

HB

1966

HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: March 19, 2001

FURTHER REFERRALS:

Date of Committee Action: 4/19/01

The JUDICIARY Committee considered:

HB 196

HOUSE BILL NO. 196

RIGHT OF ACTION FOR LEGAL SEPARATION

"An Act establishing a right of action for a legal separation; and amending Rule 42(a), Alaska Rules of Civil Procedure."

Recommends it be replaced with CS HB 196 (JUD) | Same Title | New Title
 For Senate Bills with new title: Technical Title | New Title: HCR _____

- attach amendments
- add new referral to _____ Committee
- Letter of Intent _____ Committee

- List of Abbrev. For Dpts.:
- ADM
 - CED
 - COR
 - CRT
 - EED
 - DEC
 - DFG
 - GOV
 - HSS
 - LAA
 - LAW
 - LWF
 - MVA
 - DNR
 - DPS
 - REV
 - DOT
 - UA

NEW FISCAL NOTES				
*For Chief Clerk's Office Use Only				
FN#	List by Dept(s):	Fiscal	Indet.	Zero
	Court			✓
	LAW			✓
	HSS			✓

PREVIOUS FISCAL NOTES				
List by Dept(s):	FN #	Fiscal	Indet.	Zero

<u>Signing with recommendations</u>	Printed Last Name	DP	DNP	NR	AM
<i>Keith Meyer</i>	Meyer	✓			
<i>John Coyne</i>	Coyne, H	✓			
<i>Jeannette James</i>	JAMES	✓			
Chair: <i>Sam Rokberg</i>	Rokberg				✓
Chair:					

AMENDMENT # 1

4/19/01

*points moved
no objection
adopted*

OFFERED IN THE HOUSE

TO: CSHB 196(), Draft Version "C"

- 1 Page 2, line 9:
- 2 Delete "shall"
- 3 Insert "may"

4/19/01 adopted as working document

22-LS0718\C
Lauterbach
4/4/01

meyrout amended w/ fiscal notes

CS FOR HOUSE BILL NO. 196 *pub 2 m*

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - FIRST SESSION

*TO 4/19/01
Lauterbach*

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVE DYSON

A BILL

FOR AN ACT ENTITLED

1 "An Act establishing a right of action for a legal separation; requiring a report about
2 legal separations; and amending Rule 42(a), Alaska Rules of Civil Procedure."

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

4 * Section 1. AS 25.24 is amended by adding new sections to read:

5 **Article 3A. Legal Separation.**

6 **Sec. 25.24.400. Complaint for legal separation.** A husband or a wife may
7 separately or jointly file a complaint in the superior court for a legal separation. A
8 legal separation may be granted no more than once to the same married couple.

9 **Sec. 25.24.410. Grounds for a legal separation.** A legal separation may be
10 granted by the court based on a finding that

- 11 (1) an incompatibility of temperament exists between the parties; and
- 12 (2) the continuation of the parties' status as married persons preserves
- 13 or protects significant legal, financial, social, or religious interests.

14 **Sec. 25.24.420. Residency required.** One of the parties to a complaint for

L

1 legal separation must be a resident of the state at the time the action is commenced.

2 **Sec. 25.24.430. Consolidation of actions.** If, at any time, a party to an action
3 for legal separation files an action for divorce or annulment, the court ~~shall~~
4 the new action with the action for legal separation.

5 **Sec. 25.24.440. Applicability of other statutes.** The following statutes
6 relating to divorce actions shall be applied similarly to an action for legal separation:
7 AS 25.24.060, 25.24.140, 25.24.150, 25.24.152, 25.24.160, and 25.24.170.

8 **Sec. 25.24.450. Decree.** (a) If a court finds that the grounds specified under
9 AS 25.24.410 exist, the court ~~shall~~ ^{must} enter a decree of legal separation.

10 (b) Unless otherwise provided in the decree, provisions for child custody and
11 visitation, child support, and spousal support included in a decree of legal separation
12 are final orders subject to modification only as provided in AS 25.20.110 and
13 AS 25.24.170.

14 (c) If the decree of legal separation includes provisions for division of
15 property and debts of the marriage, the decree must state whether the division is an
16 interim or final order. To the extent the division is not a final order, the court shall
17 determine the parties' respective rights to and responsibilities for property and
18 obligations not finally distributed and as to any property or debts accrued by either
19 party while the order is in effect.

20 **Sec. 25.24.460. Effect of separation.** A decree of legal separation does not
21 restore the parties to the status of unmarried persons. A decree of legal separation
22 modifies the parties' rights and responsibilities as married persons only to the extent
23 specified in the decree of separation.

24 * **Sec. 2.** AS 09.05.015(a) is amended to read:

25 (a) A court of this state having jurisdiction over the subject matter has
26 jurisdiction over a person served in an action according to the rules of civil procedure

27 (1) in an action, whether arising in or out of this state, against a
28 defendant who, when the action is commenced,

29 (A) is a natural person present in this state when served;

30 (B) is a natural person domiciled in this state;

31 (C) is a domestic corporation; or

1 (D) is engaged in substantial and not isolated activities in this
2 state, whether the activities are wholly interstate, intrastate, or otherwise;

3 (2) in an action that may be brought under statutes of this state that
4 specifically confer grounds for personal jurisdiction over the defendant;

5 (3) in an action claiming injury to person or property in or out of this
6 state arising out of an act or omission in this state by the defendant;

7 (4) in an action claiming injury to person or property in this state
8 arising out of an act or omission out of this state by the defendant, provided, in
9 addition, that at the time of the injury either

10 (A) solicitation or service activities were carried on in this state
11 by or on behalf of the defendant; or

12 (B) products, materials, or things processed, serviced, or
13 manufactured by the defendant were used or consumed in this state in the
14 ordinary course of trade;

15 (5) in an action that

16 (A) arises out of a promise, made anywhere to the plaintiff or
17 to some third party for the plaintiff's benefit, by the defendant to perform
18 services in this state or to pay for services to be performed in this state by the
19 plaintiff;

20 (B) arises out of services actually performed for the plaintiff by
21 the defendant in this state, or services actually performed for the defendant by
22 the plaintiff in this state if the performance in this state was authorized or
23 ratified by the defendant;

24 (C) arises out of a promise, made anywhere to the plaintiff or to
25 some third party for the plaintiff's benefit, by the defendant to deliver or
26 receive in this state or to ship from this state goods, documents of title, or other
27 things of value;

28 (D) relates to goods, documents of title, or other things of value
29 shipped from this state by the plaintiff to the defendant on the order or
30 direction of the defendant; or

31 (E) relates to goods, documents of title, or other things of value

1 actually received by the plaintiff in this state from the defendant without regard
2 to where delivery to the carrier occurred;

3 (6) in an action that arises out of

4 (A) a promise, made anywhere to the plaintiff or to some third
5 party for the plaintiff's benefit, by the defendant to create in either party an
6 interest in, or to protect, acquire, dispose of, use, rent, own, control, or possess
7 by either party real property situated in this state;

8 (B) a claim to recover a benefit derived by the defendant
9 through the use, ownership, control, or possession by the defendant of tangible
10 property situated in this state either at the time of the first use, ownership,
11 control, or possession or at the time the action is commenced; or

12 (C) a claim that the defendant return, restore, or account to the
13 plaintiff for an asset or thing of value that was in this state at the time the
14 defendant acquired possession or control over it;

15 (7) in an action to recover a deficiency judgment upon a mortgage note
16 or conditional sales contract or other security agreement executed by the defendant or
17 a predecessor of the defendant to whose obligations the defendant has succeeded and
18 the deficiency is claimed

19 (A) in an action in this state to foreclose upon real property
20 situated in this state;

21 (B) following sale of real property in this state by the plaintiff;

22 or

23 (C) following resale of tangible property in this state by the
24 plaintiff;

25 (8) in an action against a defendant who is or was an officer or director
26 of a domestic corporation where the action arises out of the defendant's conduct as
27 such officer or director or out of the activities of the corporation while the defendant
28 held office as a director or officer;

29 (9) in an action for the collection of taxes or assessments levied,
30 assessed, or otherwise imposed by a taxing authority after April 10, 1968;

31 (10) in an action that arises out of a promise made to the plaintiff or

1 some third party by the defendant to insure upon or against the happening of an event
2 if

3 (A) the person insured was a resident of this state when the
4 event out of which the cause of action is claimed to arise occurred;

5 (B) the event out of which the cause of action is claimed to
6 arise occurred in this state; or

7 (C) the promise to insure was made in the state;

8 (11) in an action against a personal representative to enforce a claim
9 against the deceased person represented if one or more of the grounds stated in (2) -
10 (10) of this subsection would have furnished a basis for jurisdiction over the deceased
11 if living, and it is immaterial under this paragraph whether the action was commenced
12 during the lifetime of the deceased;

13 (12) in an action for annulment, divorce, legal separation, or separate
14 maintenance when a personal claim is asserted against the nonresident party [,] if

15 (A) the parties resided in this state in a marital relationship for
16 not less than six consecutive months within the six years preceding the
17 commencement of the action;

18 (B) the party asserting the personal claim has continued to
19 reside in this state; and

20 (C) the nonresident party receives notice as required by law.

21 * **Sec. 3.** The uncodified law of the State of Alaska is amended by adding a new section to
22 read:

23 **INDIRECT COURT RULE CHANGE.** AS 25.24.430, enacted by sec. 1 of this Act,
24 amends Rule 42(a), Alaska Rules of Civil Procedure, by requiring consolidation of
25 subsequent divorce and annulment actions with legal separation actions filed by the same
26 parties.

27 * **Sec. 4.** The uncodified law of the State of Alaska is amended by adding a new section to
28 read:

29 **APPLICABILITY.** (a) This Act applies to complaints for legal separation, divorce,
30 and annulment that are filed on or after the effective date of this Act and orders of legal
31 separation issued on or after the effective date of this Act.

1 (b) An order of legal separation issued by a court in the state before the effective date
2 of this Act

3 (1) is not subject to or rendered void by this Act; and

4 (2) remains enforceable between the parties regardless of whether the issuing
5 court was authorized to issue the order.

6 * Sec. 5. The uncodified law of the State of Alaska is amended by adding a new section to
7 read:

8 REPORTS. (a) The administrative director of the Alaska Court System shall
9 annually, beginning September 30, 2002, report to the state registrar the number of legal
10 separations granted by courts in the state during the 12 calendar months preceding the date of
11 the report.

12 (b) The state registrar shall, by January 15, 2005, submit a report to the legislature
13 containing the statistics received from the court system under (a) of this section and the
14 recommendations, if any, of the state registrar for legislation on how information relating to
15 legal separations should be organized and whether the information should be made accessible
16 to members of the public through the Bureau of Vital Statistics.

17 * Sec. 6. Section 5 of this Act is repealed May 1, 2005.

HB 196 Sectional Analysis

Revised: April 18, 2001 LS0718\C

Section 1: Adds a new section of law that Provides for Legal Separation as an alternative to Divorce or Dissolution.

25.24.400 A husband and/or wife can file a complaint in superior court for legal separation and may only do so once per married couple.

25.24.410 The basis of the complaint must be incompatibility and that there is a legal, financial, social, or religious reason to remain legally married.

25.24.420 Either the husband or wife must be an Alaskan.

25.24.430 Provides for consolidation of legal separation effort and divorce effort if one of the parties escalates to a divorce.

25.24.450 A Legal Separation Decree will be entered with provisions for child custody and visitation, child support, spousal support, division of property and debts as circumstances dictate.

25.24.460 A couple with a decree of legal separation is still married.

Section 2: Gives the courts jurisdiction in an action for legal separation. This section is large, but the only change to existing law is on page 5, line 13 where "legal separation" is included with divorce.

Section 3: Amends Court rule 42(a) to allow consolidation of subsequent divorce and annulment actions with legal separation actions.

Section 4: A new section of law that defines the applicability of this act to divorce and separation actions filed before, on, or after the effective date of this act.

Section 5: Amends Court rules to require appropriate Reporting.

Section 6: Repeals Section 5 of this act on May 1, 2005. The purpose of this sunset is to generate re-evaluation of size of the reporting task.

22-LS0718\C
Lauterbach
4/4/01

CS FOR HOUSE BILL NO. 196()

**IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SECOND LEGISLATURE - FIRST SESSION**

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVE DYSON

A BILL

FOR AN ACT ENTITLED

1 **"An Act establishing a right of action for a legal separation; requiring a report about**
2 **legal separations; and amending Rule 42(a), Alaska Rules of Civil Procedure."**

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10 (b) Unless otherwise provided in the decree, provisions for child custody and
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13 AS 25.24.170.

