 17 ALR3d 764.

Award of custody of child where contest is between child's father and grandparent, 25 ALR3d 7.

Award of custody of child where contest is between child's parents and grandparents, 31 ALR3d 1187.

Modern status of maternal preference rule or presumption in child custody cases, 70 ALR3d 262.

Award of custody of child when contest is between natural parent and step-parent, 10 ALR4th 767.

Right of incarcerated mother to retain custody of infant in penal institution, 14 ALR4th 748.

Propriety of awarding joint custody of children, 17 ALR4th 1013.

Sec. 25.20.070. Temporary custody of the child. Unless it is shown to be detrimental to the welfare of the child, the child shall have, to the greatest degree practical, equal access to both parents during the time that the court considers an award of custody under AS 25.20.060 — 25.20.130. (§ 6 ch 88 SLA 1982)

Editor's notes. — For legislative intent behind the 1982 change in the child custody law, see editor's note to AS 25.20.060.

Collateral references. — Necessity of notice of application for temporary custody of child, 31 ALR3d 1378.

Sec. 25.20.080. Mediation of child custody matter. (a) At any time within 30 days after a petition for child custody is filed under AS 25.20.060 the court may order the parties to submit to mediation. Each party shall have the right to challenge peremptorily one mediator appointed.

(b) Mediation shall be conducted informally as a conference, or by telephone, or series of conferences, as determined by the mediator. The parties to the action and a court-appointed representative of the minor children shall attend.

(c) If the mediator determines that mediation efforts are unsuccessful, the mediator shall terminate mediation and notify the court that mediation efforts have failed. The custody proceeding shall proceed in the usual manner.

(d) Upon submission of the parties to mediation under this section, a pending child custody proceeding shall be stayed for a period of 30 days or until the court is notified that mediation efforts have failed. All court orders made during the pending custody proceeding remain in effect during the period of mediation.

(e) Costs of mediation shall be paid as ordered by the court by one party, by both parties, or by the state if both parties are indigent. (§ 6 ch 88 SLA 1982)

Sec. 25.20.090. Factors for consideration in awarding shared child custody. In determining whether to award shared custody of child the court shall consider

- (1) the child's preference if the child is of sufficient age and capable to form a preference;
- (2) the needs of the child;
- (3) the stability of the home environment likely to be offered each parent;
- (4) the education of the child;
- (5) the advantages of keeping the child in the community where child presently resides;
- (6) the optimal time for the child to spend with each parent considering
 - (A) the actual time spent with each parent;
 - (B) the proximity of each parent to the other and to the school which the child is enrolled;
 - (C) the feasibility of travel between the parents;
 - (D) special needs unique to the child that may be better met by one parent than the other;
 - (E) which parent is more likely to encourage frequent and continuing contact with the other parent;
- (7) any findings and recommendations of a neutral mediator;
- (8) any evidence of domestic violence, child abuse, or child neglect in the proposed custodial household or a history of violence between the parents;
- (9) evidence that substance abuse by either parent or other members of the household directly affects the emotional or physical well-being of the child;
- (10) other factors the court considers pertinent. (§ 6 ch 88 SLA 1982; am § 1 ch 52 SLA 1989)

Effect of amendments. — The 1989 amendment, effective August 24, 1989, re-wrote paragraph (8), added present paragraph (9), and redesignated former paragraph (9) as present paragraph (10).

NOTES TO DECISIONS

Quoted in *McClain v. McClain*, 716 P.2d 381 (Alaska 1986); *Bell v. Bell*, 794 P.2d 97 (Alaska 1990).

Sec. 25.20.100. Reasons for denial to be set out. If a parent the guardian ad litem requests shared custody of a child and the court denies the request, the reasons for the denial shall be stated on the record. (§ 6 ch 88 SLA 1982)

NOTES TO DECISIONS

Cited in *Miller v. Miller*, 739 P.2d 163 (Alaska 1987).

