

HB

385

HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: January 20, 2004

FURTHER REFERRALS:

Date of Committee Action: March 1, 2004

The JUDICIARY Committee considered:

HB 385

HOUSE BILL NO. 385

AWARDING CHILD CUSTODY

"An Act relating to awarding child custody; and providing for an effective date."

Recommends it be replaced with HCS or CS for HB 385 (JUD)
 For Senate Bills with new title: Technical Title New Title: HCR _____ Same Title New Title

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

List of Abbrev for Depts.:
 ADM
 CED
 COR
 CRT
 EED
 DEC
 DFG
 GOV
 HSS
 LEG
 LAW
 LWF
 MVA
 DNR
 DPS
 REV
 DOT
 UA

<u>NEW FISCAL NOTES</u>				
*Assigned by Chief Clerk's Office				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero
<u>CRT</u>				✓

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

<u>Signing with recommendations</u>	Printed Last Name	DP	DNP	NR	AM
<u>McBune</u>	Ogg	✓			
<u>Gruentig</u>	Gruentig	/			
<u>SAMUEL'S</u>	SAMUEL'S	/			
<u>HOLM</u>	HOLM	✓			
<u>Case</u>	Case	/			
Chair: <u>McBune</u>	McBune	✓			
Chair:					

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB385-ACS-TC-2-25-04
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: _____
 Title Awarding Child Custody BRU Alaska Court System
 Component Trial Courts
 Sponsor Representative McGuire
 Requester _____ Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
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--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

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 385.

Prepared by: Doug Wooliver Administrative Attorney Phone 463-4750
 Division Alaska Court System Date/Time 2/25/04 4:33 PM
 Approved by: Stephanie Cole Administrative Director by Doug Wooliver Date 2/25/2004
 Agency Alaska Court System

ALASKA STATE LEGISLATURE

Rep. Lesil McGuire, Chair
Rep. Tom Anderson, Vice-Chair
Rep. Jim Holm
Rep. Dan Ogg
Rep. Ralph Samuels
Rep. Les Gara
Rep. Max Gruenberg



State Capitol, Room 120
Juneau, AK 99801-1182
(907) 465-4990
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House Judiciary Committee

Memorandum

To: Jean Mischel, Leg. Legal
From: Vanessa Tondini, Committee Aide
House Judiciary Committee
Date: March 2, 2004
Re: CS Request

Please create a final draft House Judiciary Committee Substitute for work order # 23-LS1273\Q, HB 385, incorporating the attached two amendments. The bill was passed out of committee yesterday and we're hoping to get the CS back as soon as possible for a hearing on the House floor. In addition, please create a sectional analysis based on the Judiciary CS that you will be creating.

If you have any questions, please call me at 4990. Thank you very much!

The information attached to this memo is **CONFIDENTIAL** an/or privileged. It is intended to be reviewed initially by only the individual named above. If the reader of this Memorandum is not the intended recipient or a representative of the intended recipient, you are hereby notified that any review, dissemination, or copying of the information contained herein is prohibited. If you have received this in error, please immediately notify the sender by telephone and return this to the sender at the above address.

CS/HB 385 (version
"Q")
Amendment #1

by Rep.
Gruenberg

PASSED

P.4

L. 7+8

Delete "only"

Delete "clear + convincing"

Insert "a
preponderance of the"

CSHB 385 (version)
Amendment #2 - by Rep. Gruenberg - PASSED
~~WITHDRAWN~~
Re-offered.

P.5, L.2.

After "parent"

Insert "Unless the court finds that the effects of the domestic violence are so severe that they render the parent unable to safely parent the child."

CSTHB 385 (version 8)
Amendment #3 - WITHDRAWN

P 5, Line 2:

Delete "a"
Insert "the sole"

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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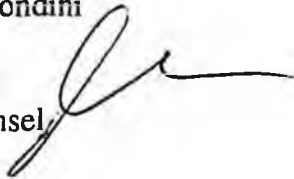
State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

March 2, 2004

SUBJECT: Child Custody (CSHB 385(JUD))
(Work Order No. 23-LS1273\W)

TO: Representative McGuire
Attn: Vanessa Tondini

FROM: Jean M. Mischel
Legislative Counsel 

You have requested a sectional summary of the above-described bill.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

Section 1. Adds a cross-reference to the presumption established in sec. 5 of the bill for child custody purposes.

Section 2. Adds a cross-reference to the presumption established in sec. 5 of the bill and to the best interest of the child factors in sec. 4 of the bill for temporary custody determinations.

Section 3. Amends the factors for consideration in awarding shared child custody to include circumstances under which a court may not consider a parent's willingness and ability to facilitate a close relationship with the other parent. Those circumstances include situations of sexual assault and domestic violence.

Section 4. Amends the factors for consideration in awarding child custody to include circumstances under which a court may not consider a parent's willingness and ability to facilitate a close relationship with the other parent. Those circumstances include situations of sexual assault and domestic violence.

Section 5. Adds a rebuttable presumption against awarding sole or joint custody to a parent who has committed an act of domestic violence. Also adds provision for overcoming this presumption and for other findings of the court pertaining to domestic violence and custody and visitation orders. Also provides for considerations pertaining to

Representative McGuire

March 2, 2004

Page 2

an abused parent and child custody awards.

Section 6. Provides an effective date for the Act.

JMM:mdr

04-082.mdr

Enclosure

Alaska State Legislature

Session:
State Capitol
Juneau, AK 99801
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Interim:
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Representative Lesil McGuire
Chair, Judiciary Committee

SPONSOR STATEMENT

HB 385

"An Act relating to awarding child custody; and providing for an effective date."

Domestic violence is often a significant factor in divorce and child custody proceedings. According to the Administration for Children and Families, U.S. Department of Health and Human Services, domestic violence is the leading cause of injury to women in the United States. The American Psychological Association, the American Medical Association, the American Bar Association Center on Children and the Law, and numerous other organizations have recommended that if domestic violence has occurred in a relationship, the offender should not receive sole or joint legal or physical custody of children. A unanimous Joint Resolution of Congress, H. Con. Res. 172, adopted in 1990, urged states to adopt the statutory presumption "that it is detrimental to the child to be placed in the custody of the abusive spouse."

When children witness violence in the home, they have been found to suffer many of the symptoms that are experienced by children who are directly abused. Children exposed to domestic violence face increased risks that they will be killed or injured by the violence, that their emotional, physical and mental development will be adversely affected, and that they will be neglected or abused. We commonly encounter the mistaken assumption among professionals, including judges and custody evaluators, that children are in less danger from a batterer once a couple is no longer living together, when the reality is often the opposite.

By the end of the 2002 legislative session, 23 states had adopted the approach of the Model Code of the Family Violence Project of the National Council of Juvenile and Family Court Judges. This model state statute clearly states that there should be a rebuttable presumption that it is detrimental to the child and not in the best interest of the child to be placed in sole custody, joint legal custody, or joint physical custody with the perpetrator of family violence. It emphasizes that the safety and well-being of the child and the parent who is the victim must be primary.

Unfortunately, courts sometimes apply psychological pressures that keep women tied to their abusers. "Friendly parent" statutes ask courts to assess each parent's willingness to co-parent when making custody decisions. Despite their reasonable reluctance to co-parent, battered women may end up being labeled "uncooperative," with an increased risk of losing their children to theirs and their children's abuser. This perpetuates family violence from one generation to the next at great social cost to Alaskan society. Amazingly, "Studies show batterers are able to convince authorities that the victim is unfit or undeserving of sole custody in approximately 70% of challenged cases." (American Judges Association). Friendly parent statutes are often the tool used by abusive parents against the protective parent.