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15 property and debts of the marriage, the decree must state whether the division is an
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31 (C) is a domestic corporation; or

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2 state, whether the activities are wholly interstate, intrastate, or otherwise;

3 (2) in an action that may be brought under statutes of this state that
4 specifically confer grounds for personal jurisdiction over the defendant;

5 (3) in an action claiming injury to person or property in or out of this
6 state arising out of an act or omission in this state by the defendant;

7 (4) in an action claiming injury to person or property in this state
8 arising out of an act or omission out of this state by the defendant, provided, in
9 addition, that at the time of the injury either

10 (A) solicitation or service activities were carried on in this state
11 by or on behalf of the defendant; or

12 (B) products, materials, or things processed, serviced, or
13 manufactured by the defendant were used or consumed in this state in the
14 ordinary course of trade;

15 (5) in an action that

16 (A) arises out of a promise, made anywhere to the plaintiff or
17 to some third party for the plaintiff's benefit, by the defendant to perform
18 services in this state or to pay for services to be performed in this state by the
19 plaintiff;

20 (B) arises out of services actually performed for the plaintiff by
21 the defendant in this state, or services actually performed for the defendant by
22 the plaintiff in this state if the performance in this state was authorized or
23 ratified by the defendant;

24 (C) arises out of a promise, made anywhere to the plaintiff or to
25 some third party for the plaintiff's benefit, by the defendant to deliver or
26 receive in this state or to ship from this state goods, documents of title, or other
27 things of value;

28 (D) relates to goods, documents of title, or other things of value
29 shipped from this state by the plaintiff to the defendant on the order or
30 direction of the defendant; or

31 (E) relates to goods, documents of title, or other things of value

1 actually received by the plaintiff in this state from the defendant without regard
2 to where delivery to the carrier occurred;

3 (6) in an action that arises out of

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6 interest in, or to protect, acquire, dispose of, use, rent, own, control, or possess
7 by either party real property situated in this state;

8 (B) a claim to recover a benefit derived by the defendant
9 through the use, ownership, control, or possession by the defendant of tangible
10 property situated in this state either at the time of the first use, ownership,
11 control, or possession or at the time the action is commenced; or

12 (C) a claim that the defendant return, restore, or account to the
13 plaintiff for an asset or thing of value that was in this state at the time the
14 defendant acquired possession or control over it;

15 (7) in an action to recover a deficiency judgment upon a mortgage note
16 or conditional sales contract or other security agreement executed by the defendant or
17 a predecessor of the defendant to whose obligations the defendant has succeeded and
18 the deficiency is claimed

19 (A) in an action in this state to foreclose upon real property
20 situated in this state;

21 (B) following sale of real property in this state by the plaintiff;

22 or

23 (C) following resale of tangible property in this state by the
24 plaintiff;

25 (8) in an action against a defendant who is or was an officer or director
26 of a domestic corporation where the action arises out of the defendant's conduct as
27 such officer or director or out of the activities of the corporation while the defendant
28 held office as a director or officer;

29 (9) in an action for the collection of taxes or assessments levied,
30 assessed, or otherwise imposed by a taxing authority after April 10, 1968;

31 (10) in an action that arises out of a promise made to the plaintiff or

1 some third party by the defendant to insure upon or against the happening of an event
2 if

3 (A) the person insured was a resident of this state when the
4 event out of which the cause of action is claimed to arise occurred;

5 (B) the event out of which the cause of action is claimed to
6 arise occurred in this state; or

7 (C) the promise to insure was made in the state;

8 (11) in an action against a personal representative to enforce a claim
9 against the deceased person represented if one or more of the grounds stated in (2) -
10 (10) of this subsection would have furnished a basis for jurisdiction over the deceased
11 if living, and it is immaterial under this paragraph whether the action was commenced
12 during the lifetime of the deceased;

13 (12) in an action for annulment, divorce, legal separation, or separate
14 maintenance when a personal claim is asserted against the nonresident party [,] if

15 (A) the parties resided in this state in a marital relationship for
16 not less than six consecutive months within the six years preceding the
17 commencement of the action;

18 (B) the party asserting the personal claim has continued to
19 reside in this state; and

20 (C) the nonresident party receives notice as required by law.

21 * Sec. 3. The uncodified law of the State of Alaska is amended by adding a new section to
22 read:

23 INDIRECT COURT RULE CHANGE. AS 25.24.430, enacted by sec. 1 of this Act,
24 amends Rule 42(a), Alaska Rules of Civil Procedure, by requiring consolidation of
25 subsequent divorce and annulment actions with legal separation actions filed by the same
26 parties.

27 * Sec. 4. The uncodified law of the State of Alaska is amended by adding a new section to
28 read:

29 APPLICABILITY. (a) This Act applies to complaints for legal separation, divorce,
30 and annulment that are filed on or after the effective date of this Act and orders of legal
31 separation issued on or after the effective date of this Act.

1 (b) An order of legal separation issued by a court in the state before the effective date
2 of this Act

3 (1) is not subject to or rendered void by this Act; and

4 (2) remains enforceable between the parties regardless of whether the issuing
5 court was authorized to issue the order.

6 * Sec. 5. The uncodified law of the State of Alaska is amended by adding a new section to
7 read:

8 REPORTS. (a) The administrative director of the Alaska Court System shall
9 annually, beginning September 30, 2002, report to the state registrar the number of legal
10 separations granted by courts in the state during the 12 calendar months preceding the date of
11 the report.

12 (b) The state registrar shall, by January 15, 2005, submit a report to the legislaure
13 containing the statistics received from the court system under (a) of this section and the
14 recommendations, if any, of the state registrar for legislation on how information relating to
15 legal separations should be organized and whether the information should be made accessible
16 to members of the public through the Bureau of Vital Statistics.

17 * Sec. 6. Section 5 of this Act is repealed May 1, 2005.



Alaska State Legislature

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REPRESENTATIVE FRED DYSON

HB 196 Sponsor Statement

"An Act relating to legal separation"

Updated: March 22, 2001

Contact: Representative Fred Dyson's office at (907) 465-2199

For many troubled marriages, a Legal Separation would be very valuable while the individuals work on their own issues and relationships. Legal Separation allows the marriage partners to separate their property and financial affairs and establish custody, without the final step of a divorce.

In a relationship with one partner having problems with substance abuse, crime, domestic violence etc., an interim status such as this Legal Separation allows for a protective status while time indicates if the troubled partner will get on top of his/her problem.

For many Alaskans, religious values make divorce a very unattractive alternative, but a legal separation provides for the partners to protect their assets.

HB 196 adds a section of law that defines and sets the guidelines for Legal Separation.

At this time 17 other states allow for "Legal Separation".

SPONSOR STATEMENT

HB 196 Sectional Analysis

Revised: April 4, 2001 LS0718\C

Section 1: Adds a new section of law that Provides for Legal Separation as an alternative to Divorce or Dissolution.

25.24.400 A husband and/or wife can file a complaint in superior court for legal separation.

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25.24.460 A couple with a decree of legal separation is still married.

Section 2: Gives the courts jurisdiction in an action for legal separation. This section is large, but the only change to existing law is on page 5, line 13 where "legal separation" is included with divorce.

Section 3: Amends Court rule 42(a) by requiring consolidation of subsequent divorce and annulment actions with legal separation actions.

Section 4: A new section of law that defines the applicability of this act to divorce and separation actions filed before, on, or after the effective date of this act.

Section 5: Amends Court rules to require appropriate Reporting.

Section 6: Repeals Section 5 of this act on May 1, 2005. The purpose of this sunset is to generate re-evaluation of size of the reporting task.

GOLTER & LOGSDON, PC

ATTORNEYS AT LAW

(907) 357-7640 Telephone

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David A. Golter

Tara N. Logsdon

March 27, 2001

VIA FACSIMILE

Mr. Wes Keller
Legislative Aide
Office of Representative Fred Dyson
Alaska State Legislature
Juneau, Alaska

Re: An Act establishing a Right of Action for a Legal Separation;

Dear Wes:

Thank-you for the opportunity to review and comment on proposed Senate Bill 126. First, I am pleased to see a move toward formal recognition of an action for legal separation of marriage. In my practice, I am often asked about legal separation as an alternative to divorce. Although Alaska does not expressly recognize legal separation, in my opinion, existing statutes give the court the authority to address most if not all of the same issues (i.e. custody, child support, spousal support and to some extent property division) outside of the context of an action for divorce. Unfortunately, I have never had the opportunity to test this in practice. On the few occasions I have filed actions seeking such relief, the opposing party has countered with a claim for divorce.

Nevertheless, my perception is that most people who are looking for legal protection against a spouse, do not see an alternative to divorce. Given the prevailing attitude toward divorce, I suspect that legal separation will not be common. However, I am hopeful that with statutory recognition, that option will at least appear more viable to those who do not wish to pursue a divorce.

Having reviewed the proposed act, I have only a couple of questions concerning the interplay between an action for separation and a subsequent action for divorce. I assume that if a counterclaim for divorce were filed in response to an action for legal separation, the matter would proceed as a divorce. I note

SUPPORT

-2-

however, that AS 25.24.450 provides that if the requisite grounds for separation are shown, the court "shall" issue a decree of legal separation. While I suspect that most judges would have little difficulty with this, perhaps it would make sense to clarify which action has priority.


I also had a question about the effect of a divorce action filed after the entry of a final decree of separation. Section 25.24.450(b) would seem to preclude the court from revisiting custody and support issues in a subsequent action for divorce, at least without grounds for modification under AS 25.20.110 and AS 25.24.170. With regard to division of the marital estate, however, I am uncertain as to whether the court in a subsequent divorce could divide assets. There will undoubtedly be couples that obtain a decree of separation only to later file for a divorce. I assume that property awarded to a spouse in a final decree of separation would be considered "separate property" in a subsequent divorce. However, in dividing the marital estate in a divorce, the law in Alaska and in other states, permits the court to divide a spouse's separate property if necessary to do equity. A party unhappy with a final decree of separation might well attempt to persuade a subsequent divorce court to reallocate assets. While this would be rare and unlikely to succeed, the potential for additional litigation might discourage actions for legal separation.

Also, although it would seem that AS 25.24.430 would prevent forum shopping at least within Alaska, there seems to be some potential for a party unhappy with a final decree of separation, to attempt to relitigate property issues in another state.

The Supreme Court would undoubtedly resolve these issues, but it might make sense to address them up front in the statute.

Please give me a call if you would like to discuss any of this further.

Sincerely,
GOLTER & LOGSDON, P.C.



By: David A. Golter

DAG/stl

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

BILL NO. HB 196

Revision Date/Time (Note if correction) _____ Dept. Affected _____
 Title Legal Separation BRU Alaska Court System
 Component Trial Courts
 Sponsor Representative Dyson
 Requester House Judiciary Component No. 768

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2001) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
 The court system does not anticipate any fiscal impact from the passage of HB 196.

Prepared by: Douglas Wooliver Phone 463-4750
 Division: Alaska Court System Date/Time 2/29/01 9:30 a.m.
 Approved by: Stephanie Cole Date _____
 Agency: Alaska Court System

For distribution information, call the Governor's Legislative Office

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB 196
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Health & Social Services
 Title: Establishing a right of action for legal BRU: State Health Services
 separations Component: Bureau of Vital Statistics
 Sponsor: Rep. Dyson
 Requester: House (JUD) Component Number: 961

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2001) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2002 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The department has to make two assumptions. 1) Legal separation is performed under current law; the husband is presumed to be the father; and 3 party affidavits are available. 2) The bill does not intend that legal separations to be public documents. Based upon the yearly reports from the Alaska Court System, the Registrar will examine and make an evaluation and recommendations to the Legislature in 2005. As written the bill has no programmatic effects on the Department.

Prepared by: Karen E. Pearson, MS Phone (907) 465-3090
 Division: Public Health Date/Time 3/28/01 4:34 PM
 Approved by: Elmer A. Lindstrom, Special Assistant Date _____
 Agency: Department of Health & Social Services

For distribution information, call the Governor's Legislative Office

FISCAL NOTE

**STATE OF ALASKA
2001 LEGISLATIVE SESSION**

Fiscal Note Number: _____
 Bill Version: HB 196
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Law
 Title "An Act establishing a right of action for a legal separation; and amending Rule 42(a), Alaska Rules of Civil ..." BRU Civil Division
 Component Collections and Support
 Sponsor Representative Dyson
 Requester House Judiciary Committee Component No. 2210

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2001) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2002 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

HB 196 creates a new cause of action which allows married couples to remain legally married but obtain many of the legal benefits of a divorce or dissolution action. The couple remain married, however the rights and responsibilities of the couple can be modified by the decree, including provisions for child custody and visitation, child support, spousal support, and provisions for division of property and debts.

Passage of HB 196 will have no fiscal impact on the Department of Law.