Sec. 25.20.110. Modification of child custody or visitation. (a) An award of custody of a child or visitation with the child may be modified if the court determines that a change in circumstances requires the modification of the award and the modification is in the best interests of the child. If a parent opposes the modification of the award of custody or visitation with the child and the modification is granted, the court shall enter on the record its reason for the modification.

(b) When making a determination relating to child custody under (a) of this section, the court shall consider the past history of the parents with respect to their compliance with the child support payment provisions of temporary or permanent support orders or agreements relating to the child or to other children. Under this subsection, the court may consider a parent's failure to pay child support only if the parent had actual knowledge of the amount of the child support obligation and had funds available for payment of support or could have obtained those funds through reasonable efforts, as determined by the court. (§ 6 ch 88 SLA 1982; am § 2 ch 130 SLA 1990)

Effect of amendments. — The 1990 amendment added subsection (b).

NOTES TO DECISIONS

Applicability of changed circumstances doctrine. — The changed circumstances doctrine applies to modifications of stipulated child custody arrangements in effect for a significant period of time. *S.N.E. v. R.L.B.*, 699 P.2d 875 (Alaska 1985).

Judicial inquiry concerns child's well-being. — When a court determines the best interests of the child under the changed circumstances doctrine, the scope of judicial inquiry is limited to facts directly affecting the child's well-being. *S.N.E. v. R.L.B.*, 699 P.2d 875 (Alaska 1985).

For a modification of custody to be justified, two circumstances must correspond: (1) the noncustodial parent must bear the burden in the modification proceeding of establishing that a change in circumstances has occurred, and (2) the modification must be in the best interests of the child. *Nichols v. Mandelin*, 790 P.2d 1367 (Alaska 1990).

Burden of proving substantial

change in circumstances is on moving parent. See *S.N.E. v. R.L.B.*, 699 P.2d 875 (Alaska 1985); *Garding v. Garding*, 767 P.2d 183 (Alaska 1989); *House v. House*, 779 P.2d 1204 (Alaska 1989).

Burden not carried. — Father failed to carry the burden of proving a substantial change in circumstances, where, apart from the father's attempt to gain sole custody, there was no evidence to support the superior court's finding that the parties had become "unable to cooperate with each other to the extent necessary to make a joint custody arrangement work." *Garding v. Garding*, 767 P.2d 183 (Alaska 1989).

The custodial parent's decision to leave the state with the children constitutes a substantial change in circumstances. *House v. House*, 779 P.2d 1204 (Alaska 1989).

Substantial change in circumstances sufficient to support transfer of custody. — Substantial change took place in the mother's circumstances, justifying transfer of custody from the father to the mother, where there was evidence in the record regarding her overall maturation, her changed marital status, her full-time employment, and her sustained control of a former drinking problem. *Nichols v. Mandelin*, 790 P.2d 1367 (Alaska 1990).

Change in circumstances insufficient to support change of custody order. — Trial court's findings of changes of circumstances which referred to fact mother's having entered into a lesbian relationship, without a specific finding as to how such relationship adversely affected the child, were insufficient to support change of custody order. *S.N.E. v. R.L.B.*, 699 P.2d 875 (Alaska 1985).

In a change of custody hearing based on alleged change of circumstances, it is impermissible to rely on any real or imagined social stigma attaching to mother's status as a lesbian. *S.N.E. v. R.L.B.*, 699 P.2d 875 (Alaska 1985).

No abuse of discretion. — Superior court did not abuse its discretion in determining that remaining in the father's custody and moving with him to California would be in the children's best interests.

Collateral references. — Putative father's right to visit illegitimate child, 15 ALR3d 887.

Right of jailed or imprisoned parent to visit from minor child, 15 ALR4th 1234.

House v. House, 779 P.2d 1204 (Alaska 1989).

Custody modification was mandated and the case was remanded further findings on the effect of changed circumstances, where the primary changed circumstance on which the father relied on appeal, i.e., the mother's decision to leave the state, was never found by a trial court to negatively affect the child's best interests or to merit a change in custody. *Lee v. Cox*, 790 P.2d 1359 (Alaska 1990).