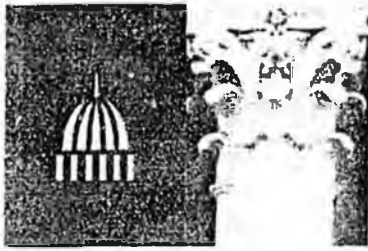
HB 385 serves to better protect children from the effects of domestic violence by achieving consistency between Alaska child protection statutes and child custody statutes. This bill incorporates the sense of the legislature in AS 47.10.011 (6), (7) & (8) and 1999's House Joint Resolution No. 36 that the effects of witnessing domestic violence is harmful to children, that parenting by a perpetrator of domestic violence places a child at a substantially higher risk of being directly abused, and that the sexual molestation of a child by their parents makes them unfit.

The bill also modifies our statutes "friendly parent" provision that inadvertently harms children, particularly in circumstances involving domestic violence, child abuse/sexual abuse and neglect. Alaska is in the minority of states that still have a "friendly parent" provision that inadvertently harms children, particularly in circumstances involving domestic violence, child abuse/sexual abuse and neglect. Also, while Alaska's child custody statutes specifically mention domestic violence as a factor to be considered, they allow wide discretion and do not give it special weight. It is simply one additional factor when considering the best interests of the child.

Effects of this violence on children have high costs in human lives and to our communities. Research has consistently shown that children who witness violence suffer a wide range of short and long-term emotional and behavioral problems that often follow them for life. These children are at higher risk for psychosomatic disorders, stuttering, anxiety and fears, sleep disruption, excessive crying, problems in school, drug and alcohol abuse, sexual acting out, running away, and even suicide. Boys who witness their fathers' abuse of their mothers or siblings are more likely to inflict severe violence as adults. Data suggest that girls who witness abuse may tolerate abuse as adults more than girls who do not.

Alaska ranks in the top 5 states in the nation for per capita rates of domestic violence. The rate of Alaskan women being killed by a partner is 1.5 times the national average. Alaska has 6 times the national average of reported child sexual assault. In 3 out of 4 reported cases, the victim knew the offender, the most commonly reported type of sexual abuse is a father who commits incest with his daughter--usually the eldest daughter. (AK Dept. of Health & Social Services)

HB 385 sends a clear message that we wish to halt the perpetuation of family violence from generation to generation and that perpetrators will be held accountable.



AUG./SEPT. 2003

National Conference of State Legislatures

LEGISBRIEF

BRIEFING PAPERS ON THE IMPORTANT ISSUES OF THE DAY

VOL. 11, No. 36

When Children Witness Domestic Violence

By Stephanie Walton

Children exposed to violence at home also are more likely to become perpetrators or victims of domestic abuse as adults.

In homes where one partner abuses the other, children also are more likely to be abused. Hundreds of studies have documented the negative effects for children exposed to violence. Even when they aren't physically abused, they can show symptoms of trauma, which include:

- Increased aggression.
- Depression, anxiety and fear.
- Lower scores on verbal, motor and cognitive skills tests.
- Physical symptoms, including headaches, stomach aches, ulcers and asthma.

Children exposed to violence at home also are more likely to become perpetrators or victims of domestic abuse as adults, according to the American Psychological Association.

State Action

At least 12 states allow or mandate increased penalties for a perpetrator if a child witnessed the domestic violence. Most of these laws allow courts to increase sentences, while a few require stiffer sentences. Oklahoma law, for example, requires the minimum penalty for domestic violence to be increased to a six-month sentence if a child is present. There is a one-year sentence for a second or subsequent violation in the presence of a child. In Oregon, a fourth degree domestic violence assault is raised from a Class A misdemeanor to a Class C felony if a child is present. Delaware, Georgia and Utah can charge defendants with a separate crime of child abuse when children witness a violent episode.



In most states, these laws are only a few years old, but their effects are already apparent. In Multnomah County, Ore., felony domestic violence charges rose nearly 150 percent after the stricter sentencing law was passed. Prosecutors in Georgia and Utah report they use the child abuse charges as additional "bargaining chips," leading to more convictions. Law enforcement officers in these states also are more likely to note in their crime reports whether children were present during a domestic violence incident. In addition, prosecutors are more likely to report the affected families to child welfare agencies, even though the laws don't require it.

Advantages and Disadvantages. Proponents of stiffer laws argue that criminal laws for violence in the presence of a child increase batterer accountability. In some states children become eligible for crime victim services and compensation. The laws also increase public awareness of the harm on children. Also, prosecutors have another way to pursue charges if the adult victim doesn't cooperate. Finally, a study commissioned by the National Institute of Justice suggests that such laws educate prosecutors, police and the courts about the harmful effects on children.

Opponents argue that prosecutors who use these laws as bargaining chips trivialize the real damage inflicted on children. They also note that since prosecutors are more likely to report families to child welfare agencies in states with these laws, workers need to be trained to understand the dynamics of family violence. Without training, they may hold victims responsible for exposing children to violence and remove them from the family. This can further traumatize both the children and the victim parent—although in some instances, the removal may be warranted. Children also may be required to testify against the batterer in court. This can frighten and confuse them, especially if the batterer is a parent. Finally, opponents say these laws increase the burden on the criminal justice system when state budgets already are severely strained.

Other Approaches. Some states have taken different approaches. Alaska law includes witnessing domestic violence as civil child maltreatment, and authorizes child welfare intervention. Advocates claim, however, that, in some cases, removing children penalizes the victim for the perpetrator's behavior. She may be held responsible for failing to protect her children. Child welfare agencies are removing children from homes even under more general "failure to protect" regulations.

Other states, including Alaska, focus efforts at the local level, providing cross-training for domestic violence workers, child welfare agencies, police officers, prosecutors, judges, probation officers and others who need to understand how witnessing domestic violence affects children. Localities in Colorado, Massachusetts and a number of other states place domestic violence advocates in child welfare offices to increase communication and understanding between the two systems.

It will take time to understand how states can best respond to help domestic violence victims and their children, but everyone agrees on the ultimate goal: keeping families safe.

Selected References

- Christian, Steve. "Children's Exposure to Domestic Violence: Is It Child Abuse?" *State Legislative Report* (National Conference of State Legislatures) 27, no. 1 (January 2002).
- Schechter, Susan, and Jeffrey L. Edleson. *Effective Interventions in Domestic Violence & Child Maltreatment Cases: Guidelines for Policy and Practice*. Reno, Nev: National Council of Juvenile and Family Court Judges, 1999.
- Whitcomb, Debra. "Prosecutors, Kids, and Domestic Violence Cases." *NIJ Journal*, no. 248 (2002).

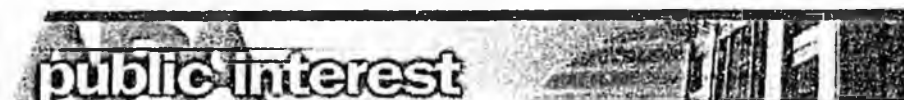
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Proponents of stiffer laws argue that they increase batterer accountability.

Opponents argue that prosecutors may hold victims responsible for exposing children to violence.

Other states focus efforts at the local level.



Issues and Dilemmas in Family Violence: Issue 5

American Psychological Association Presidential Task Force on Violence And The Family

WHEN PARENTS SEPARATE AFTER AN ABUSIVE RELATIONSHIP, SHOULDN'T FATHERS HAVE AS MUCH RIGHT AS MOTHERS TO BE GRANTED PHYSICAL CUSTODY OF AND VISITATION RIGHTS WITH THEIR CHILDREN?

Tensions exist between children's need for contact with their father and their need to be protected from the physical, sexual and psychological abuse that is common in families where there has been other forms of violence such as woman abuse.

Although most people believe that fathers should have equal access to their children after the termination of a relationship between the parents, the equal-access option is based on the assumption that the fathers will act in their children's best interests. However, that is a naive assumption in situations where family violence has occurred.