Prepared by: Joan M. Kasson Phone 465-5370
 Division: Attorney General's Office Date/Time 3/29/01 11:00 AM
 Approved by: Kathryn Daughhete for Bruce M. Botelho, Attorney General Date 3/29/01
 Agency: Department of Law

For distribution information, call the Governor's Legislative Office

Notice: This opinion is subject to correction before publication in the Pacific Reporter. Readers are requested to bring errors to the attention of the Clerk of the Appellate Courts, 303 K Street, Anchorage, Alaska 99501, phone (907) 264-0608, fax (907) 264-0878.

THE SUPREME COURT OF THE STATE OF ALASKA

DANNY R. GLASEN,)	
)	Supreme Court No. S-8943
Appellant,)	
)	Superior Court No.
v.)	3AN-90-5756 CI
)	
GAIL A. GLASEN, a/k/a)	<u>O P I N I O N</u>
GABRIELLE A. GLASEN,)	
)	[No. 5337 - December 1, 2000]
Appellee.)	
_____)	

Appeal from the Superior Court of the State of Alaska, Third Judicial District, Anchorage, Elaine M. Andrews, Judge.

Appearances: Vincent Vitale, Anchorage, for Appellant. Loren Domke, Loren Domke, P.C., Juneau, for Appellee.

Before: Matthews, Chief Justice, Eastaugh, Fabe, Bryner, and Carpeneti, Justices.

FABE, Justice.

I. INTRODUCTION

In this appeal, Danny Glasen disputes the superior court's decision to deny his request to incorporate the Glasens' 1991 separation agreement into their 1997 divorce decree. Because we agree with the superior court that the separation agreement was not a final order and that it terminated upon the Glasens'

reconciliation, we affirm its decision to set aside the separation decree.

II. FACTS AND PROCEEDINGS

A. Factual Background

1. The pre-separation relationship

Danny and Gail Glasen met in Hawaii in 1984, while Danny was opening a restaurant with business partners there. At that time, Danny was married but estranged from his first wife, and Danny and Gail began living together shortly after they met. During their time in Hawaii, Gail worked with Danny on his restaurant for about six or seven months. After that, Danny sold his interest in the restaurant and the two moved to Cordova. Danny obtained a divorce from his former wife shortly thereafter.

From the beginning, Danny and Gail have had an erratic and tumultuous relationship, marked by periods of separation and reconciliation. After moving to Cordova in the summer of 1985, Gail left Danny for a short period before moving back in with him.

Gail and Danny had their first child, Drake William Glasen, in September 1986. After nine months, Gail again left Danny because his "party" lifestyle bothered her. She moved to Morro Bay, California for about a month and a half with the baby.

The couple reconciled, however, and got married in August 1987 in Reno. Gail returned to Cordova with Danny and stayed there until their daughter Meriah Victoria was born in June 1988. The Glasens bought a luxury home in Malibu, California, for \$550,000 in 1988. Gail lived there with the children until August 1993, while

Danny remained in Cordova and intermittently visited the Malibu home.

2. The separation agreement

In July 1991 Danny filed a complaint for legal separation and, through his attorney, prepared a separation agreement for Gail to sign. The separation agreement characterized nearly all property, except for the Malibu home and the Glasens' yacht, as Danny's separate property to which he was entitled. This property included, for example, the Cordova home, the Cordova cabin, Orca Oil stock, an escrow account, land in Cordova, Danny's pension, and other property and resources. Notably, the separation agreement did not contain any values for any marital or separate property, any marital or separate debts, or either of the parties' salaries or income.

As for the Malibu house, the agreement stated that after satisfying all debts and reimbursing Danny for his mortgage and maintenance payments, Gail should receive the sale proceeds. In addition, the agreement stated that Danny and Gail would jointly own the yacht and be equally responsible for all related expenses.

The parties agreed to joint custody of their children, and Danny agreed to pay \$2,000 a month in temporary child and spousal support. Gail signed the agreement without the assistance of counsel because she "trusted Danny, and she just wanted to make Danny happy and sign it."

Shortly after Gail signed the agreement, the superior court granted a decree of legal separation incorporating the

agreement. During the hearing -- at which Gail was not present -- Danny assured the standing master that Gail would receive between \$450,000 and \$600,000 from the sale of the Malibu home after expenses. They also assured the master that the settlement agreement would obviate the need for spousal support. When Danny and Gail ultimately sold the Malibu home, however, they barely made enough money to cover their costs and netted only \$419.89. Finally, Danny testified that the agreement would allow for future reconciliation.

3. The post-separation relationship

After the superior court entered the decree of legal separation in 1991, the Glasens remained married and reconciled a few months later. Their sexual relationship resumed, and their marital relations continued as they had before the separation. For the next two years Gail lived in the Malibu home while Danny commuted from Cordova to visit. Then Gail moved back to Cordova with the children to be with Danny and enroll Drake in school. The Glasens remained in Cordova together for two more years.

During this entire period -- from 1991 through 1996 -- Danny and Gail remained a financial and marital unit. They filed joint tax returns, maintained joint credit cards, and also kept a joint bank account. Moreover, Danny voluntarily supported Gail and the children by wiring them money, paying bills, and depositing money in the joint banking account. The Malibu home remained in joint title.

In January 1996 Gail and the children moved to Juneau so that Gail could pursue her education. But even then, she returned to Cordova during the summer with the children to be with Danny.

In the spring of 1997 Danny and Gail decided to move to Cambria, California, and buy a home there. They flew to California together to look for real estate and business opportunities. Before they could make the move, however, Danny and Gail had an argument that precipitated the present divorce action. Danny filed for divorce in July 1997 and sought to enforce the 1991 separation agreement.

B. Procedural History

After Danny filed for divorce in July 1997, he requested that the 1991 separation agreement be merged into the divorce decree. Superior Court Judge Elaine M. Andrews granted the divorce, but declined to incorporate the 1991 agreement into the divorce decree. Instead, Judge Andrews scheduled an evidentiary hearing to determine whether the agreement was valid and enforceable. The superior court did award visitation and custody under the terms of the 1991 agreement, but required that child support conform to Alaska Civil Rule 90.3 guidelines. The court also ordered interim spousal support and attorney's fees for Gail.

Ultimately, the superior court determined that although it had authority to enter the decree of legal separation in 1991, the separation decree was interlocutory rather than final. On alternative grounds, the superior court concluded that Gail had met the Civil Rule 60(b)(6) requirements to set aside the decree.

Finally, the superior court determined that under a post-nuptial contract analysis, the 1991 agreement did not "meet the fair and reasonable test or survive an equitable estoppel analysis." The court entered a Rule 54(b) certification of final order, and Danny timely appealed.

III. STANDARD OF REVIEW

To the extent that this case presents a question of law, we exercise our independent review.¹ We will disturb the superior court's factual findings only if those findings are clearly erroneous.² "It is the function of the trial court, not of this court, to judge witnesses' credibility and to weigh conflicting evidence."³

Moreover, we "will not disturb a trial court's grant of a Rule 60(b) motion except upon a showing of an abuse of discretion."⁴ And we will find an abuse of discretion only when "left with a definite and firm conviction, after reviewing the whole record, that the trial court erred in its ruling."⁵

¹ See Knutson v. Knutson, 973 P.2d 596, 599 (Alaska 1999).

² See id.

³ Id. at 599-600.

⁴ McGee v. McGee, 974 P.2d 983, 987 (Alaska 1999) (quotation omitted).

⁵ Id. (quotation omitted).

IV. DISCUSSION

A. The Superior Court's Authority to Enter the Separation Decree

Gail argues as a preliminary matter that the superior court lacked authority to enter the separation decree in 1991 because actions for legal separation do not exist in Alaska. After finding "inferential authority recognizing the validity of separation agreements," the superior court concluded that it possessed jurisdiction when it granted the decree in 1991.

Although there is no statute that directly authorizes courts to enter separation decrees, the superior court reasoned that the legislature's references to "legal separation" in statutes pertaining to child custody and support indicate that individuals may bring such actions. The superior court noted that although some statutes refer to "legal separation," these provisions do not specifically authorize courts to grant legal separations.⁶ Danny, on the other hand, maintains that because actions for separate maintenance exist at common law, the superior court possessed authority to enter the separation decree here.

We need not decide in this case whether courts in Alaska may enter decrees of legal separation. Instead, we affirm the superior court's decision because we conclude that the decree, even if authorized, was not a final order and that the Glasens' reconciliation dissolved the decree.

⁶ See AS 25.24.150(a) (governing child custody judgments); AS 25.27.900(5) (governing the Child Support Enforcement Agency).

B. The Separation Decree's Status as an Interim Order

Danny disputes the superior court's conclusion that the Glasens' 1991 separation agreement was not a final property division. We agree with the superior court that the legal separation decree was an interim order that was "provisional and conditional, affording an opportunity for reconciliation."⁷ First, Danny's testimony from 1991 indicates that he did not intend the separation to be final. He and Gail specifically chose to separate rather than divorce because they believed they might still reconcile.⁸ Danny testified that "we don't want to totally, even though we can't get along, we're incompatible right now, we don't want to totally close the door on it for the future if something does happen we can get together." Thus, Danny himself believed

⁷ 24 Am. Jur. 2d Divorce & Separation § 409, at 571 (1998). The treatises also refer to legal separation as "limited divorce" and "judicial separation," noting that there are no meaningful distinctions between these terms. See Judge Joyce Hens Green et al., Dissolution of Marriage § 3.02, at 125 (1986) ("The limited divorce is also called . . . legal separation, or judicial separation."); 24 Am. Jur. 2d Divorce & Separation § 1, at 229 (1998) ("Absolute divorce . . . is a judicial dissolution of the marriage . . . whereas limited divorce, sometimes referred to as . . . legal separation is a change in status by which the parties are separated and are precluded from cohabitation, but the actual marriage is not affected."). Thus, we refer to the action in this case as simply "legal separation."

⁸ States that recognize legal separation as an action distinct from dissolution or separate maintenance provide for termination or revocation of the separation decree upon reconciliation. See Or. Rev. Stat. § 107.475 (1999) (requiring courts to fix duration of legal separation decree and providing that when the judicially determined time expires, "the decree shall have no further effect"); Wis. Stat. Ann. § 767.09 (West 1993) ("A decree of separation shall provide that in case of a reconciliation at any time thereafter, the parties may apply for a revocation of the judgment.").

that he and Gail might reconcile, indicating that the separation was not a permanent arrangement.

Moreover, the test of a final judgment "is essentially a practical one."⁹ We have stated:

The basic thrust of the finality requirement is that the judgment must be one which disposes of the entire case, ". . . one which ends the litigation on the merits and leaves nothing for the court to do but execute the judgment." Further, the reviewing court should look to the substance and effect, rather than form, of the rendering court's judgment, and focus primarily on the operational or "decretal" language therein.⁽¹⁰⁾

The Glasens' decree of legal separation fails this test of finality, for it provides that the child custody and property settlement agreement "shall be incorporated in any final judgment issued in this action or in any decree of divorce where ever issued" This clearly implies that the separation decree itself is not the "final judgment issued in this action." Further, the decree demonstrates that it is only a stepping stone on the path to divorce as it provides that "at any time hereafter either party may . . . calendar an uncontested divorce hearing for the purpose of terminating the parties' marriage." Thus, the separation decree was an interim rather than a final order.

Finally, a contract that purports to embody a final property distribution, but which does not list or describe all of

⁹ City and Borough of Juneau v. Thibodeau, 595 P.2d 626, 628 (Alaska 1979).

¹⁰ Matanuska Maid, Inc. v. State, 620 P.2d 182, 184-85 (Alaska 1980).

the spouses' property or assets, is invalid as a final property division.¹¹ The Glasens' separation agreement did not fully list or describe all of the marital property that existed in 1991. Indeed, the Glasens may have continued to acquire marital property or debt from 1991, when the separation decree was entered, to 1997, when Danny filed for divorce. Because the Glasens continued their marital relationship for approximately six years after the initial settlement agreement, that agreement could not have embodied a final property division.

We conclude that the Glasens' decree of legal separation could not be a final judgment. Thus, even assuming that Alaska law authorizes entry of a separation decree, the Glasens' separation decree was valid only insofar as it settled certain support and property issues between the spouses while they were separated.

C. The Glasens' Reconciliation

It is well recognized that a legal separation decree ordinarily terminates "if the parties become reconciled and resume cohabitation."¹² The superior court found that Danny and Gail reconciled about three months after the separation decree was entered. Danny asserts that because Gail committed adultery during

¹¹ See Lacher v. Lacher, 993 P.2d 413, 419-20 (Alaska 1999); Musser v. Johnson, 914 P.2d 1241, 1242 (Alaska 1996); 24A Am. Jur. 2d § 1111, at 533 (citations omitted).

