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Alaska Court System
State of Alaska

OFFICE OF ADMINISTRATIVE DIRECTOR

CHARLES S. CHRISTENSEN III
Staff Counsel

April 1, 1993

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

The Honorable Brian Porter
Chairman, House Judiciary Committee
P. O. Box V
Juneau, Alaska 99811

Dear Representative Porter:

Thank you for scheduling a hearing on House Bill 122, relating to the findings and recommendations of a neutral mediator when awarding shared child custody. As you will recall, this bill was introduced by the Judiciary Committee at the request of the Alaska Supreme Court.

In December, 1988, Chief Justice Warren Matthews created the Task Force on Mediation in response to an instruction from the Fifteenth Legislature. The purpose of the task force was to evaluate the potential benefits of mediation to consumers and to the court system. In its report, issued in June, 1990, the task force recommended the statutory change contained in HB 122.

Currently, AS 25.20.090 reads in pertinent part:

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

. . . .

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

. . . .

After study, the task force concluded that this statute as written endangers the mediation process and runs contrary to the majority view that mediation communications be kept confidential. The majority view also does not envision a mediator making a

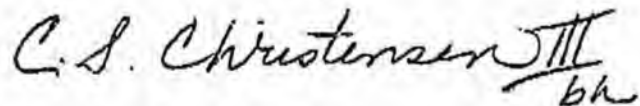
The Honorable Brian Porter
April 1, 1993
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recommendation about the resolution of a dispute, should mediation be terminated without agreement. The mediator's role is to guide the parties to a mutual decision, and not to impose a decision upon the parties, even in the form of a recommendation, if they cannot reach a decision.

To correct this problem, HB 122 would simply delete from the statute the requirement that the findings and recommendations of a neutral mediator be considered by the court.

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

Very truly yours,



C. S. Christensen III
Staff Counsel

CSC:bh

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

- (1) the child's preference if the child is of sufficient age and capacity to form a preference;
- (2) the needs of the child;
- (3) the stability of the home environment likely to be offered by each parent;
- (4) the education of the child;
- (5) the advantages of keeping the child in the community where the 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 in 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, rewrote 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 or 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)

8-LS0529A
Lauterbach
1/28/93

HOUSE BILL NO.
IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Introduced:
Referred:

A BILL

FOR AN ACT ENTITLED

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

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

4 * Section 1. AS 25.20.090(7) is repealed.



Alaska Court System
State of Alaska

OFFICE OF ADMINISTRATIVE DIRECTOR

CHARLES S. CHRISTENSEN III
Staff Counsel

January 12, 1993

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

Representative Brian Porter, Chairman
House Judiciary Committee
P. O. Box V
Juneau, Alaska 99811

Dear Representative Porter:

Attached you will find copies of three pieces of court system legislation which were introduced during the Seventeenth Legislature, but were not passed into law. We ask that the Judiciary Committee reintroduce these bills on behalf of the supreme court.

1. CSHB 93 (HES), relating to the findings and recommendations of a neutral mediator when awarding shared custody.

HB 122
During the Seventeenth Legislature, a bill containing CSHB 93 (HES) passed the House and died in the Senate Rules Committee. The statutory change which it proposed was first made in the June, 1990 report of the Task Force on Mediation. This task force was formed by Chief Justice Matthews in December, 1988 in response to an instruction from the Fifteenth Legislature.

Currently, AS 25.20.090 reads in pertinent part:

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

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

After study, the task force concluded that this statute as written endangers the

Representative Brian Porter
January 12, 1993
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mediation process and runs contrary to the majority view that mediation communications be kept confidential. The majority view also does not envision a mediator making a recommendation about the resolution of a dispute. To correct this problem, CSHB 93 (HES) proposed deleting from the statute the requirement that the findings and recommendations of a neutral mediator be considered by the court.

2. HB 141, relating to the introduction of bills by the supreme court.

HB 121
During the Seventeenth Legislature, this bill passed the House 39 - 0 and died in the Senate Judiciary Committee. It would have given the supreme court the authority to introduce legislation, similar to the authority enjoyed by the governor. Bills would be introduced with the inscription "Rules Committee by Request of the Alaska Supreme Court."

3. HB 172 Relating to the preparation of the jury list.

HB 120
This bill passed the House 34 - 0, and died in the Senate Judiciary Committee. At the present time, AS 09.20.050 instructs the administrative director to prepare a list of persons qualified for jury service by March 15 of each year. It is compiled from the list of applicants for the permanent fund dividend, which must be submitted by the Department of Revenue to the court system by the preceding January 15.

Putting the jury year on a calendar year basis would allow more efficient administration. Accordingly, HB 171 proposed requiring the administrative director to prepare the jury list by November 30, from a list submitted by the Department of Revenue no later than September 30.

Thank you for your courtesy. Please feel free to contact me if you have any questions or comments.

Very truly yours,



C. S. Christensen III
Staff Counsel

CSC:bh

Attachments



Alaska State Legislature

Please enter into the record my testimony to the House Judiciary
committee name

committee on HB 122, dated March 3, 1993
bill/subject

Please make available teleconference
ref: HB 122 prior to further
movement of the proposed
legislation.

Signed: Ermit Portcheller, Jr.
Testifier

Representing (Optional)
F.O. Box 2544 PALMER, ALASKA
Address 99645
745-3689 / 373-0831
Phone No.

HOUSE COMMITTEE REPORT

(9)

Date Referred: February 3, 1993

FURTHER REFERRALS:

Judiciary

Date of Committee Action: 3-17-93

The HEALTH, EDUCATION AND SOCIAL SERVICES Committee considered:

HB 122

HOUSE BILL NO. 122

CHILD CUSTODY PROCEDURES

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

- RECOMMENDATIONS: the same title
 be replaced with _____ a new title
 have attached amendments(s)
 do pass
 do not pass
 no recommendations
 individual recommendations
 additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

fiscal impact _____

fiscal note(s) _____

zero fiscal note Courtsystem

zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Al Vega</i>	<input checked="" type="checkbox"/>	<i>Peer Post</i>		<input checked="" type="checkbox"/>	
<i>Greg ...</i>	<input checked="" type="checkbox"/>				
<i>Carl Bunde</i>	<input checked="" type="checkbox"/>				
<i>Harley Allberg</i>	<input checked="" type="checkbox"/>				
<i>Scott ...</i>	<input checked="" type="checkbox"/>				
<i>Robert Davis</i>	<input checked="" type="checkbox"/>				
<i>Wendy ...</i>	<input checked="" type="checkbox"/>				
<i>Tom Bruce</i>	<input checked="" type="checkbox"/>				

Carl Bunde
 CHAIRMAN'S SIGNATURE

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

Bill No. HE-122

Revision Date: _____ Department Affected: Alaska Court System
 Title: Child custody procedures BRU: Trial Courts
 Components: _____
 Sponsor: House Judiciary
 Requestor: _____ COMPONENT SERIAL NO. 768

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
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REVENUE						
FUND SOURCE:						

FUNDING: (Thousands of Dollars)

1002 FEDERAL RECEIPTS						
1003 GF MATCH						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/PROGRAM RECEIPTS						
1006 GF/MHTIA						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY 93) impact: None

ANALYSIS: (Attach a separate page if necessary)
No fiscal impact.

Prepared by: C. S. Christensen III, Staff Counsel *CSC* Phone: 264-8228
 Division: Alaska Court System Date: 03/01/93

Approved by: Arthur H. Snowden, II, Administrative Director *AS*
 Agency: Alaska Court System Date: 03/01/93

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