Fathers who batter their children's mothers can be expected to use abusive power and control techniques to control the children, too. In many of these families, prior to separation, the men were not actively involved in the raising of their children. To gain control after the marital separation, the fathers fight for the right to be involved. Often children who have been exposed to violence in the family are frightened to confront their father's negative or abusive behavior, and mothers cannot protect them. Sometimes the father tries to alienate the child from the mother by using money and other enticements, negative comments, or restricted access to the telephone during visitation with him. Other times, fathers may threaten or actually kidnap the child to punish the mother for leaving, or to try to force her to return.

Most people, including the battered woman herself, believe that when a woman leaves a violent man, she will remain the primary caretaker of their children. Family courts, however, may not consider the history of woman abuse relevant in awarding custody. Recent studies suggest that an abusive man is more likely than a nonviolent father to seek sole physical custody of his children and may be just as likely (or even more likely) to be awarded custody as the mother. Often fathers win physical custody because men generally have greater financial resources and can continue the court battles with more legal assistance over a longer period of time.

Family courts frequently minimize the harmful impact of children's witnessing violence between their parents and sometimes are reluctant to believe mothers. If the court ignores the history of violence as the context for the mother's behavior in a custody evaluation, she may appear hostile, uncooperative, or mentally unstable. For example, she may refuse to disclose her address, or may resist unsupervised visitation, especially if she thinks her child is in danger. Psychological evaluators who minimize the importance of violence against the mother, or pathologize her responses to it, may accuse her of alienating the children from the father and may recommend giving the father custody in spite of his history of violence.

Some professionals assume that accusations of physical or sexual abuse of children that arise during divorce or custody disputes are likely to be false, but the empirical research to date shows no such increase in false reporting at that time. In many instances, children are frightened about being alone with a father they have seen use violence towards their mother or a father who has abused them. Sometimes children make it clear to the court that they wish to remain with the mother because they are afraid of the father, but their wishes are ignored.

Research indicates that high levels of continued conflict between separated and divorced parents hinders children's normal development. Some practitioners now believe that it may be better for children's development to restrict the father's access to them and avoid continued danger to both mothers and the children.



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Applied Research Forum

National Electronic Network on Violence Against Women

Child Custody and Visitation Decisions in Domestic Violence Cases : Legal Trends, Research Findings, and Recommendations

Daniel G. Saunders, Ph.D.
University of Michigan, School of Social Work

Publication Date: August 1998
Revision Date: October 1998

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Introduction

It may be hard to believe an abusive partner can ever make good on his threat to take the children away from his victim. After all, he has a history of violent behavior and she almost never does. Unfortunately, a surprising number of battered women lose custody of their children. The actual number is not known and offenders appear to be no more successful in gaining custody than non-offenders ([Liss & Stahlv, 1993](#)). However, violence against one parent by another is often considered in custody-determination proceedings ([Family Violence Project, 1995](#)). This document describes some of the legal and cultural trends surrounding custody and visitation decisions and the social science evidence supporting a need to consider domestic violence in these decisions.

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Legal Trends

Over the past 200 years, the bases for child custody decisions have changed considerably. The patriarchal doctrine of fathers' ownership of children gave way in the 1920's and 30's to little preference for one parent or the other obtaining custody. When given such broad discretion, judges tended to award custody to mothers, especially of young children. The mother-child bond during the early, "tender years" was considered essential for children's development. In the 1970's, "the best interests of the children" became the predominant guideline (Fine & Fine, 1994) and presumably was neutral regarding parental rights. Exposure to domestic violence was not originally included in the list of factors used to determine the child's best interest.

States recently came to recognize that domestic violence needs to be considered in custody decisions (Cahn, 1991 ; Hart, 1992 ; for a review of state laws see Family Violence Project, NCJFCJ, 1995 , and legislative updates for 1996 , 1997 , and 1998). While a growing number of states specifically mention domestic violence as a factor to be considered, most of them allow wide discretion and do not give it special weight. It is simply one additional factor when considering the best interests of the child. By the end of the 1997 legislative session, 13 states had adopted the Model Code of the Family Violence Project of the National Council of Juvenile and Family Court Judges (NCJFCJ, 1998). These statutes specify that there is a "rebuttable presumption that it is detrimental to the child and not in the best interest of the child to be placed in sole custody, joint legal custody, or joint physical custody with the perpetrator of family violence" (p. 33).

Statutes now address other concerns related to custody and the recent proliferation of legislation seems likely to continue. Statutes in some states now cover: the prevention of child abduction by the perpetrator through supervised visitation and similar safeguards (Girdner & Hoff, 1996 ; Hart, 1990), providing a defense against child abduction charges if battered women flee with their children, exempting battered women from mandated mediation (Girdner, 1996), protecting battered women from charges of "child abandonment" if they flee for safety without their children (Cahn, 1991), and allowing parents to check on the criminal charges against a divorce partner (Pennsylvania's Jen & Dave's law). Recent case law makes it easier for battered women to relocate far away from their abusers (Dunford-Jackson, in press). Unfortunately, courts may apply psychological pressures that keep women tied to their abusers. "Friendly parent" statutes ask courts to assess each parent's willingness to co-parent when making custody decisions (Zorza, 1992). Despite their reasonable reluctance to co-parent, battered women may end up being labeled "uncooperative," with an increased risk of losing their children. Along with legal changes, training and resource manuals for judges and court managers have recently been published, including guidelines for selecting custody evaluators and guardian ad litem (Goelman, Lehrman, Valente, 1996 ; Lemon, Jaffe, & Ganley, 1995 ; NCJFCJ, 1995 ; National Center for State Courts, 1997). For further discussion of these topics, see the references at the end of this document.

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General Views About Joint Custody

Enthusiasm for joint custody in the early 1980's was fueled by studies of couples who were highly motivated to "make it work" (Johnston, 1995). This enthusiasm has waned in recent years, in part

because of social science findings. For example, Johnston (1995) concluded from her most recent review that "highly conflictual parents" (not necessarily violent) had a poor prognosis for becoming cooperative parents and there is increasing evidence that children of divorce have more problems because of the conflict between the parents before the divorce and not because of the divorce itself (Kelly, 1993). "High conflict" parents should be allowed to develop separate parenting relationships with their children. Frequent visits and joint custody schedules led to more verbal and physical abuse. More frequent transitions between high-conflict parents were related to more emotional and behavioral problems of the children. If this is true of "high conflict" parents, it is likely to be even more true if mothers are being physically victimized.

Not all social scientists conclude that joint custody can be problematic. For example, Bender (1994) believes that "even the small percentage of parents who are very angry may be able to work out procedures to alleviate anger so that the child is not caught in the middle" (p. 126). However, his conclusion relies on data gathered at one point in time and thus statements about cause and effect are not possible. For example, better child adjustment is likely to result when joint custody is requested by (or ordered to) non-violent, low-conflict couples rather than from joint custody per se. Joint custody can be quite beneficial to the children of these non-violent, low-conflict couples, but not in cases of battering.

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Parents Most at Risk for Physical and Emotional Abuse of a Child

Social science evidence can help to establish which parent is most likely to harm children. The most convincing evidence for the potential of men who batter their partners also to batter their children comes from a nationally representative survey (Straus, 1983). Half the men who battered their wives also abused their children. Abuse was defined as violence more severe than a slap or a spanking. Battered women were half as likely as men to abuse their children. Several non-representative surveys show similar results (reviewed in Saunders, 1996). When battered women are not in a violent relationship, there is some evidence that they are much less likely to direct anger toward their children (Walker, 1984).