Modification of visitation order. The change in circumstances required modification of visitation rights need not rise to the level sufficient to warrant change of custody. *Hermosillo Hermosillo*, 797 P.2d 1206 (Alaska 1990).

Actions by a custodial parent which substantially interfere with the noncustodial parent's visitation rights are sufficient to constitute a change in circumstances which may justify and require modification of the visitation order, such modification is in the best interest of the child. *Hermosillo v. Hermosillo*, 797 P.2d 1206 (Alaska 1990).

Withholding visitation rights for failure to make alimony or support payments, 4 ALR4th 1155.

Post adoption visitation by natural parent, 78 ALR4th 218.

Sec. 25.20.115. Attorney fee awards in custody and visitation matters. In an action to modify, vacate, or enforce that part of an order providing for custody of a child or visitation with a child, the court may, upon request of a party, award attorney fees and costs of the action. In awarding attorney fees and costs under this section, the court shall consider the relative financial resources of the parties and whether the parties have acted in good faith. (§ 3 ch 130 SLA 1990)

Collateral references. — Right to attorney's fees in proceeding, after absolute divorce, for modification of child custody or support order, 57 ALR4th 710.

Sec. 25.20.120. Closure of custody proceedings and records. At any stage of a proceeding involving custody of a child the court may, if it is in the best interests of the child, close the proceeding to the public or order the court records closed to the public temporarily or permanently. The court may modify or vacate an order under this section at any time. (§ 6 ch 88 SLA 1982)

NOTES TO DECISIONS

Broad gag order must be justified by compelling circumstances. — In a child custody hearing, a gag order which goes beyond assuring confidentiality of the file and anonymity of the parties must be jus-

tified by compelling circumstances and drawn as narrowly as possible to protect against particular evils. *S.N.E. v. R.L.O.*, 699 P.2d 875 (Alaska 1985).

Sec. 25.20.130. Access to records of the child. A parent who is not granted custody under AS 25.20.060 — 25.20.130 has the same access to the medical, dental, school, and other records of the child as the custodial parent. (§ 6 ch 88 S.L.A. 1982)

Sec. 25.20.140. Action for failure to permit visitation with minor child. (a) When a court order is specific as to when a custodian of a minor child must permit another person to have visitation with that child, and the custodian fails, wilfully and without just excuse, to permit visitation with the child in substantial conformance with the court order, the person entitled to visitation has a separate cause of action against the custodian for damages.

(b) The amount of damages recoverable under this section is \$200 for each failure of the custodian, wilfully and without just excuse, to permit visitation with the child for substantially the length of time and substantially in the same manner as specified in the court order. This amount may not be increased or decreased once liability has been established. The custodian is not liable for more than one failure in respect to what is, under the court order, a single continuous period of visitation. The prevailing party in an action commenced under this section is entitled to recover a reasonable attorney fee.

(c) As used in this section,

(1) "court order" means a decree, judgment, or order issued by a court of competent jurisdiction;

(2) "custodian" means a natural person who has been awarded custody, either temporary or permanent, of a minor child;

(3) "just excuse" includes illness of the child which makes it dangerous to the health of the child for visitation to take place in conformance with the court order; "just excuse" does not include the wish of the child not to have visitation with the person entitled to it. (§ 2 ch 126 S.L.A. 1977; am § 9 ch 94 S.L.A. 1980)

Revisor's notes — Formerly AS 09.55.238. Renumbered as AS 25.24.300 in 1983. Renumbered again in 1991.

Cross references. — For crime of failure to permit visitation, see AS 11.51.125.

NOTES TO DECISIONS

Full attorney fee recoverable. — The term "a reasonable attorney fee" as set out in subsection (b) means full, rather than partial, fees. *L.L.M. v. P.M.*, 754 P.2d 262 (Alaska 1988).

But only where denial of visitation unjustified. — Trial court's award of attorney's fees in an action for enforcement of visitation rights was reversed and the case was remanded, where the award was

based on the inappropriate "prevailing party" standard of Civil Rule 82, rather than on a determination that the father "willfully and without just excuse failed to permit visitation." *L.L.M. v. P.M.*, 754 P.2d 262 (Alaska 1988).