¹² 24 Am. Jur. 2d Divorce & Separation § 409, at 572 (1998). Some jurisdictions that statutorily authorize judgments for legal separation require the parties to make a joint application to the court for an order of termination. See id. and n.61. In many jurisdictions, however, the separation decree automatically terminates, or its effect is destroyed, once the parties reconcile. See id. and n.60.

their separation and sporadically lived in California, the superior court erred in concluding that they reconciled. Gail counters that they reconciled within a few months of their separation, and that "nothing changed in the pattern of their marriage."

Although we have never defined "reconciliation" expressly, one authority has stated that

reconciliation means a voluntary resumption of marital cohabitation in the fullest sense. This ordinarily requires living together as husband and wife, engaging in sexual relations, and where possible, establishing a joint domicile.

. . . .

But a reconciliation may be found to exist without the resumption of a matrimonial domicile if the parties live together as constantly as the circumstances permit.⁽¹³⁾

In addition, when spouses reconcile and indicate through their conduct "the intention of rescinding the separation agreement in whole or in part, effect should be given to their action."¹⁴

In this case the superior court found sufficient facts to support its conclusion that Danny and Gail had reconciled:

After the separation agreement was ordered, the couple cohabitated [sic] and had sexual relations. They filed joint tax returns for the years between the legal separation and the divorce. In all ways Danny and Gail operated as a marital unit. Danny did not pay child

¹³ Homer H. Clark, Jr., The Law of Domestic Relations in the United States § 19.7, at 437-38 (1998) (footnotes omitted); see also 24 Am. Jur. 2d Divorce & Separation § 34, at 253-54 ("If the parties resume the marital relationship by unequivocal acts, it is said that the parties have reconciled, even if the reconciliation fails after a short time.") (citation omitted).

¹⁴ Clark, supra note 13, § 19.7, at 439.

support as the parties contemplated in the Separation Agreement, because the Glasens functioned as a family unit.

The record supports the superior court's findings: Danny and Gail maintained both a commuter relationship and a cohabitation relationship, and they continued to function as an economic unit. They filed joint tax returns, maintained joint credit cards, and also kept a joint bank account. As the trial court found, the Glasens' reconciliation, cohabitation, and economic commingling indicated an intent to behave as a marital unit and rescind their separation agreement. Based on these facts, we conclude that the superior court did not err in finding that the Glasens reconciled.

Thus, the Glasens' reconciliation after their separation provides a separate basis for affirming the superior court's decision not to incorporate the separation decree into the divorce decree.

D. Interim Alimony and Interim Attorney's Fees

Danny also argues that the superior court erred in awarding interim alimony and attorney's fees to Gail. The superior court did not, however, certify those awards as final orders under Civil Rule 54(b); it only certified its decision to set aside the separation decree.¹⁵ Thus, the interim alimony and attorney's fees

¹⁵ Alaska R. Civ. P. 54(b) states:

When more than one claim for relief is presented in an action, . . . the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and

(continued...)

awards are not proper matters for appeal, and we therefore do not decide whether the superior court erred in granting those awards.

V. CONCLUSION

Because the Glasens' 1991 separation decree was not a final judgment, we AFFIRM the superior court's decision to deny Danny's request to incorporate the separation agreement into the 1997 divorce decree.

¹⁵(...continued)

upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all of the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

Legislative Research Report 98.018

June 15, 1998

Divorce—Rates in Alaska and the U.S. and Correlation to Welfare Participation

Legislative Research Services
Division of Legal and Research Services
Legislative Affairs Agency
Alaska State Legislature

Prepared by Patricia Young, Legislative Analyst



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SUMMARY

You wished to know the divorce rate in Alaska and how it compares to rates across the country. You requested information on the economic impacts of divorce on women and children in Alaska. Additionally, you wished to know the percentage of public assistance cases that are single-parent households and the percentage that are married-parent households.

After increasing for several years, the divorce rate in the nation and in Alaska has been declining since about 1980. From highs of 5.2 (nationwide) and 8.8 (in Alaska) during 1980, the divorce rate declined to 4.4 divorces per 1,000 population nationwide and 5.0 divorces per 1,000 population in Alaska in 1996. Thus, the drop (a 43 percent decline) in Alaska's rate has been more dramatic than that in the nation as a whole. Several factors contribute to Alaska's relatively high divorce rate, including the state's higher percentage of individuals within the prime age group for divorce (20 - 39) when compared to the nation as a whole and Alaska's relatively smaller percentage of individuals who are 50 and over—the age group least likely to divorce.

While divorce adversely impacts the financial resources of custodial mothers and their children, it is important to note that approximately 43 percent of the births in Alaska are to unmarried mothers and nearly half of the divorces involve no minors whatsoever. Approximately 73

percent of public assistance recipients in Alaska in 1996 were single-parent families; nevertheless, attempting to draw conclusions about the effect of divorce on public assistance participation is problematic given the high percentage of recipients who may have never married. Likewise, the approximate 17 percent of public assistance recipients classified as dual-parent families, can not be automatically equated with the "American Dream" family unit experiencing hard times. Nor can antisocial behavior be linked directly to divorce although at-risk youth are often from single-parent households.

The Divorce Rate in Alaska and the United States

The most commonly used measures of divorce are the number of divorces, the crude divorce rate (the number of divorces per 1,000 total population), and the divorce rate per 1,000 married women aged 15 and over. These measures are based on the numbers of divorces (including absolute divorces, annulments, and dissolutions of marriage) reported by states to the National Center for Health Statistics (NCHS) and population estimates generated by the U.S. Census Bureau, and they show recognizable and persistent patterns across the country.

According to the NCHS's most recent comprehensive analysis of detailed divorce data (1990), the crude divorce rate for the nation as a whole was 4.7 (that is, 4.7 divorces per 1,000 total population).¹ At that time, Alaska ranked 15th, with a crude divorce rate of 5.7.²

Provisional divorce data from the NCHS and population data from the U.S. Census Bureau have since that time shown a steady decline in the crude divorce rate of both the nation and the state of Alaska. According to recent provisional data, the crude divorce rate for the country as a whole in 1996 had dropped to 4.4.³ By comparison, Alaska's crude divorce rate for the same year was 5.0. Based on provisional data from the NCHS, we estimate Alaska's rank among states for 1996 at between 13th and 20th in the nation.⁴

The following table shows U.S. and Alaska divorce rates at five-year intervals from 1965 through 1995. We have also included rates from 1971 and 1996 to provide a more complete picture of the trends in divorce rates both in Alaska and in the nation as a whole. The divorce rate rose steadily between 1965 and 1980, both in the United States and in Alaska; at that point, however, the rates began to decline. As you will see from the table and accompanying figure below, while Alaska's divorce rate was significantly higher than that in the rest of the country, the decline was far more dramatic. While the U.S. rate declined from a high of 5.2 in 1980 to 4.4 in 1996, representing a 15 percent drop, the rate in Alaska declined from a high of 8.8 in 1980 (the

¹ Divorces/total population X 1,000 = crude divorce rate. The most recent comprehensive analyses of detailed divorce data were compiled for 1990. Because of decreased state and federal budgets, NCHS suspended collection of detailed data in January 1996. Data collected after 1990 is considered provisional. Currently, no federal or private organization completes the detailed analyses of nationwide divorce data previously provided by NCHS.

² National Center for Health Statistics, "Advanced Report of Final Divorce Statistics, 1989 and 1990," *Monthly Vital Statistics Report*, March 22, 1995.

³ National Center for Health Statistics, "Births, Marriages, Divorces, and Deaths for June 1997," *Monthly Vital Statistics Report*, January 28, 1998. Preliminary data for 1997 show the divorce rate leveling off—the U.S. divorce rate for 1997 is 4.3; the Alaska divorce rate for 1997 is 5.1.

⁴ To estimate state rankings for 1996, we used provisional divorce statistics from the NCHS and U.S. Census Bureau estimates of state populations for 1996 as reported in the *Congressional Quarterly's State Fact Finder, 1998: Rankings Across America*. Because divorce data were unavailable for seven states, we are unable to more precisely establish state rankings.

recession following the end of the pipeline construction boom) to 5.0 in 1996, a drop of 43 percent.

Table 1: Crude Divorce Rates, U.S. and Alaska, 1965-1996

Year	U.S.	Alaska
1965	2.5	
1970	3.5	
1971	3.7	5.6
1975	4.8	7.1
1980	5.2	8.8
1985	5.0	7.5
1990	4.7	5.5
1995	4.5	5.1
1996	4.4	5.0

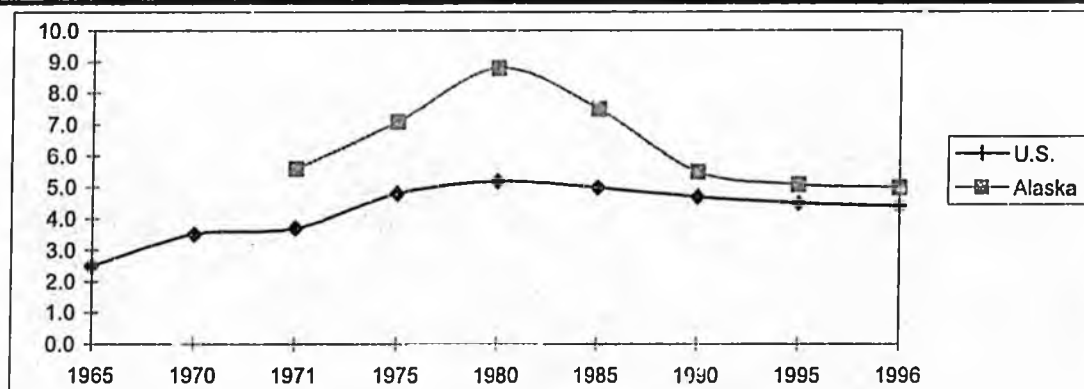
Notes:

Because Alaska data for 1965 and 1970 were not readily available, we have included data from 1971. Alaska's crude divorce rate was uncharacteristically high during the recession following the pipeline construction boom: 7.8 in 1976; 8.7 in 1977; 8.3 in 1978; 8.6 in 1979; and peaking at 8.8 in 1980.

Sources:

National Center for Health Statistics, "Divorces and Annulments and Rates, United States, 1940-90," *Monthly Vital Statistics Report*, March 22, 1995; and Alaska Bureau of Vital Statistics, *Annual Reports*, various years.

Figure 1: Crude Divorce Rates, U.S. and Alaska, 1965-1996



Notes and Sources: See Table 1, above.

When examining Alaska's divorce rate, particularly in relation to that of the nation as a whole, it is important to note that a number of other factors impact the crude divorce rate. Age is the primary demographic characteristic that influences overall divorce rates.

According to NCHS demographers, the following patterns are persistent and recognizable across the country:

- ◆ Divorce occurs with the highest frequency among men who are between the ages of 20 and 24 and among women who are between the ages of 15 and 19.
- ◆ Divorce rates are characteristically high among men who are between the ages of 25 and 39 and women who are between the ages of 20 and 39.
- ◆ Divorce rates drop sharply with age.

As described in a report previously prepared by this agency, Alaska may have substantially the same divorce rates by age as the nation as a whole. However, because a relatively larger proportion of Alaska's population is between the ages of 20 and 39 (the highest divorce rate age group), and a relatively smaller proportion of the population is over the age of 50 (the lowest divorce rate age group), Alaska naturally has a higher overall divorce rate.⁵ Furthermore, Alaska normally has one of the highest levels of in, out, and gross migration—largely a phenomenon of adults within the highest divorce rate age groups. Of particular note in this regard is the fact that divorce data are compiled by state of occurrence, not residence, so migration may artificially inflate Alaska's divorce rate. Table 2 shows the relative percentage of the U.S. and Alaska populations in the highest and lowest divorce rate age groups as of July 1, 1996.

Table 2: Percent of Population in High and Low Divorce Rate Age Groups, July 1, 1996

Ages 20 - 39		Ages 50 and Older	
U.S.	Alaska	U.S.	Alaska
30	33	26	16

Sources:

"Resident Population of the United States: Estimates by Age and Sex," U.S. Bureau of the Census, May 29, 1998, <http://www.census.gov/population/estimates/nation/intfile2-1.txt>; and "Alaska Total Population Overview: 1996 Estimates," Alaska Department of Labor, Research and Analysis Section, Demographics Unit, <http://www.state.ak.us/local/akpages/LABOR/research/poplet.htm>.

Age and migration characteristics combine with peculiarities of Alaska's divorce laws—including convenient procedures and lenient grounds, residency requirement and waiting periods—and relatively uncongested courts to contribute to the state's relatively high overall divorce rate. Despite these factors, Alaska's divorce rate has dropped dramatically in the last several years—a trend that appears to be continuing.

⁵ Patricia Young, "Divorce in Alaska," Alaska Legislative Research Agency, 91.292, November 12, 1991; included as Attachment A.