Emotional abuse of children by men who batter is even more likely because nearly all of these men's children are exposed to domestic violence (Pagelow, 1990). This exposure often constitutes a severe form of child abuse since the problems associated with witnessing abuse are now clearly documented (e.g., Edleson, 1997). There are short and long-term emotional and behavioral consequences for both boys and girls. Parents may not realize that their children can be affected even if they do not see the violence. For example, the children may be hiding in their bedrooms listening to repeated threats, blows, and breaking objects. Obviously, they may be afraid their mother will be injured or killed, but they may also have divided loyalties between their parents, guilt about not being able to intervene, and anger at their mothers for not leaving (Saunders, 1996). If mothers cannot find safety, their fears and depression may keep them from being as nurturing and supportive to their children as they normally would be.

Although state laws include emotional abuse in their statutory definitions of child abuse, such abuse is difficult to substantiate and child protection workers often give it low priority.

Mothers may also be blamed for harming their children in cases where evaluators and practitioners do

not understand the dynamics of abuse ([Edleson, 1997](#)). Their cases are sometimes labelled as "failure to protect" since they are supposedly able to protect their children from the physical and emotional abuse of their partners ([Enos, 1996](#)). Battered women may even face criminal charges ([Sierra, 1997](#)). However, battered women's actions often come from their desire to care for their children. They may not attempt to leave because of financial needs, because they believe that the children need a father, or because they fear losing the children to their abuser. They often leave the relationship when they see the impact of violence on their children, only to return when threatened with even greater violence or out of economic necessity. Innovative programs, like Project Protect in Massachusetts, were developed to address these concerns. They use specially trained staff and multidisciplinary teams to integrate interventions for child abuse and domestic violence ([Davidson, 1995](#)). On a policy level, states generally allow evidence to show that the non-abusive spouse feared retaliation from her partner and thus could not try to stop or prevent abuse to the child. However, only a few states explicitly authorize this type of evidence.

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Factors Related to Risk to the Children

In a given custody case, a number of factors related to or incorrectly attributed to child abuse and exposure to domestic violence may be present. Several factors -- parental separation, childhood victimization of the parents, the parents' psychological characteristics, and abuser interventions -- are discussed next.

Parental Separation. Parental separation or divorce does not prevent abuse to children or their mothers. On the contrary, physical abuse, harassment, and stalking of women continue at fairly high rates after separation and divorce. In one study, a fourth of the women reported threats against their lives during visitation ([Leighton, 1989](#)). Separation is a time of increased risk of homicide for battered women ([Wilson & Daly, 1994](#)) and these homicides sometimes occur during custody hearings or visitation exchanges of children. In rare cases, men kill children in retaliation for their female partners leaving them.

Children are also likely to be exposed to renewed violence if their fathers become involved with other women. Over half of men who batter go on to abuse a second woman ([Wofford, Elliot, & Menard, 1994](#)). Judges who consider the remarriage of a man to be a sign of stability and maturity should instead consider it as a possible sign that the children will once again be emotionally harmed.

Parents' Childhood Victimization. Evaluators may look to childhood risk factors of each parent to assess their child abuse potential. The link between being abused in childhood and becoming a child abuser is not as strong as was once thought, with about 30% of child abuse victims becoming abusers ([Kaufman & Zigler, 1987](#)). Some evidence suggests that the link is stronger in men than in women ([Miller & Challas, 1981](#)).

Parents' Psychological Characteristics. The parents' personality traits and psychological disorders are generally poor predictors of child abuse ([Wolfe, 1985](#)). Neither parent is likely to have chronic mental disorders of genetic origin (e.g., schizophrenia, or bipolar disorder). Personality disorders are much more likely to appear on the psychological tests of both parents. Great care must be taken, however, when interpreting parents' behaviors and psychological tests. Men who batter often have the types of personality disorders that keep childhood traumas, anxiety, and other problems hidden ([Holtzworth-](#)

Munroe & Stuart, 1994).

To the extent that psychological disorders continue to be used to describe battered women, they can be placed at a serious disadvantage. Compared with the chronic problems of their partners, battered women's psychological problems are much more likely to decrease as she becomes safer. Many battered women may seem very unstable, nervous, and angry (Crites & Coker, 1988). Other battered women may speak with a flat affect and appear indifferent to the violence they describe (Meier, 1993). These women probably suffer from the numbing symptoms of traumatic stress. The psychological test scores of some battered women may indicate severe personality disorders and mental illness. However, their behaviors and test scores must be interpreted in the context of the traumas they have faced or continue to face (Rosewater, 1987). The tactics used by their abusers parallel those used against prisoners of war and include threats of violence, forced isolation, degradation, and attempts to distort reality and increase psychological dependence. Severe depression and traumatic stress symptoms are the likely results. When women fear losing custody of children to an abusive partner, the stress can be overwhelming.

Interventions for the Abuser. Successful completion of treatment does not at all mean that the risks of child and woman abuse are eliminated. Although the evaluation of programs for men who batter is still in its infancy (Saunders, 1996), it is clear that a substantial proportion of women (35%, averaged across a number of studies) report that physical abuse by their partners occurs within 6-12 months after treatment. Psychological abuse is even more prevalent. Only two studies of programs for men who batter investigated the reduction of actual or potential violence toward the children (Myers, 1984 ; Stacey & Shupe, 1984). Both of these studies showed promising results, yet did not specifically focus on parenting issues. Only one description could be found of a special parent training program for men who batter (Mathews, 1995)

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Recommendations for Custody and Visitation

Despite the dearth of sound research in this area, some tentative recommendations can be made from practice wisdom and the research that does exist. There is general agreement that joint custody has many advantages when a woman has good financial resources and an ex-partner who is nonabusive and supportive as a co-parent. However, the past and potential behavior of men who batter means that joint custody (or sole custody to him) is rarely the preferred option for these families. In addition to their propensity for violence, these men are likely to abuse alcohol (Tolman & Bennett, 1990) and communicate in a hostile, manipulative manner (Holtzworth-Munroe & Stuart, 1994).

As stated earlier, the model state statute of the National Council of Juvenile and Family Court Judges clearly states that there should be a presumption that it is detrimental to the child to be placed in sole or joint custody with a perpetrator of family violence (NCJFCJ, 1993). The model statute emphasizes that the safety and well-being of the child and the parent who is the victim must be primary. The perpetrator's history of causing fear as well as physical harm should be considered. A parent's absence or relocation in an attempt to escape violence by the other parent should not be used as a factor to determine custody. Courts sometimes label battered women as "impulsive" or "uncooperative" if they leave suddenly to find safety in another city or state. The model statute specifies that it is in the best interest of the child to reside with the non-violent parent and that this parent should be able to choose the location of the residence, even if it is in another state. The noncustodial parent may also be denied access to the child's medical and educational records if such information could be used to locate the

custodial parent.

Visitation guidelines should be based on the following general principles: a) contact between child and parent should be structured in a way that limits the child's exposure to parental conflict; b) transitions should be infrequent in cases of ongoing conflict and the reasonable fear of violence; and c) substantial amounts of time with both parents may not be advisable (Johnston, 1992). Ideally, a court order should detail the conditions of supervised visitation, including the role of the supervisor (NCJFCJ, 1995). Unsupervised visitation should be allowed only after the abuser completes a specialized program for men who batter and does not threaten or become violent for a substantial period of time. Practitioners need to be aware of the strong likelihood that men who batter will become violent in a new relationship and that they often use nonviolent tactics that can harm the children. Rather than rely on official records of recidivism, the best way to establish that the perpetrator is nonviolent is to interview current and past partners.

Visitation should be suspended if there are repeated violations of the terms of visitation, the child is severely distressed in response to visitation, or there are clear indications that the violent parent has threatened to harm or flee with the child. Even with unsupervised visitation, it is best to have telephone contact between parents only at scheduled times, to maintain restraining orders to keep the offender away from the victim, and to transfer the child in a neutral, safe place with the help of a third party (Johnston, 1992). Hart (1990) describes a number of safety planning strategies that can be taught to children in these situations.