Quoted in *Carter v. Bradrick*, 644 P.2d 850 (Alaska 1982).

Cited in *Gerlach v. State*, 699 P.2d 1 (Alaska Ct. App. 1985).

Chapter 23. Adoption.

Section

- 05. Construction of chapter; rights of persons affected by adoption
- 10. Who may be adopted
- 20. Who may adopt
- 30. Venue
- 40. Persons required to consent to adoption
- 50. Persons as to whom consent and notice not required
- 60. Execution of consent; consent as power of attorney
- 70. Withdrawal of consent
- 80. Petition for adoption
- 90. Report of petitioner's expenditures
- 100. Notice of petition, investigation and hearing
- 110. Required residence of minor
- 120. Hearing
- 125. Interests of minor to be adopted
- 130. Effect of adoption decree

Section

- 140. Appeal and validation of adoption decree
- 150. Confidential nature of hearings and records in adoption proceedings
- 160. Recognition of foreign decree affecting adoption
- 170. Applications for birth certificates
- 173. Indian child adoption reports
- 175. Findings concerning persons born outside the United States
- 180. Relinquishment and termination parent and child relationships
- 185. Records and information
- 190. Adoption assistance
- 200. Investigation
- 210. Amount and duration of subsidy payments
- 220. Annual reevaluation
- 230. Regulations
- 240. Definitions

NOTES TO DECISIONS

Intervention in child custody proceedings. — Indian Child Welfare Act, 25 U.S.C. 1901-1963 (P.L. 95-608), does not limit a state court's power to allow intervention in child custody proceedings. In re *J.R.S.*, 690 P.2d 10 (Alaska 1984).

Adoption vacated where Indian tribe not allowed to intervene under Civ. R. 24(a). — See In re *J.R.S.*, 690 P.2d 10 (Alaska 1984).

Collateral references. — 2 Am. Jur. 2d, Adoption, § 1 et seq.
Proof: equitable adoption, 18 Am. Jur. POF2d, pp. 631-609.

2 C.J.S., Adoption of Persons, § 1 et seq.
Modern status of law as to equitable adoption or adoption by estoppel, 97 ALR3d 347.

Criminal liability of one arranging for

adoption of child through other than licensed child placement agency ("baby broker acts"). 3 ALR4th 468.

Validity and application of statute authorizing change in record of birthplace of adopted child. 14 ALR4th 739.

Action for wrongful adoption based on misrepresentation of child's mental or



Alaska State Legislature

Please enter into the record my testimony to the HES
committee name

committee on House Bill # 422 dated 2/11/94
bill/subject:

Section 25,20,104 (8) Christmas Vacation -

I believe there should be an additional option under Christmas Vacation which would allow Christmas to be alternated every other year like Thanksgiving.

This would allow the visiting parent to schedule Christmas with the grandparents of the children on the visiting parents side.

Reason for Inclusion - If options are not included in law, then they tend to NOT BE MADE AVAILABLE

Signed: Dayne Clark
Testifier

Representing (Optional)

P.O. Box 2620, Soldotna, AK 99669

Address

907-262-1408

A M E N D M E N T

OFFERED IN THE HOUSE
TO: CSHB 422() Draft 8-LS1606\J

BY

Page 3, line 9, after "parent,":

Insert "including a dissolution proceeding under AS 25.24.200(a) but excluding a dissolution proceeding under AS 25.24.200(b),"

Page 5, after line 14:

Insert new bill sections to read:

" * Sec. 6. 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 unmarried children of the marriage under the age of 19 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 in a manner that complies with the visitation requirements of AS 25.20.104, including visitation by grandparents and other persons if in the child's best interests, and support 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. 7. 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 visitation rights must meet the requirements of AS 25.20.104. 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 marital, educational, and custodial status of each child born of the marriage or adopted by the petitioners who is under the age of 19;

(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. 8. 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 child custody, child support, and visitation comply with the requirements of AS 25.20.104 and 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;

(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."

Renumber the following bill section accordingly.