Economic Impacts of Divorce on Women and Children in Alaska

According to a 1991 evaluation of the effectiveness and impact of Alaska's child support guidelines used by the Alaska Court System, in the majority of cases in which fathers were granted primary physical custody of children, their post-divorce per capita incomes remained relatively unchanged, increasing an average of one percent; the non-custodial mothers' incomes dropped by 2 to 22 percent, an average of 11 percent. In cases in which mothers were awarded physical custody (approximately 72 percent of the cases studied), the families' per capita incomes declined by 17 to 33 percent, depending primarily on the number of children involved, for an average 28 percent decline from the pre-divorce level. In contrast, the non-custodial fathers' incomes increased by 31 to 118 percent, for an average 54 percent. These changes were for cases in which child support obligations were paid. When average arrearages were considered, custodial mothers' incomes dropped by 35 to 42 percent while non-custodial fathers' incomes rose by 45 to 192 percent.⁶

Although the guidelines for establishing child support obligations and the methods for collecting such obligations have changed since the time of the study, it continues to be true that the financial resources of custodial mothers and their children diminish after divorce.

When attempting to correlate divorce rates with the impact of divorce on Alaska's children, it should be noted that a high proportion of children in Alaska are born to unmarried mothers (43 percent in 1996), and not all divorces involve minors.⁷ According to the Alaska Bureau of Vital Statistics *Annual Reports*, approximately half of all divorces in the state involve no minor children.

Table 3: Percentage of Alaska Divorces Involving No Minor Children

Year	Percent
1976	46
1980	46
1986	50
1990	50
1996	49

SOURCE:

Alaska Bureau of Vital Statistics, *Annual Reports*, years as indicated.

⁶ Ginny Fay and Emily Read, *Child Support in Alaska: An Evaluation of the Effectiveness and Impact of Alaska's Child Support Guidelines* (Alaska Women's Commission and the University of Alaska, July 1991).

⁷ NCHS, *Monthly Vital Statistics Report*, Vol. 46, No. 1 Supplement, quoted in NCHS, "Alaska Health Facts," *FASTATS*, updated May 19, 1998. <http://www.cdc.gov/nchswww/fastats/alaska.htm> (June 11, 1998).

Single Parent Families on Public Assistance

According to data supplied by the Division of Public Assistance, the division handled an average of 12,198 Aid to Families with Dependent Children (AFDC) cases over the 18 month period from July 1995 through December 1996. The following table shows the percentage of each category of AFDC cases from March 1996, a month the Division considers representative of the year.

	Basic Cases				Two-Parent Family Cases (e)	Totals
	Child Only/No parents (a)	Pregnant Women (b)	2 Parents/1 Incapacitated (c)	Single Parent Household (d)		
Number of Cases	1,066	160	128	9,304	2,127	12,784
Percent of all Cases	8.3	1.3	1.0	72.8	16.6	100.0
<p>NOTES: Until 1997, the cash assistance program was known as Aid to Families with Dependent Children; since its restructuring, it is known as Temporary Assistance to Needy Families, and eligibility rules have changed somewhat. We have used AFDC data to correspond with the 1996 population and divorce data used elsewhere in this report. (a) Cases generally involving eligible children cared for by relatives who do not themselves qualify. (b) Recipients qualify by household income and resources and because of pregnancy; they may or may not be married. (c) One parent is unemployable because of disability. (d) Cases include households in which the parent is single or divorced as well as households in which the other parent is absent. (e) Cases include two-parent households in which one parent is unemployed.</p>						
<p>SOURCE: Alaska Department of Health and Social Services, Division of Public Assistance.</p>						

According to the regulations governing AFDC, the division classified approximately 73 percent of the public assistance cases as single-parent household cases, and approximately 17 percent two-parent households. Nevertheless, one should not conclude that 73 percent of these cases result from divorce. In addition to the fact that approximately 50 percent of all divorces in the state involve no minor children, national statistics show that nearly half of all AFDC mothers have never been married.⁸

On the national level, according to U.S. Department of Health and Human Services information on welfare for 1997, across the country two-parent households represented 6.9 percent of the welfare caseload. For the same time period, two-parent households represented 15.8 percent of

⁸ "Mothers Who Receive AFDC Payments—Fertility and Socioeconomic Characteristics," *Statistical Brief*, Bureau of the Census, March 1995, <http://www.census.gov/socdemol/www/sb2-95.html> (June 13, 1998); included as Attachment B.

Alaska's caseload.⁹ In other words, proportionately, there are fewer single-parent households on welfare in Alaska than in the nation as a whole.

Correlation of Divorce to Antisocial Behavior

We contacted researchers with the Office of Juvenile Justice and Delinquency Prevention (OJJDP), as well as other national sources of information and statistics on families and youth, including the National Conference of State Legislatures and the Family Law section of the American Bar Association. In an effort to assist us in ascertaining if any data substantiates the notion that divorce leads to antisocial behavior, researchers with the OJJDP also contacted additional sources. We found no studies isolating and documenting the influence of divorce on children in regard to social, educational, and/or emotional behavior and achievement. The OJJDP provided a survey of juveniles and young adults in long-term, state-operated juvenile institutions, conducted in 1987. Results from the survey indicated that less than a third of the youth lived with both parents while they were growing up. The study did not, however, assess the number of those households that were single-parent households as a result of divorce. The following were among the survey findings:

About 70 percent did not live with both parents while they were growing up. More than half (54%) reported having primarily lived in a single-parent family.

Approximately 4 of 5 juveniles (82.2%) reported previously having been on probation, and 3 of 5 (58.5%) reported having been committed to a correctional institution at least once in the past.

Almost 43 % of the juveniles had been arrested more than 5 times, with over 20% of them having been arrested more than 10 times in the past.¹⁰

On the other hand, according to OJJDP researchers, the majority of juveniles that come into contact with the court system do so only once. Furthermore, they note that since approximately 1980, the percentage of the overall population growing up in single-parent families is very similar to that of the offender population. Nevertheless, undoubtedly, a correlation exists between the dynamic of poverty, substance abuse, dysfunctional family structure and domestic abuse, and contact with the justice system.¹¹

I hope you find this information useful. Please do not hesitate to contact us if you have questions or need additional information.

⁹ "Temporary Assistance for Needy Families (TANF)—Two Parent Families as Percentage of Total Families on Welfare by State," Administration for Children and Families, U.S. Department of Health and Human Services, September 1997, http://www.adf.dhhs.gov/news/may97_2p.htm (June 12, 1998).

¹⁰ Allen J. Beck, Susan A. Kline, and Lawrence A. Greenfeld, "Survey of Youth in Custody, 1987," *Special Report*, Bureau of Justice Statistics, September 1988.

¹¹ Eric Peterson, Office of Juvenile Justice and Delinquency Prevention, U.S. Justice Department, referring to results of studies conducted in 1976 and 1991.

LIST OF ATTACHMENTS

Attachment A – Patricia Young, “Divorce in Alaska,” Alaska Legislative Research Agency, 91.292, November 12, 1991.

Attachment B – “Mothers Who Receive AFDC Payments—Fertility and *Statistical Brief*, Bureau of the Census, March 1995, <http://www.census.gov/socdemo/www/sb2-95.html> (June 13, 1998).

Attachment A

**Patricia Young, "Divorce in Alaska," Alaska Legislative
Research Agency, 91.292, November 12, 1991.**

Alaska State Legislature

Legislative Research Agency



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November 12, 1991

MEMORANDUM

TO:

FROM: Patricia Young
Legislative Analyst

RE: Divorce in Alaska
Research Request 91.292

You asked this agency to provide information and statistics on divorce. You were particularly interested in knowing the Alaska divorce rate, the length of time typically needed to obtain a divorce when custody and/or property issues must be resolved, and the number of divorced couples who remarry each other.

The most common measures of divorce are the number of divorces, the crude divorce rate (the proportion of divorce per 1,000 of the entire population), and the divorce rate per 1,000 marriages. This rate is typically based on the number of married women aged 15 and over.¹ Such measures show recognizable and persistent patterns across the country. Nevertheless, divorce, like all human behavior, is more easily counted than accounted for.

Divorce Rates--Demographics

Data from 1988 have been used throughout this memorandum because later data are still considered provisional. Divorce rates are based on numbers of divorces (including absolute divorces, annulments, and dissolutions of marriage) reported by states to the National Center for Health Statistics (NCHS) and population estimates as of July 1, 1988, by the U.S. Bureau of Census.

According to the National Center for Health Statistics' final data on 1988 divorce statistics, the crude divorce rate for the U.S. in 1988 was 4.7 (i.e., 4.7 divorces per 1,000 population).² By comparison, Alaska ranked eighth in the nation, with a crude divorce rate of 6.4.³ Alaska's rate of 6.4 was derived from the calculation of 3,342 divorces within a population of 524,000.

¹This rate can be calculated by the number of married women or men aged 15 and above; however, the resulting rates will differ slightly. Marital status is self-reported and not verified. Because individuals define their marital status differently, the number of married women and men do not match.

²Divorces/total population x 1,000 = crude divorce rate.

³National Center for Health Statistics, "Advance Report of Final Divorce Statistics, 1988," *Monthly Vital Statistics Report*, May 21, 1991.

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More recent divorce and population data, supplied by the Alaska Bureau of Vital Statistics and the Alaska Department of Labor's *Alaska Population Overview: 1988 and Provisional 1989 Estimates*, 1990, show the number of divorces for that year at between 3,299 and 3,370 and the population at 531,000. The Alaska divorce rate based on these figures would be 6.2 or 6.3 per 1,000 population. Using either figure, however, Alaska's ranking among states would remain unchanged.⁴

Based on NCHS data, the U.S. divorce rate, which peaked at 5.3 per 1,000 population in the late 1970s and early 1980s, generally declined through the 1980s to 4.7 in 1988, a drop of 0.6 divorces per 1,000 population, or approximately 11 percent. The decline was more significant in Alaska. From 8.7 in 1978 (the recession following the pipeline construction boom) to 6.4 in 1988, the Alaska divorce rate dropped by approximately 2.3 divorces per 1,000 population, or 26 percent. (Using state data, the drop would be 2.4 divorces per 1,000 population, or approximately 28 percent.) Provisional data from NCHS show the U.S. rates for 1989 and 1990 holding at 4.7 but the Alaska rate dropping to 6.3 in 1989 and 5.5 in 1990. If these rates prove accurate, Alaska's rank among states for 1990 will be between 12th and 18th.⁵

Another way of measuring divorce is to compare the number of divorces to the total number of marriages within the population. The 1988 U.S. rate of divorce among married women at or above 15 years of age was 20.7 per 1,000. Thus, approximately 2 percent of the married couples in the U.S. divorced in 1988. Alaska's divorce rate per 1,000 married women 15 years and over for the same year was approximately 29.8.⁶ In other words, approximately 3 percent of Alaska's married couples divorced in 1988. Provisional data for 1989 and 1990 suggest that this rate is also declining. The 1990 Alaska divorce rate is currently estimated to be 26.3 per 1,000 married women (based on 2,921 divorces among 110,862 married women).

Although helpful for broad comparisons, these rates are less meaningful than divorce rates by age, which show the number of divorces per 1,000 married women (or men) of a particular age group. The following table shows 1988 divorce

⁴Unless specifically noted otherwise, subsequent calculations for Alaska divorce in 1988 will be based on 3,342--the number of 1988 Alaska divorces reported to NCHS--and 531,000--the Alaska Department of Labor's 1988 population count.

⁵National Center for Health Statistics, "Annual Summary of Births, Marriages, Divorces, and Deaths: United States, 1990," *Monthly Vital Statistics Report*, August 28, 1991. Based on provisional data, six states and the District of Columbia have 1990 divorce rates of 5.5 per 1,000 population. Because population figures are not listed, these states cannot be precisely ranked.

⁶Divorces/married women x 1,000 = rate of divorce for married couples, or 3,342/112,236 x 1,000 = 29.77.

rates by age for men and women in the divorce registration area (DRA)--those 31 states and the District of Columbia which report detailed data to the NCHS. The DRA accounted for 49 percent of all divorces in 1988.

TABLE 1
DIVORCE RATES BY AGE, 1988; DIVORCE REGISTRATION AREA

	Men	Women
All ages	18.9	18.5
15-19	37.5	56.3
20-24	55.9	46.3
25-29	38.9	35.6
30-34	30.2	26.7
35-39	26.1	22.3
40-44	21.3	19.9
45-49	17.0	13.0
50-54	11.4	7.8
55-59	7.0	4.7
60-64	4.5	2.8
65+	1.9	1.5

Source: NCHS, "Advance Report of Final Divorce Statistics, 1988," Table 5.

Unfortunately, divorce rates by age are not generally available for individual states, including Alaska.⁷ Barbara Wilson, demographer, Natality, Marriage, and Divorce, National Center for Health Statistics, notes that, nevertheless, the following patterns are persistent and recognizable across the country.