The model statute (NCJFCJ, 1993) states that visitation should only be awarded to the perpetrator if adequate safety provisions for the child and adult victim can be made. Orders of visitation can specify, among other things: the exchange of the child in a protected setting, supervised visitation by a person or agency, completion by the perpetrator of "a program of intervention for perpetrators", and no overnight visitation. If the court allows a family or household member to supervise the visitation, the court can set the conditions to be followed during visitation. For example, an order might specify that the batterer not use alcohol prior to or during a visit and that the child be allowed to call the mother at any time.

Visitation centers are expanding across North America in response to the need for safe access and visitation (Straus, 1995). The approaches of these centers vary. For example, most of them provide some form of observational records of the visit, but the role of these programs in evaluating parents and reporting to courts differs. The experience of the visitation center in Duluth, Minnesota, shows the difficulty of keeping a neutral stance given the traditional biases in our social systems (McMahon & Pence, 1995). The Duluth center found that the traditional over-emphasis on parental rights and child welfare may block from view the harm of domestic violence to both battered women and their children.

In conclusion, although there is a need for further practice experience and research, our current knowledge of risk factors for continued abuse of women and children means that decision-makers must exercise great caution in awarding custody or visitation to perpetrators of domestic violence. If custody or visitation is granted, careful safety planning and conditions attached to the court order are important to help lower the risk of harm to the children and their mothers.

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In Brief

The current enthusiasm for joint child custody and liberal visitation need to be tempered drastically in cases involving domestic violence for the following reasons:

- Men who batter their intimate partners have a high potential for physically and emotionally abusing their children.
- Child custody evaluations often place battered women at a disadvantage because living in an abusive relationship may produce traumatic effects that give the false impression that they are unfit parents.
- Battered women's attempts to protect themselves and their children can also give the false appearance that they are unfit parents.
- Men who batter are likely to have chronic behavioral and emotional problems that may not be easily detected.
- Many states are responding to these concerns by enacting laws that require domestic violence to be considered in child custody determinations and sometimes presume that the abuser should not have joint or sole custody. Other statutes address concerns over visitation, mediation, child abduction, and child abandonment.

Although more research is needed in the field, our current practice wisdom and social science research indicate that:

- Men who batter should rarely have sole or joint custody of their children.
- Divorce, separation and/or treatment of the abuser do not guarantee that the abuse of the women and children will stop.
- Visitation needs to be supervised in many cases or restricted in other ways.
- Battered women need to be allowed exemptions from mandated mediation.
- Battered women should be allowed to relocate with their children at a safe distance from their ex-partners and not be labelled "uncooperative" if they do not wish to coparent.

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Sec. 25.20.070. Temporary custody of the child.

Unless it is shown to be detrimental to the welfare of the child, the child shall have, to the greatest degree practical, equal access to both parents during the time that the court considers an award of custody under AS 25.20.060 - 25.20.130.

Sec. 25.20.080. Mediation of child custody matter.

(a) Except as provided in (f) and (g) of this section, at any time within 30 days after a petition for child custody is filed under AS 25.20.060 the court may order the parties to submit to mediation. Each party has the right to challenge peremptorily one mediator appointed.

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

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

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

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

(f) The court may not order or refer parties to mediation in a proceeding concerning custody or visitation of a child if a protective order issued or filed under AS 18.66.100 - 18.66.180 is in effect. The court may not order or refer parties to mediation if a party objects on the grounds that domestic violence has occurred between the parties unless the court finds that the conditions of (g)(1) - (3) of this section are met. If the court proposes or suggests mediation under this subsection,

(1) mediation may not occur unless the victim of the alleged domestic violence agrees to the mediation; and

(2) the court shall advise the parties that each party has the right to not agree to mediation and that the decision of each party will not bias other decisions of the court.

(g) A mediator who receives a referral or order from a court to conduct mediation under (a) of this section shall evaluate whether domestic violence has occurred between the parties. A mediator may not engage in mediation when either party has committed a crime involving domestic violence unless

(1) mediation is requested by the victim of the alleged domestic violence, or proposed by the court and agreed to by the victim;

(2) mediation is provided by a mediator who is trained in domestic violence in a manner that protects the safety of the victim and any household member, taking into account the results of an assessment of the potential danger posed by the perpetrator and the risk of harm to the victim; and

(3) the victim is permitted to have in attendance a person of the victim's choice, including an attorney.

Sec. 25.20.090. Factors for consideration in awarding shared child custody.

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

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

Sec. 25.24.150. Judgments for custody.

(a) In an action for divorce or for legal separation or for placement of a child when one or both parents have died, the court may, if it has jurisdiction under AS 25.30.300 - 25.30.320, and is an appropriate forum under AS 25.30.350 and 25.30.360, during the pendency of the action, or at the final hearing or at any time thereafter during the minority of a child of the marriage, make, modify, or vacate an order for the custody of or visitation with the minor child that may seem necessary or proper, including an order that provides for visitation by a grandparent or other person if that is in the best interests of the child.

(b) If a guardian ad litem for a child is appointed, the appointment shall be made under the terms of AS 25.24.310 (c).

(c) The court shall determine custody in accordance with the best interests of the child under AS 25.20.060 - 25.20.130. In determining the best interests of the child the court shall consider

- (1) the physical, emotional, mental, religious, and social needs of the child;
- (2) the capability and desire of each parent to meet these needs;
- (3) the child's preference if the child is of sufficient age and capacity to form a preference;
- (4) the love and affection existing between the child and each parent;
- (5) the length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity;
- (6) the desire and ability of each parent to allow an open and loving frequent relationship between the child and the other parent;
- (7) any evidence of domestic violence, child abuse, or child neglect in the proposed custodial household or a history of violence between the parents;
- (8) evidence that substance abuse by either parent or other members of the household directly affects the emotional or physical well-being of the child;
- (9) other factors that the court considers pertinent.

(d) In awarding custody the court may consider only those facts that directly affect the well-being of the child.

(e) Notwithstanding the provisions of (d) of this section, in awarding custody the court shall comply with the provisions of 25 U.S.C. 1901 - 1963 (P.L. 95-608, the Indian Child Welfare Act of 1978).

(f) If the issue of child custody is before the court at the time it issues a judgment under AS 25.24.160, the court shall concurrently issue a judgment for custody under this section unless, subject to AS 25.24.155, the court delays the custody decision for a later time.

in 1914 as amend- dealing with anti- practices. 15 U.S. ce discrimination, mergers, and in- t may be substan- create a monopoly

ud or wrongdoing; free from excep- elastic adjective, nt upon context.

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hat no contagious ing as to healthy n or reservation.

ption or reserva- age of the goods, e (or have been) ck. One which ring the words in

trine, equity will ctor, seeks to set some remedy, if ed conscience or le. Franklin v. , 486. One seek- age of one's own v. Car-X Service 13, 84 Ill.Dec. 25,

e environmental water pollution.

ibt; perspicuous; ication, question nce, obstruction, free from doubt umbered. Free

which check is holder of check.

of a ship to leave ort. The certifi- evidencing the tract for exhibi- of time between and commence- : Waxmann v. 40 F.Supp. 108,

Clearance card. A letter given to an employee by his employer, at the time of his discharge or end of service, showing the cause of such discharge or voluntary quit- tance, the length of time of service, his capacity, and such other facts as would give to those concerned infor- mation of his former employment.

Clearance certificate. Issued to ship's captain showing that customs requirements have been made.

Clear and convincing proof. That proof which results in reasonable certainty of the truth of the ultimate fact in controversy. *Lepre v. Caputo*, 131 N.J.Super. 118, 328 A.2d 650, 652. Proof which requires more than a preponderance of the evidence but less than proof beyond a reasonable doubt. Clear and convincing proof will be shown where the truth of the facts asserted is highly probable. In re Estate of Lobe, Minn.App., 348 N.W.2d 413, 414. See also Beyond a reasonable doubt; Burden of proof; Clear evidence or proof.

Clear and present danger doctrine. Doctrine in con- stitutional law, first formulated in *Schenck v. U. S.*, 249 U.S. 47, 39 S.Ct. 247, 63 L.Ed. 470, providing that governmental restrictions on First Amendment free- doms of speech and press will be upheld if necessary to prevent grave and immediate danger to interests which government may lawfully protect.

Speech which incites to unlawful action falls outside the protection of the First Amendment where there is a direct connection between the speech and violation of the law; this is the "clear and present danger test". *People v. Winston*, 64 Misc.2d 150, 314 N.Y.S.2d 489, 495.

Clear annual value. The net yearly value to the posses- sor of the property, over and above taxes, interest on mortgages, and other charges and deductions.

Clear annuity. The devise of an annuity "clear" means an annuity free from taxes or free or clear of legacy or inheritance taxes.

Clear chance. A "clear chance" to avoid accident with- in meaning of last clear chance doctrine involves the element of sufficient time to appreciate peril of the party unable to extricate himself therefrom, and to take necessary steps to avoid injuring him. *Klouse v. North- ern Pac. Ry. Co.*, 50 Wash.2d 432, 312 P.2d 647, 650. See also Last clear chance doctrine.

Clear days. If a certain number of clear days be given for the doing of any act, the time is to be reckoned exclusively, as well of the first day as the last.

Clear evidence or proof. Evidence which is positive, precise and explicit, which tends directly to establish the point to which it is adduced and is sufficient to make out a prima facie case. It necessarily means a clear prepon- derance. It may mean no more than a fair preponder- ance of proof but may also be construed as requiring a higher degree of proof. It may convey the idea, under emphasis, of certainty, or understood as meaning beyond doubt. See also Beyond a reasonable doubt; Clear and convincing proof.

Clearing. The departure of a vessel from port, after complying with the customs and health laws and like local regulations. See also Clearance; Clearance certifi- cate.

In banking, a method of making exchanges and set- tling balances, adopted among banks and bankers. See Clearinghouse.

Clearing account. An account containing amounts to be transferred to another account(s) before the end of the accounting period.

Clearing corporation. A corporation, all of the capital stock of which is held by or for a national securities exchange or association registered under a statute of the U.S., such as the Securities Exchange Act of 1934. U.C.C. § 8-102(3).

Clearinghouse. An association or place where banks exchange checks and drafts drawn on each other, and settle their daily balances. See U.C.C. § 4-104(d).

With respect to a stock or commodities exchange, a facility which provides for the daily clearance of all transactions. With regard to futures transactions, a clearinghouse performs the following functions: con- firms that trades made each day are acknowledged by both parties; settles amounts owed daily on futures contracts due to changes in contract prices during the trading session; insures the financial worth of all fu- tures contracts that it has accepted.

Clearing loan. One made to a bond dealer while an issue of bonds is being sold.

Clearings. Method of making exchanges and settling balances among banks and bankers.

Clearing title. Acts or proceedings necessary to render title marketable.

Clear legal right. A right inferable as a matter of law from uncontroverted facts.

Clearly. Visible, unmistakable, in words of no uncertain meaning. Beyond a question or beyond a reasonable doubt; honestly, straightforwardly, and frankly; plain- ly. Without obscurity, obstruction, entanglement, con- fusion, or uncertainty. Unequivocal.

Clearly erroneous. For purposes of rule providing that findings of trial court shall not be set aside unless "clearly erroneous," refers to findings when based upon substantial error in proceedings or misapplication of law, *Kauk v. Anderson*, C.C.A.N.D., 137 F.2d 331, 333; or when unsupported by substantial evidence, or con- trary to clear weight of evidence or induced by errone- ous view of the law. *Smith v. Porter*, C.C.A.Ark., 143 F.2d 292, 294. As a basis for appellate review, a finding is "clearly erroneous" when, although there is evidence to support it, the reviewing court on entire evidence is left with definite and firm conviction that a mistake has been committed. *United States v. United States Gyp- sum*, 333 U.S. 364, 395, 68 S.Ct. 525, 542. See also Error.

Clearly proved. Proof by preponderance of the evi- dence. *Olson v. Union Oil Co. of California*, 25 Cal. App.2d 627, 78 P.2d 446, 447. Proof sufficient to satisfy

PREPAID LEGAL SERVICES

penses. Such plan may be either open-ended whereby the person can secure legal services from the attorney of his choice, or closed-end whereby he must secure the services of a particular attorney, group of attorneys, or list of attorneys.

Preparation. With respect to criminal offense, consists in devising or arranging means or measures necessary for its commission, while attempt is direct movement toward commission after preparations are made. *State v. Quick*, 199 S.C. 256, 19 S.E.2d 101, 103. See also *Aid and abet*.

Prepare. To provide with necessary means; to make ready; to provide with what is appropriate or necessary.

Prepayment. Payment of debt obligation or expense before it is due.

Prepayment clause. Provision in mortgage or note giving borrower right to pay off the indebtedness before it becomes due. See also *Prepayment penalty*.

Prepayment penalty. A penalty under a note, mortgage, or deed of trust, imposed when the loan is paid before its due date. Consideration to terminate loan at borrower's election before maturity. See also *Penalty clause*.

Prepayments. Assets representing expenditures for future benefits. Rent and insurance premiums paid in advance are usually classified as current prepayments.

Prepense. Forethought; preconceived; premeditated.

Preponderance of evidence. As standard of proof in civil cases, is evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not. *Braud v. Kinchen*, La.App., 310 So.2d 657, 659. With respect to burden of proof in civil actions, means greater weight of evidence, or evidence which is more credible and convincing to the mind. That which best accords with reason and probability. The word "preponderance" means something more than "weight"; it denotes a superiority of weight, or outweighing. The words are not synonymous, but substantially different. There is generally a "weight" of evidence on each side in case of contested facts. But juries cannot properly act upon the weight of evidence, in favor of the one having the *onus*, unless it overbear, in some degree, the weight upon the other side.

That amount of evidence necessary for the plaintiff to win in a civil case. It is that degree of proof which is more probable than not.

Preponderance of evidence may not be determined by the number of witnesses, but by the greater weight of all evidence, which does not necessarily mean the greater number of witnesses, but opportunity for knowledge, information possessed, and manner of testifying determines the weight of testimony.

See also *Fair preponderance of evidence*.

Prerogative /prəˈrɒɡətɪv/. An exclusive or peculiar right or privilege. The special power, privilege, immu-

nity, right or advantage vested in an official person either generally, or in respect to the things of his office or in an official body, as a court or legislature.

Prerogative court. In old English law, a court established for the trial of all testamentary causes, where a deceased left *bona notabilia* within two different dioceses; in which case the probate of wills belonged to the archbishop of the province, by way of special prerogative. And all causes relating to the wills, administrations, or legacies of such persons were originally cognizable herein, before a judge appointed by the archbishop, called the "judge of the prerogative court," from whom an appeal lay to the privy council. The jurisdiction of these courts became obsolete with the transfer of the testamentary jurisdiction of the ecclesiastical courts to the Chancery Division of the High Court.

Prerogative law. That part of the common law of England which is more particularly applicable to the king.

Prerogative writs. In English law, the name was given to certain judicial writs issued by the courts only upon proper cause shown, never as a mere matter of right, the theory being that they involved a direct interference by the government with the liberty and property of the subject, and therefore were justified only as an exercise of the extraordinary power (prerogative) of the crown. In America, issuance is now generally regulated by statute, and such are generally referred to as extraordinary writs or remedies.

Such writs have been abolished in the federal and most state courts with the adoption of Rules of Civil Procedure. The relief formerly available by such writs is now available by appropriate action or motion under the Rules of Civil Procedure. See Rule 81. These writs are the writs of mandamus, procedendo, prohibition, quo warranto, habeas corpus, and certiorari.