- Divorce occurs with the highest frequency among men between the ages of 20 and 24 and among women between the ages of 15 and 19.
- Divorce rates are characteristically high among men between the ages of 25 and 39 and women between the ages of 20 and 39. The majority of divorces take place among these same age groups.
- Divorce rates drop sharply with age.

Although we are unable to compare specific divorce rates by age, the table below shows the percent distribution of 1988 divorces by age of husband and

⁷Divorce rates by age are calculated by dividing the total number of divorces among a given age group by the number of married women (or men) in that age group and multiplying by 1,000. Because the number of married men and women within each age group in Alaska is unavailable, we cannot compare our rates by age to the DRA rates.

wife at the time of decree for the divorce registration area and for Alaska.⁸ As noted above, the majority of divorces occur among men between the ages of 25 and 39 (58 percent for the DRA; 59 percent for Alaska) and women between the ages of 20 and 39 (73 percent for the DRA; 78 percent for Alaska).

TABLE 2
PERCENT DISTRIBUTION OF DIVORCE BY AGE: DRA AND ALASKA

	Men		Women	
	DRA	Alaska	DRA	Alaska
15-19	0.4	0.3	1.7	1.9
20-24	8.7	11.1	14.4	16.6
25-29	19.8	20.8	22.6	23.2
30-34	20.8	19.1	20.4	21.4
35-39	17.2	19.0	15.8	16.8
40-44	13.3	13.3	11.4	10.5
45-49	8.4	7.8	6.5	5.6
50-54	4.9	4.6	3.3	2.2
55-59	2.9	2.0	1.8	0.8
60-64	1.8	(60-69) 1.7	1.1	(60-69) 0.8
65+	1.7	(70+) 0.2	1.0	(70+) 0.2
all ages	99.9	99.9	100.0	100.0

(Percentages may not add to 100 due to rounding.)

Source: NCHS, "Advance Report of Final Divorce Statistics, 1988," Table 5 and Alaska Division of Vital Statistics.

Alaska has a higher percentage of divorce among both men and women through age 39 than does the DRA. This means that in Alaska, a higher percentage of divorce occurs among age groups with characteristically high divorce rates, and a lower percentage of divorce occurs among age groups with characteristically low rates. To illustrate how this affects an overall divorce rate, consider the following. Given that individuals between the ages of 25 and 39 divorce at the rate of approximately 30 per 1,000 married women aged 15 and above, if a state has 100,000 such married women and 33 percent of them are within the high divorce rate ages (i.e., 33,000), then 990 divorces will occur in that age group. If, however, only 25 percent of the married women are within that age group (i.e., 25,000), then only 750 divorces will occur in that age group.

Age is the primary demographic characteristic that influences overall divorce rates. Migration is another important factor. Both are discussed below.

⁸Percent distribution of divorce in Alaska was calculated from Division of Vital Statistics' data showing the total number of divorces in 1988 by age group (with a total of 3,297 divorces for men and 3,298 for women).

Alaska Age Characteristics

The following table shows the percent distribution of population by age for the U.S. and for Alaska. As you will see, a relatively large proportion of Alaska's population is between the ages of 20 and 39 and a relatively small proportion is over the age of 40. Alaska has a higher percentage of its population within each age bracket (except 15-19) through age 44 than does the U.S. as a whole, and Alaska has a lower percentage of its population within each age bracket after age 50.

TABLE 3
PERCENT DISTRIBUTION OF POPULATION BY AGE: U.S. AND ALASKA

	U.S.	Alaska
0-14	21.6	26.1
15-19	7.4	7.1
20-24	7.9	8.3
25-29	8.9	10.9
30-34	8.9	11.6
35-39	7.8	10.2
40-44	6.6	7.4
45-49	5.3	5.3
50-54	4.5	3.8
55-59	4.4	3.0
60-64	4.4	2.4
65+	12.3	3.6

all ages 99.7 100.0
(Percentages may not add to 100 due to rounding.)

Source: Based on U.S. Bureau of the Census 1988 figures reported in *Statistical Abstract of the United States, 1990*, 110th ed., p. 12 and Alaska Department of Labor, *Alaska Population Overview: 1988 and Provisional 1989 Estimates*, p. 31.

With the exception of one state, Alaska has the lowest median age.⁹ In Alaska, 26 percent of the population is under 15 years of age, compared to 22 percent nationally; 48 percent is between 15 and 39 years of age, compared to 41 percent nationally; only 20 percent is 40 or above, compared to 37 percent nationally. In Alaska, only 4 percent is over 65, compared to 12 percent nationally.

Alaska may have substantially the same divorce rates by age as the nation as a whole, but because a larger proportion of the population is within high divorce rate age groups, and a smaller proportion of the population is within

⁹*States in Profile: The State Policy Reference Book 1990*, 2nd edition (Alexandria, Virginia: Brizius & Foster and State Policy Research, Inc., 1990), Table A-6.

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low divorce rate age groups, we naturally have a higher overall divorce rate. Furthermore, Alaska normally has one of the highest levels of in, out, and gross migration--largely a phenomenon of adults within the highest divorce rate age groups. Of particular note in this regard is the fact that divorce data are compiled by state of occurrence, not residence.

Alaska Migration Characteristics

According to the Alaska Department of Labor's *Alaska Population Overview: 1988 & Provisional 1989 Estimates*, during the early 1980s, Alaska was the most rapidly growing state in the union. Growth peaked in 1983 with construction and infrastructure development brought on by increased oil revenue. Since that time, the pace of growth has declined, but in almost any year at least ten percent of the population leaves and is replaced (p. 9). Migration includes the rotation of military personnel in and out of the state (estimated to account for about 20 percent of the migration flow each year). This high migration rate in part reflects--as does the size of the nontourist, nonresident population--economic opportunity in Alaska relative to that in other states. Migration is particularly high for individuals between the ages of 18 and 35, many of whom are presumed to bring few dependents with them (p. 26).

Because individuals who migrate tend to be within ages with typically high divorce rates under any circumstance, migration significantly affects divorce rates. Moving is generally considered a highly stressful event. Financial need, the legendary--and therefore anticipated, if not realized--inclemency of physical conditions and stress of being a newcomer to Alaska, and long separations undoubtedly exacerbate family problems and accelerate disintegration.

Unfortunately, length of domicile within the state is not collected with divorce records, and the military claims to track no information on divorce among military personnel (in 1988 there were more than 24,000 military personnel in the state). We are unable, therefore, to ascertain the number of divorces among the nonresident population, the military, or other individuals who tend to migrate.¹⁰ According to a table supplied by the NCHS, however, only about 72 percent of Alaska's divorces in 1988, occurred between "resident" spouses, i.e., both spouses resided within the state.

¹⁰According to Betty Mahoney, chief of the Survey, Market and Analysis Division of the U.S. Department of Defense Manpower Data Center, no information on divorce among military personnel is known, but long separation and stressful conditions unquestionably increase the likelihood of divorce.

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Migration in and out of Alaska is largely a function of economic opportunity, but in some cases, individuals migrate for the purpose of divorce.¹¹ Given Nevada's relatively lenient divorce laws and high crude divorce rate (13.2 divorces per 1,000 population), it is reasonable to assume that a Nevada divorce is an attractive alternative to residents of states where divorces may take years due to long residency requirements, long periods of living separate and apart as grounds for divorce, and highly congested courts. In addition to the fact that a high proportion of the Nevada population falls within characteristically high divorce rate ages, Nevada does not particularly discourage migratory marriage and divorce as a matter of public policy. Instead, such events generate state tax revenue.

Using demographic patterns, one could predict that our divorce rate will drop as the state population grows older (Alaska has a high rate of increase in the older population) and that the nationwide trend to postpone marriage will also tend to reduce overall divorce rates. The "boom-bust" economy, however, tends to inflate divorce rates, as would increased numbers of marriages among teenagers (because the divorce rate among that age group is characteristically so high).

Additional Factors Which Influence Divorce Rates

Age and migration characteristics combine with peculiarities of Alaska's divorce law--including convenient procedures and lenient grounds, residency requirements and waiting periods--and relatively uncongested courts to contribute to the state's relatively high overall divorce rate. Pertinent factors are briefly described below.

¹¹According to Harry D. Krause in *Family Law in a Nutshell*, 2nd edition, although periods of liberality have alternated with periods of difficulty, some form of divorce has always been possible. When ecclesiastical courts had jurisdiction over family matters, divorce "from bed and board" (like contemporary legal separation) freed parties from each other but did not allow them to remarry. Annulments, however, were relatively available. Jurisdiction subsequently fell to the secular courts, and full divorce with the right to remarry became available, but the courts maintained the church's view that divorce was a remedy available to an innocent party only. Thus began a long period of what was, for the most part, consent divorce involving perjury and collusion over the grounds of adultery or cruelty (pp. 276 - 281). The decline of the traditional fault-based system and the advent of unilateral no-fault divorce has occasioned the decline but not the demise of migratory divorce. "Comparison shopping" for more liberal divorce laws and conditions continues to be a contributing factor in the calculation of crude divorce rates.

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All states have implemented some form of no-fault divorce.¹² Alaska, like a few other states, also provides for a mutual consent divorce, or dissolution, when spouses agree on every issue. Parties are generally not represented by counsel and dissolutions typically proceed more quickly than in divorce proceedings. Uncharacteristically, in Alaska the dissolution process may be used even if children are involved. The dissolution process is often particularly attractive to financially or emotionally vulnerable individuals. For this reason, the Alaska legislature in 1990 enacted a provision which specifies that courts must give "heightened scrutiny" to dissolution agreements when one spouse is represented by counsel and one is not, when there is evidence of domestic violence during the marriage, when there are minor children of the marriage, or when there is a "patently inequitable division of the marital estate" [AS 25.24.220(h)]. The Alaska Supreme Court has further suggested that the legislature consider extending this provision to contested divorces.

Alaska is one of two states with no residency requirement. Twelve states require a one-year residency for the purpose of divorce (five of the twelve make that requirement only if the cause of the divorce occurred outside the state); half of all states require a six-month residency; six states require residency of three months; and seven--including Alaska--require two months or less.

As you may know, Alaska had a statutory one-year residency requirement for divorce until 1975 when it was declared unconstitutional. Since that time, the domicile (i.e., the physical presence with intent to remain) of one spouse has been deemed sufficient for divorce jurisdiction.¹³

¹²By undermining the more dependent partner's platform for negotiating status and consequences such as property, alimony, and child custody, no-fault divorce has occasioned increased economic hardship for--in the overwhelming majority of cases--divorced women and their children. According to a recent study by Ginny Fay and Emily Read for the Alaska Department of Revenue, *Child Support in Alaska: An Evaluation of the Effectiveness and Impact of Alaska's Child Support Guidelines*, (Alaska Women's Commission and University of Alaska, July 1991), in the majority of cases in which fathers have primary custody of children, their post-divorce per capita incomes remains relatively unchanged; non-custodial mothers' incomes nevertheless drop by 2 to 22 percent. When mothers have primary custody of children (approximately 72 percent of the cases studied), their family per capita incomes decline by 17 to 33 percent (depending primarily on the number of children involved) while fathers' incomes increase by 31 to 118 percent. These percentages are for instances in which child support obligations are paid. When average arrearages are considered, the mothers' incomes drop by 35 to 42 percent while the fathers' incomes rise by 45 to 192 percent. That such disparity can exist and women and children can be so inadequately protected clearly shows that, as a practical matter, no-fault divorce has serious shortcomings.

¹³*Perito v. Perito*, 756 P.2d 895 (Alaska 1988).

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Alaska is one of two states with a waiting period of 30-days. Although many states leave the imposition of conciliation periods to the discretion of the courts, others have made waiting periods between the time of service of process or filing of a petition for divorce and the hearing or trial mandatory, either by statute or rule. Twenty-seven states require waiting periods, ranging from 20 days to six months. In some cases waiting periods are lengthened if minor children are involved.

Family court caseloads and the length of the judicial process also affect divorce rates. Divorce may take years in states with highly congested courts. Although no-fault divorce has reduced the number of migratory divorces, the realities of court caseloads undoubtedly encourage the practice and, thus, impact state divorce rates. A recent study prepared by the Alaska Women's Commission and the University of Alaska for the Child Support Enforcement Division of the Department of Revenue reports that although it varies for different locations in the state, the average length of the judicial process involving child support and custody is approximately five months. The average for the dissolution process is approximately two months, while the average for the divorce process is approximately nine months.¹⁴

¹⁴Ginny Fay and Emily Read, *Child Support in Alaska: An Evaluation of the Effectiveness and Impact of Alaska's Child Support Guidelines*, (The Alaska Women's Commission and the University of Alaska, July 1991).