Pres /préy/. L. Fr. Near. Cy pres, so near; as near. See Cy pres.

Presale. Sale of real estate (e.g., condominium units) before construction has started.

Presbyter /prézbətər/. Lat. In civil and ecclesiastical law, an elder; a presbyter; a priest.

Presbyterianism. One of the principal systems of church polity known as the "Christian Protestant Church", occupying an intermediate position between episcopacy and congregationalism. A religious faith or doctrine, based on the Westminster Confession of Faith and the Larger and Shorter Catechisms.

Presbyterium. That part of the church where divine offices are performed; formerly applied to the choir or chancel, because it was the place appropriated to the bishop, priest, and other clergy, while the laity were confined to the body of the church.

Prescribable /préskráybəbəl/. That to which a right may be acquired by prescription.

1183
Prescribe. To assert a thing, on the ground of uninterrupted and immemorial possession.

To lay down authority; to impose as a rule; to impose as a law; to direct; to give law; to give action; to give law.

In a medical sense, to prescribe, or order use of medicine, or drug.

Prescription. A direction, or order, in a medical sense, to use of medicine, or drug. Also, a formula for the preparation of a medicine.

Prescription is a species of action which has been silent for a long time. *Jones v. Butcher*.

Acquisition of a prescriptive easement.

International law. Law which governs the relations of states and territories through conquest or sovereignty over it due to the general conviction that things are in conformity with the general conviction of *Arkansas v. State of Missouri*, 1028, 1030, 84 L.Ed. 1

Prescription in a quiet title. Based on the immediate possession, by the claimant, of the land "whose estate" he has.

Real property law. Requiring title to incorporate in the deed. *N.M.* 497, 71 P.2d 64 usually applied to incorporeal hereditaments.

In Louisiana, prescription is acquiring the ownership of real property, by the effect of which the ownership is regulated by law. It is a special and particular prescription which the ownership by which a mere possessor acquires possession during the prescription by which debts are barred to every creditor when the creditor has not urged his claim without urging his claim every nearly equivalent by "limitation of action" statute of limitations.

See also *Adverse possession*.
Prescriptive easement. Easement which is not inc

estly unreasonable may
ties, and what is reason-
pose and circumstances
X2). Acceptance of an
asonable time if no time
1, 207. See also U.C.C.
ction of goods); § 2-610
-508(2) (substitution of
ods).

a time for performance,
s" for performance, de-
ry, conveniently, to be
done, as soon as circum-
County v. Leo L. Lan-
v.App., 424 S.W.2d 458.

arian owner may make
either natural or artifi-
t so use his rights so as
of water available to a
v. Bodoian, 376 Mass.
ommon enemy doctrine.
he value of a specific
en area for tax assess-

insurer procures the
ch he has insured (i.e.,
oss, death, etc.) to be
er insurer. See also

r refund of money in
t. A deduction from a
of insurance, in par-
A deduction or draw-
charge, or rate (as, a
ight by a railroad), not
it, but handed back to
e full stipulated sum-
rice made by manufac-
hase of product. Such
g proof of purchase to

rge refunded to a ship-
e Interstate Commerce

ed (i.e. refunded) to the
l payment of the tax-
(kickback; Refund.

l resistance, by force
ons of the government,
y v. Press Pub. Co., 74
is a federal crime to
bellion or insurrection
ted States or the laws

empt of a court man-
ess, particularly of the

court of chancery. If a defendant refused to appear,
after attachment and proclamation, a "commission of
rebellion" issued against him. 3 Bl.Comm. 444.

Rebellious assembly. In old English law, a gathering
of twelve persons or more, intending, going about, or
practicing unlawfully and of their own authority to
change any laws of the realm; or to destroy the inclo-
sure of any park or ground inclosed, banks of fish-ponds,
pools, conduits, etc., to the intent the same shall remain
void; or that they shall have way in any of the said
grounds; or to destroy the deer in any park, fish in
ponds, coneys in any warren, dovehouses, etc.; or to
burn sacks of corn; or to abate rents or prices of
virtuals, etc. See also Unlawful assembly.

Rebus sic stantibus /riybəs sik stántabəs/. Lat. At
this point of affairs; in these circumstances. A name
given to a tacit condition, said to attach to all treaties,
that they shall cease to be obligatory so soon as the state
of facts and conditions upon which they were founded
has substantially changed.

Rebut. In pleading and evidence, to defeat, refute, or
take away the effect of something. When a plaintiff in
an action produces evidence which raises a presumption
of the defendant's liability, and the defendant adduces
evidence which shows that the presumption is ill-found-
ed, he is said to "rebut it." See Rebuttable presumption;
Rebuttal evidence.

Rebuttable presumption. In the law of evidence, a
presumption which may be rebutted by evidence. Oth-
erwise called a "disputable" presumption. A species of
legal presumption which holds good until evidence con-
trary to it is introduced. Beck v. Kansas City Public
Service Co., Mo.App., 48 S.W.2d 213, 215. It shifts
burden of proof. Heiner v. Donnan, 285 U.S. 312, 52
S.Ct. 358, 362, 76 L.Ed. 772. It gives particular effect to
certain group of facts in absence of further evidence,
and presumption provides prima facie case which shifts
to defendant the burden to go forward with evidence to
contradict or rebut fact presumed. Gulle v. Boggs, Fla.,
274 So.2d 26, 28. And which standing alone will sup-
port a finding against contradictory evidence. Lieber v.
Rigby, 34 Cal.App.2d 582, 94 P.2d 49, 50. See also
Presumption.

Rebuttal evidence. Evidence given to explain, repel,
counteract, or disprove facts given in evidence by the
opposing party. That which tends to explain or contra-
dict or disprove evidence offered by the adverse party.
Rayton v. State, 261 Ind. 251, 301 N.E.2d 633, 636.
Rebuttal occurs during the trial stage where evidence is
given by one party to refute evidence introduced by the
other party. Evidence which is offered by a party after
he has rested his case and after the opponent has rested
in order to contradict the opponent's evidence. See also
Rejoinder.

Also evidence given in opposition to a presumption of
fact or a prima facie case; in this sense, it may be not
only counteracting evidence, but evidence sufficient to
counteract, that is, conclusive. See Rebuttable presump-

Rebutter. In common law pleading, a defendant's an-
swer of fact to a plaintiff's surrejoinder; the third plead-
ing in the series on the part of the defendant.

Recall. A method of removal of official in which power
of removal is either granted to or reserved by the people.
Jones v. Harlan, Tex.Civ.App., 109 S.W.2d 251, 254.
Right or procedure by which a public official may be
removed from office before the end of his term of office
by a vote of the people to be taken on the filing of a
petition signed by required number of qualified voters.
Wallace v. Tripp, 358 Mich. 668, 101 N.W.2d 312, 314.
Recall may also be applicable to judges.

Under federal Consumer Product Safety Act, govern-
ment has power to require recall of unsafe products for
repair, replacement or refund. See 15 U.S.C.A.
§ 2064(c)-(f).

To summon a diplomatic minister back to his home
court, at the same time depriving him of his office and
functions.

Recall a judgment. To revoke, cancel, vacate, or re-
verse a judgment for matters of fact. When it is an-
nulled by reason of errors of law, it is said to be
"reversed."

Recant. To withdraw or repudiate formally and public-
ly. Pradlik v. State, 131 Conn. 682, 41 A.2d 906, 907.

Recapitalization. A process whereby stock, bonds or
other securities of a corporation are adjusted or restruc-
tured as to type, amount, income or priority. A restruc-
turing of the capital of a corporation through amend-
ment of the articles of incorporation or a merger with a
subsidiary or parent corporation. Recasting of capital
structure (e.g. exchange of bonds for stock) within frame-
work of existing corporation. Helvering v. Southwest
Consol. Corporation, La., 315 U.S. 194, 203, 62 S.Ct. 546,
552, 86 L.Ed. 789. See also Reorganization.