By state of occurrence, divorce rates are highest in the nation's western and southern regions. The following table shows 1988 divorce rankings and rates; residency requirements and mandatory waiting periods; and rank by population, median age, and net migration for western region states.¹⁵

TABLE 4
WESTERN REGION STATES--DIVORCE IN 1988

State	Div. Rank	Crude Div. Rate	Resd. Rqmt.	Mand. Wait Period	Pop. Rank	Median Age Rank	Net Migration
Nevada	1	13.2	6 weeks	20 days	41	26	1
Arizona	2	7.1	3 months	60 days	24	38	3
Wyoming	5	6.9	60 days	20 days	50	48	50
Alaska	8	6.4	none	30 days	49	49	5
Idaho	9	6.0	6 weeks	none	42	43	18
Colorado	11	5.7	90 days	90 days	26	39	13
Washington	12	5.7	none	90 days	18	22	12
New Mexico	14	5.6	6 months	none	37	44	15
Oregon	16	5.5	6 months	90 days	30	9	28
Montana	18	5.1	3 months	20 days	44	19	45
Utah	24	4.8	3 months	90 days	35	50	32
Hawaii	26	4.6	6 months	none	39	29	19
California	34	4.2	6 months	6 months	1	36	6

Sources: NCHS, "Advance Report of Final Divorce Statistics, 1988"; "Family Law in the Fifty States: An Overview," *Family Law Quarterly*, Winter 1990; *Shepard's Lawyer's Reference Manual* (1986, with 1988 amendments); U.S. Bureau of the Census, as reported in *Statistical Abstract of the United States, 1990*; *States in Profile: The State Policy Reference Book 1990*, 2nd edition; and *The State Policy Data Book, 1989*.

As you can see, the rates of divorce in the 13 western states are high (8 states within the top 15, 11 within the top 25), the numbers of residents are low (8 states within the bottom 15, 10 within the bottom 25), and the populations (as of July 1, 1989) are young (8 states within the bottom 15, 10 within the bottom 25). Although less consistent, net migration is also relatively high within western region states, with 7 of the 13 ranked in the top 15 and 8 ranked in the top 25. Information on relative court caseloads is unavailable, but it can be assumed that courts are less backlogged in states with smaller populations. Nine of the 13 western region states require residency of three months or less whereas most states require six months to one year; nine of the 13 also require waiting periods of three months or less.

¹⁵Net migration information comes from *The State Policy Data Book, 1989* (Alexandria, Virginia: Brizius & Foster and State Policy Research, Inc. 1989), Table A-11, which shows net migration from 1980 through 1988 as a percent of the 1980 population.

States with young resident populations, high migration rates, lenient residency requirements, and relatively low volume courts will have higher crude divorce rates. A high divorce rate is a complex phenomenon that does not lend itself to simple solutions. Waiting periods may be thought to compensate for relatively lenient residency requirements, and instituting longer waiting periods might appear to be a simple way to reduce divorce rates. Historically speaking, however--although serious family disfunction is notorious for prolonging relationships--nothing will deter people who truly wish to part.

Once a petition has been filed, the court may order interim custody and support; however, according to the study on child support in Alaska conducted by the Alaska Women's Commission and the University of Alaska, interim custody was ordered in under ten percent of all cases studied. Although interim child support orders should accompany interim custody orders, interim support was ordered in only 68 percent of those cases with custody orders.¹⁶ Furthermore, many people separate before filing for divorce, and although individuals are obligated by common law to support family members until a divorce is granted, in many cases support stops or seriously diminishes at separation. Given these conditions (and the problems inherent in no-fault divorce), lengthening the waiting period or requiring separation prior to full divorce would further contribute to the impoverishment of children in Alaska and an increase in the number of women and children on welfare. On the other hand, encouraging couples to marry more advisedly would perhaps not be inappropriate.

Number of Remarriages to the Same Partner

Because states do not regularly track information which would answer this or related questions about remarriage to the same spouse, ascertaining the number of couples who divorce in Alaska but remarry while outside Alaska, or the number of couples who marry and divorce outside but remarry in Alaska is not possible. Thus, although light may be shed on this question, a definitive answer to the question of how many couples remarry each other is not possible.

Attachment A was prepared by Anthony Zenk, research analyst with the Alaska Bureau of Vital Statistics. Mr. Zenk searched marriage files for repeat marriages within the state from 1982 through 1990 (Table 1).¹⁷ Mr. Zenk also compared divorce and marriage files to ascertain the number of couples who divorced and remarried in Alaska during that time (Table 2). Table 1 shows that during this nine-year period 235 marriage certificates were filed for couples remarrying spouses. This figure represents less than one percent (0.7) of the couples who divorced within the state within that time period. Table 2 shows that 318 couples, or approximately 1 percent (0.9) of those who divorced within the state during that time period, also remarried within the state during that time period. Because the numbers are duplicative if the couple married, divorced, and remarried within the state, data from the two searches were compared. Table 3 shows that 120 couples are represented in both

¹⁶Fay and Read, p. 27.

¹⁷Data relating to 1988 through 1990 are provisional.

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the previous tables. Thus, it appears that 433 couples engaged in some pattern of remarriage within the state during this time period. This figure represents approximately one percent (1.3) of those who divorced within the state during this time period.

I hope this information is useful. If you have questions or need further information, please call.

Attachment

MEMORANDUM**STATE OF ALASKA
HEALTH AND SOCIAL SERVICES****DATE:** 10/14/91**TO:** Patricia Young
State of Alaska
Legislative Research
Juneau, Alaska 99811-3100**FILE:** SR91107**FROM:** Anthony Zenk
Research Analyst III
Bureau of Vital Statistics
P.O. Box 110675
Juneau, Alaska 99811-0675**PHONE:** (907) 465-3038

Attached is updated re-marriage and divorce and re-marriage information. I apologize that this request took so much time to complete. I caught a bug and have been out of the office. Also, as I mentioned on the phone, after looking at the number of re-marriages for the same couple, using more current data, I noticed significant discrepancies in the number of re-marriages from the number that I reported earlier. I was very surprised to find this significant change and I can't totally explain why this discrepancy exists. However, several corrections to marriage dates were made since the old set of numbers were provided.

Below is revised data for your review. If you would like to go over this data I would be more than willing to sit down and explain how I arrived at these numbers. In so doing, we both would better understand the information and the limitations of using the data to make inferences about a vital event in Alaska.

Tables below are from the marriage and divorce certificate files at the Bureau. Data was taken from the most current statistical tapes that are on the mainframe. Data provided is by year of marriage.

Table 1

Re-marriages in Alaska, for the same couple, by year of marriage, 1982-1990, (selection and sort was by GDOB, BDOB, GBSTATE, BBSTATE).

1982	1983	1984	1985	1986	1987	1988	1989	1990
9	13	26	27	38	27	42	28	25

Table 2

Divorce and then marriage certificate filed in Alaska, for the same couple, data is by year of marriage, 1982-1990.

1982	1983	1984	1985	1986	1987	1988	1989	1990
18	36	41	29	44	37	50	31	32

Table 3

Matched marriage certificates, in both Table 1 and Table 2, above, which reflects the occurrence of a divorce, marriage, marriage, or a marriage, divorce, marriage, for the same couple.

1982	1983	1984	1985	1986	1987	1988	1989	1990
2	5	10	8	15	13	31	18	18

Again, if this data is not clear, please give me a call, so that we can review it together, soon.

Attachment B

**"Mothers Who Receive AFDC Payments Fertility and
Socioeconomic Characteristics," *Statistical Brief*,
Bureau of the Census, March 1995,
<http://www.census.gov/socdem/www/sb2-95.html>
(June 13, 1998).**

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Mothers Who Receive AFDC Payments — Fertility and Socioeconomic Characteristics

In summer 1993, the Nation had 36 million mothers 15 to 44 years old; 3.8 million of them (10 percent) were receiving AFDC (Aid to Families with Dependent Children) payments to help with the rearing of 9.7 million children. (An additional 0.5 million women over 45 years old and 0.3 million fathers living with their dependent children also received AFDC.)

This Brief examines fertility and socioeconomic characteristics of mothers in their child-bearing years (aged 15 to 44) who received AFDC and compares them to mothers of those ages who were not receiving payments. The statistics were collected in the Survey of Income and Program Participation (SIPP) between June and September 1993.



SB/95-2
Issued March 1995

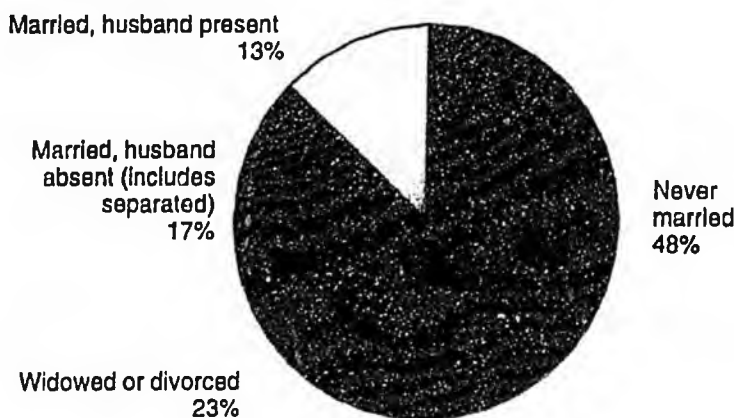
U.S. Department
of Commerce

Economics and Statistics
Administration

BUREAU OF THE CENSUS

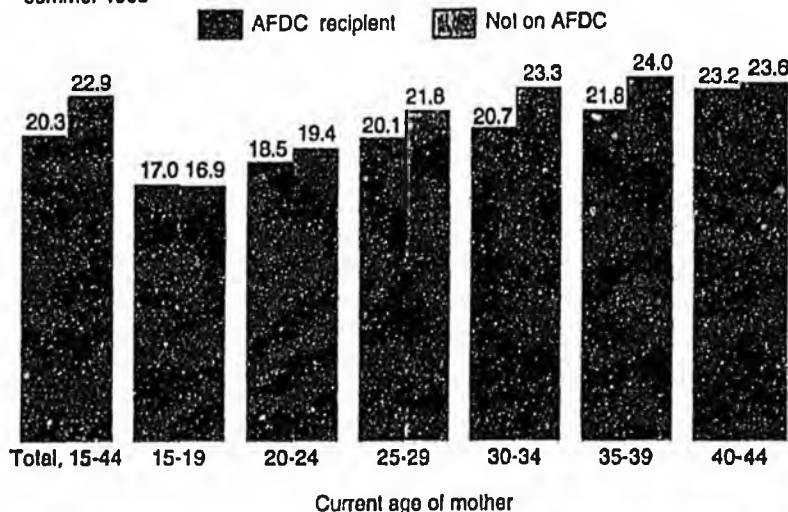
Nearly Half of AFDC Mothers Have Never Been Married

Percent distribution of mothers currently on AFDC,
by marital status: summer 1993



AFDC Mothers Were Younger When They Had Their First Child

Mean age at first birth among mothers, by current AFDC status and current age:
summer 1993



AFDC mothers are younger.

On average, mothers receiving AFDC payments were 30 years old; those not receiving them were 34. (See table, page 4.) AFDC mothers were nearly 3 times as likely as their non-AFDC counterparts to be under 25 years old (28 percent versus 10 percent).

AFDC mothers were also younger (an average of 20 years old) than non-AFDC mothers (23 years) when they gave birth for the first time. (See graph on page 1 and table.) In fact, 29 percent of mothers on AFDC had their first birth under age 18; the same was true for only 15 percent of non-AFDC mothers.

AFDC mothers have more children.

Mothers on AFDC had an average of 2.6 children each; non-AFDC mothers averaged 2.1. The difference varied by age of mother, ranging from about 0.5 children for women aged 20 to 24 to about 1.0 for those 35 years old and over. (See graph below and table.)

The chances of receiving AFDC payments differ by race and Hispanic origin, but not the nativity of the mother.

■ **Race:** About 1 in 4 Black mothers of childbearing ages (1.5 million) were AFDC recipients, higher than the 7 percent of corresponding White mothers (2.1 million). Despite these differences in reciprocity rates, Black AFDC mothers did not have significantly more children than their White counterparts.

■ **Hispanic origin:** Nearly 1 in 5 Hispanic mothers (784,000) aged 15 to 44 were on AFDC. By comparison, about 1 in 10 (3.0 million) non-Hispanic mothers were AFDC recipients. Although both Hispanic and non-Hispanic mothers on AFDC were an average of 20 years old when they had their first child, Hispanic women had almost 0.7 more children than non-Hispanic women. About 3 in 10 Hispanic mothers on AFDC were born outside the United States.

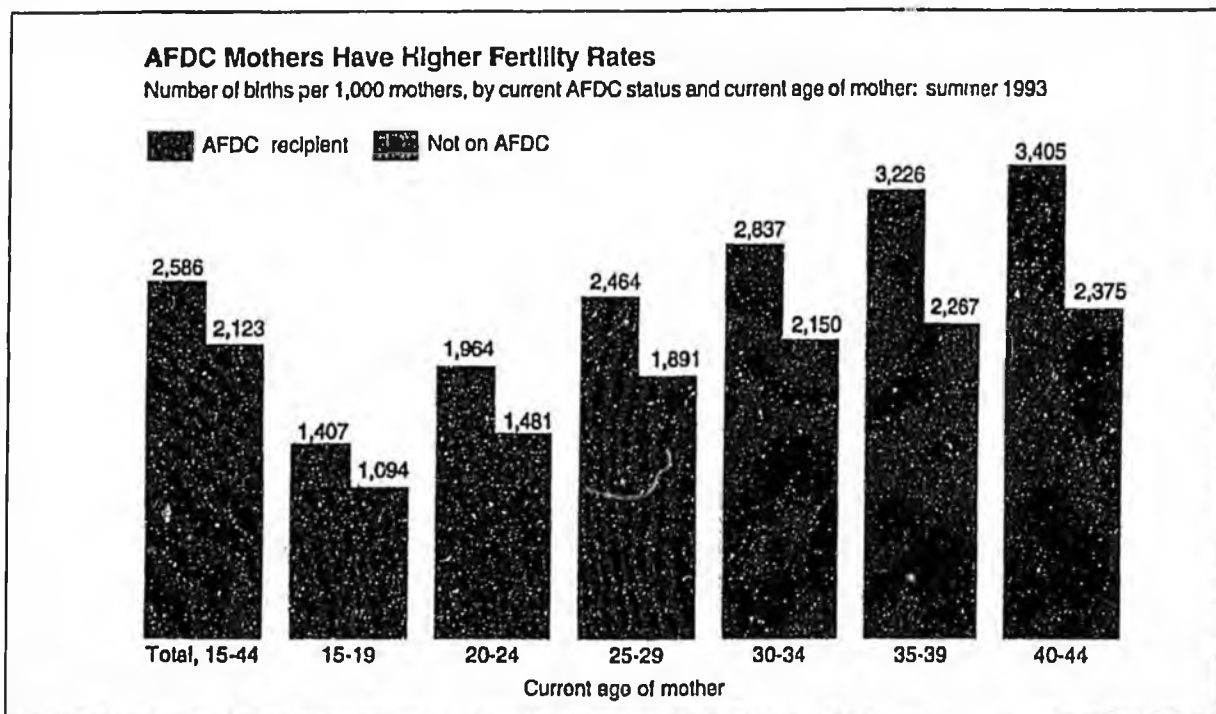
■ **Nativity:** About 9 percent (392,000) of the Nation's 4.2 million foreign-born mothers aged 15-44 were on AFDC, not statisti-

cally different from the 11 percent (3.4 million) of U.S.-born mothers who were AFDC recipients. Native- and foreign-born mothers on AFDC each had higher fertility rates than their counterparts who were not AFDC participants. Incidentally, about three-quarters of all foreign-born mothers on AFDC were not citizens of the United States.

Nearly one-half of AFDC mothers have never been married.

About 1.8 million of the Nation's 3.8 million mothers (48 percent) receiving AFDC payments had never been married. These never-married AFDC mothers had an average of 2.4 children each.

Another 30 percent of AFDC mothers were currently married. (See chart on the first page.) They had an average of 2.8 children each. Most of these women (58 percent, or 648,000) either were separated or had absent husbands. However, about half a million women in intact marriages needed AFDC payments to help make ends meet.



The remaining 23 percent of mothers receiving AFDC payments were either widowed or divorced.

Almost half of AFDC mothers do not have a high school diploma.

An additional 38 percent had completed high school (but did not attend college) and another 19 percent had attended college for at least 1 year.

About 1 in 7 AFDC mothers were currently enrolled in school; these women, on average, had 2.1 children each and were 28 years old. Only 11 percent of these students were teenagers; this suggests that a large proportion of mothers on AFDC who are enrolled in school are trying to resume their education while raising a family under severe economic circumstances.

Most AFDC mothers are jobless

Unlike mothers not getting AFDC payments, most AFDC mothers (87 percent) didn't have a job. On average, jobless AFDC mothers supported 2.6 children each, no more than AFDC mothers who had a job for all or part of the month preceding the survey.

.... and have very low family incomes.

Nearly three-quarters of mothers on AFDC lived in families with monthly incomes of less than \$1,000; these low-income mothers supported an average of 2.7 children each. In contrast, only 10 percent of non-AFDC mothers lived in families with such low incomes; these low-income non-AFDC mothers had an average of 2.2 children each. About 4 in every 5 AFDC mothers were below the poverty level.

Most AFDC mothers reside in central cities

AFDC mothers were more likely than non-AFDC mothers to live in metro areas (81 percent versus 77 percent). About 70 percent of

metropolitan AFDC mothers lived in central cities. In contrast, nearly 2 in 3 metropolitan non-AFDC mothers lived in the suburbs.

.... and 1 in 5 live in a Pacific Coast State.

The Pacific Division is comprised of five States: Washington, Oregon, California, Alaska, and Hawaii. It was home to 787,000 — or 21 percent — of the Nation's AFDC mothers. Most (625,000) lived in California. Though about one-quarter of Pacific Division AFDC mothers were born outside the United States, they had an average of only 2.6 children, not significantly different from that of AFDC mothers nationally.

Upcoming Briefs

Many mothers also participated in other programs designed to assist families needing economic support to provide basic nutrition for themselves and their children. About 5.3 million received food stamps; 2.4 million received support from

the Women, Infants, and Children (WIC) program. Additional Briefs about these mothers will be issued later this year.

Contacts:

AFDC mothers —
Amara Bachu (301-457-2449) or
Martin O'Connell (301-457-2416)

Statistical Briefs —
Robert Bernstein
301-457-1221

This Brief is one of a series that presents information of current policy interest. It may include data from businesses, households, or other sources. All statistics are subject to sampling variability, as well as survey design flaws, respondent classification errors, and data processing mistakes. The Census Bureau has taken steps to minimize errors, and analytical statements have been tested and meet statistical standards. However, because of methodological differences, use caution when comparing these data with data from other sources.

What is AFDC?

AFDC (Aid to Families with Dependent Children) is a program administered and funded by Federal and State governments to provide financial assistance to needy families. In an average State, more than half (55 percent) of the total costs of AFDC payments are funded by the Federal government. The States provide the balance of these payments, manage the program, and determine who receives benefits and how much they get.

In order to be eligible to receive AFDC payments, a family must have a dependent child who is —

- Under age 18 and living with them: (An 18 year-old who is expected to complete secondary school or its equivalent before turning 19 may also be covered.)
- Deprived of financial support from one of their parents due to the parent's death, continued absence, or incapacity. (This includes children in two-parent families where the principal family earner is unemployed.)
- A resident of the State they live in.
- A U.S. citizen or an alien who is permanently and lawfully residing in the United States.

AFDC Mothers Versus Non-AFDC Mothers

Mothers 15 to 44 years old, by AFDC status and selected fertility and socioeconomic characteristics: summer 1993

Characteristic	Receiving AFDC					Not receiving AFDC				
	Mothers		Mean age of mother in years ...			Mothers		Mean age of mother in years ...		
	Number (in thousands)	Percent	Births per 1,000 mothers	at time of survey	at first birth	Number (in thousands)	Percent	Births per 1,000 mothers	at time of survey	at first birth
Total	3,754	100.0	2,586	29.5	20.3	32,022	100.0	2,123	34.0	22.9
Age										
15 to 19 years	191	5.1	1,407	18.1	17.0	554	1.7	1,094	18.1	15.9
20 to 24 years	866	23.1	1,964	22.2	18.5	2,615	8.2	1,481	22.3	19.3
25 to 29 years	865	23.0	2,464	27.3	20.1	5,020	15.7	1,891	27.2	21.8
30 to 34 years	921	24.5	2,837	31.9	20.7	7,508	23.4	2,150	32.1	23.3
35 to 39 years	604	16.1	3,226	36.9	21.8	8,389	26.2	2,267	37.0	24.0
40 to 44 years	307	8.2	3,405	41.5	23.2	7,938	24.8	2,375	42.0	23.6
Race										
White	2,074	55.2	2,536	29.9	20.8	26,352	82.3	2,108	34.1	23.1
Black	1,471	39.2	2,694	29.0	19.5	4,258	13.3	2,165	33.4	20.9
Hispanic Origin										
Hispanic ¹	784	20.9	3,114	30.2	20.3	3,406	10.6	2,408	32.9	21.7
Not Hispanic	2,970	79.1	2,447	29.3	20.3	28,616	89.4	2,089	34.2	23.0
Marital Status										
Currently married	1,120	29.8	2,827	31.0	20.7	25,322	79.1	2,185	34.4	23.3
Married, husband present	472	12.6	2,929	31.1	20.6	23,827	74.4	2,175	34.5	23.4
Married, husband absent ²	648	17.3	2,753	30.9	20.8	1,495	4.7	2,352	33.7	21.3
Widowed or divorced	851	22.7	2,728	32.9	21.0	4,009	12.5	2,078	36.2	21.7
Never married	1,783	47.5	2,366	26.9	19.6	2,691	8.4	1,598	27.1	20.5
Educational Attainment										
Not a high school graduate	1,633	43.5	2,890	28.8	19.2	4,631	14.5	2,464	31.9	19.8
High school, 4 years	1,422	37.9	2,361	29.6	20.8	12,900	40.3	2,094	33.8	21.9
College: 1 or more years	698	18.6	2,333	30.7	21.6	14,490	45.3	2,040	34.9	24.8
Enrollment in School										
Enrolled in school	527	14.0	2,128	28.3	20.1	2,682	8.4	1,950	31.8	21.7
Not enrolled in school	3,226	85.9	2,361	29.7	20.3	29,340	91.6	2,138	34.2	23.0
Labor Force Status										
Worked all or some weeks	474	12.6	2,372	31.3	20.4	21,889	68.4	2,061	34.7	23.0
No job last month	3,280	87.4	2,617	29.2	20.2	10,133	31.6	2,255	32.5	22.6
Monthly Family Income³										
Less than \$500	1,351	36.1	2,574	29.7	20.3	889	2.8	2,045	31.2	21.0
\$500 to \$999	1,360	36.3	2,770	29.7	20.2	2,190	6.9	2,308	31.9	21.0
\$1,000 to \$1,499	479	12.8	2,431	29.8	20.5	3,159	10.0	2,153	32.3	21.5
\$1,500 and over	552	14.8	2,293	28.0	20.0	25,309	80.2	2,107	34.6	23.3
Poverty Level³										
Below poverty level	3,004	80.3	2,696	29.6	20.2	4,178	13.2	2,489	31.5	20.8
Above poverty level	737	19.7	2,135	29.0	20.5	27,368	86.8	2,068	34.5	23.2
Division										
New England	185	4.9	(B)	(B)	(B)	1,496	4.7	2,022	34.8	24.3
Mid Atlantic	542	14.4	2,689	29.9	20.4	4,388	13.7	2,023	34.2	23.7
East North Central	748	19.9	2,537	29.0	20.6	5,669	17.7	2,107	33.8	22.8
West North Central	222	5.9	3,027	29.1	19.5	2,363	7.4	2,168	34.2	23.7
South Atlantic	591	15.7	2,472	28.9	19.6	5,720	17.9	2,025	34.1	22.7
East South Central	191	5.1	(B)	(B)	(B)	2,006	6.3	2,026	34.0	21.7
West South Central	369	9.8	2,744	29.8	20.3	3,512	11.0	2,220	33.9	22.2
Mountain	119	3.2	(B)	(B)	(B)	1,634	5.1	2,400	34.2	22.8
Pacific	787	21.0	2,596	30.2	20.9	5,234	16.3	2,223	33.7	23.0
Metropolitan Residence										
Metropolitan	3,039	81.0	2,595	29.4	20.3	24,519	76.6	2,101	34.1	23.1
In central cities	2,117	56.4	2,697	29.7	20.0	8,688	27.1	2,125	33.5	22.5
Suburbs	922	24.6	2,362	28.8	20.8	15,830	49.4	2,088	34.4	23.5
Nonmetropolitan	715	19.0	2,547	28.8	20.2	7,503	23.4	2,194	33.8	22.0
Place of Birth										
Native born	3,362	89.6	2,536	29.2	20.0	28,171	88.0	2,095	34.0	22.8
Foreign born	392	10.4	3,014	31.6	22.4	3,850	12.0	2,328	33.9	23.1

(B) Base too small to show derived measure. ¹Persons of Hispanic origin may be of any race. ²Includes separated women. ³Excludes those who did not report income.