Recaption. At common law, a retaking, or taking back.
A species of remedy by the mere act of the party injured
(otherwise termed "reprisal"), which happens when any
one has deprived another of his property in goods or
chattels personal, or wrongfully detains one's wife, child,
or servant. In this case, the owner of the goods, and the
husband, parent, or master may lawfully claim and
retake them, wherever he happens to find them, so it be
not in a riotous manner, or attended with a breach of
the peace. Prigg v. Pennsylvania, 41 U.S. (16 Pet.) 539,
612, 10 L.Ed. 1060. It also signifies the taking a second
distress of one formerly distrained during the plea
grounded on the former distress. See also Distraint;
Distress; Ejectment; Repossession.

Also, formerly, a writ to recover damages for him
whose goods, being distrained for rent in service, etc.,
are distrained again for the same cause, pending the
plea in the county court, or before the justice.

Recapture. To recover (by IRS) the tax benefit of a
deduction or a credit previously taken by tax payer.
See, e.g., Recapture of depreciation.

ADN Alaska Digest
2/29/04

KETCHIKAN

Man suspected in death of toddler also faces child porn charges

The father of a toddler who was found dead last week is facing 31 counts of possessing child pornography. James Michael Paul, 44, of Ketchikan is being held in lieu of \$100,000 bail.

Paul's 22-month-old daughter Sarah was found dead Tuesday in his apartment, and he was found

unconscious on the floor near her. Results of an autopsy performed on the child have not been released, but a prosecutor Thursday called the death suspicious.

Assistant district attorney James Scott told District Court Judge Kevin Miller that \$100,000 bail was justified because of Paul's history and because he is a suspect in the suspicious death of his child.

Miller agreed to the bail and appointed the Public Defender Agency to represent Paul. He scheduled a preliminary hearing March 5.

The child pornography charges stem from a Ketchikan police investigation into allegations Paul's wife made Feb. 2 when she sought a domestic violence restraining order.

Nannapat Paul said that her husband constantly yelled at her and the child and that he sometimes hit the girl. She added that she had found child pornography on the computer. At a hearing that day, Magistrate Teresa Chenhall ordered Paul to stay away from his wife and daughter.

The girl's death Tuesday came four days after the restraining order was loosened to allow unsupervised visits between the father and daughter.

Police went to the Revilla Street apartment Tuesday afternoon after Nannapat Paul reported

that her husband had failed to return Sarah to her at the agreed-upon time. They found Paul unconscious and the child dead.

Paul has a previous misdemeanor conviction in a 2002 case. That case began with an indictment charging 22 felony counts of possessing child pornography, the same charge he faces now.

— The Associated Press

We, the undersigned, hereby support and request passage of House Bill 0385
 "An Act relating to awarding child custody; and providing for an effective date."

	Sign	Date	Name and Address (print clearly)	
1	Kim Finner	2/27/04	Ann Fama 145 Adelbert Place S.	KTN, AK
2	Maria Aspinwall	2/27/04	MAIA Aspinwall Box 715 WARD COVE	
3	K.T.	2/27/04	Kristen Thompson 1438 Fairy Creek	Ward, AK
4	Quinn Vinn	2/27/04	Jessica Verney 2430 First Ave Ktn	AK 99901
5	Gaume Piarete	2/27/04	Taime Blasex 1412 Millar Kt	, AK 99901
6	Erin Nelson	2/27/04	Erin Nelson 832 Buren #16	KTN AK 99901
7	Scott Hart	2/27/04	SCOTT HART PO Box 1077 WARD COVE	AK 99928
8	Tracy S. Hwang	2/27/04	Tracy S Hwang 1728 S Compass	Ketchikan, AK 99901
9	Shawna Strouth-Shaw	2/27/04	Shawna Strouth-Shaw P.O. Box 596 WARD COVE	, AK 99928
10	Christine Shanks	2/27/04	Christine Shanks POB 23156 KTN	99901
11	Michael Fitzgerald	2/27/04	MICHAEL FITZGERALD 925 JACKSON ST	KTN 99901
12	Judy Nolan	2/27/04	Judy Nolan Box 5806 Ktn	AK 99901
13	Patrick Nelson	2/27/04	PATRICK NELSON	
14	Mike Youker	2/27/04	Mike Youker Box 6143 Ketchikan	AK 99901
15	James Moody	2-27-04	James Moody P.O. Box 1143 WARD COVE	AK 99928
16	Elizabeth Dredbridge	2-27-04	Elizabeth Dredbridge 33575 Empress Ketchikan	AK 99901
17	Sally Hansen	27Feb04	Sally Hansen 415 Front Wards Pt KTN	99901
18	Amenda Gierdinger	2/27/04	Amenda Gierdinger P.O. Box 7662 Ktn	AK 99901
19	Judi Smith	2/27/04	Judi Smith 245 Tower Rd KTN AK	99901
20	Tracey Stall	2/27/04	Tracey Stall PO Box 1244 WARD COVE	AK 99928
21	Jani Steffel	2/27/04	JANI STEFFEL Box 534 KTN AK	99901
22	Richard L. Sayre	2-27-04	Richard L. Sayre - P.O. Box 5517 - Ketchikan, AK	
23	Jennifer L. Johnson	2-27-04	Jennifer L. Johnson P.O. Box 6852 Ktn.	AK
24	Sharon Stewart	2-27-04	Sharon Stewart 1252 Millar KTN	AK
25	Connie Finner	2-27-04	Connie Finner Box 7191 KTN, AK	
26	Judith Lundberg	2-27-04	Judith Lundberg 657 N Pt HESSIE KTN, AK	
27	Elaine Caskey	2-27-04	ELAINE CASKEY BOX 1364 WARD COVE, AK	99928
28	Ronald Wendt	2-27-04	Ronald Wendt 3855 Everest Ketchikan	
29	Taave Cochauer	2-27-04	Taave Cochauer 1200 Woodside Ketchikan, Alaska	
30	Sandra Sneyer	2-27-07	Sandra Sneyer P.O. Box 1171 WARD COVE	AK 99928

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	Sign	Date	Name and Address (print clearly)
31	<i>[Signature]</i>	2-27-04	Dorothy Duncan 3407 Hopkins Ketchikan, AK
32	NICHOLE STARK	2-27-04	NICHOLE STARK PO BOX 9540 KTN, AKS 99901
33	<i>[Signature]</i>	2-27-04	219 Heekman Ketchikan AK
34	<i>[Signature]</i>	2-28-04	Heather Sullivan Box 5106 KTN AK
35	<i>[Signature]</i>	2-28-04	SARA Kay Vasce 3860 HILLSIDE ROAD Ketchikan, AK. 99901
36	<i>[Signature]</i>	2-28-04	301 Broadway #A. KTN. AK. 99901
37	Wade A. Jones	2-28-04	Ingrid L. Jones PO Box 9949 Ketchikan, AK 99901
38	<i>[Signature]</i>	2-1-04	Rebecca Bolling 2928 Island Ketchikan, AK 99901
39	<i>[Signature]</i>	3-1-04	Kay Kusuda PO Box 6393, Ketchikan AK 99901
40	<i>[Signature]</i>	2/21/04	Renelle Britton 20205 S151 Ktn AK 99901
41	Shelly Trudel	3/01/04	Shelly Trudel PO Box 433 Ktn AK 99901
42	<i>[Signature]</i>	3/1/04	CARISERWA 5521 N. TORNGASS KTN 99901
43	<i>[Signature]</i>	3/1/04	GREY EYNE P.O. Box 6014 KTN AK 99901
44	Shirley Sticca	3-1-04	722 Hill Rd
45	Aracira D. Buendia	3-1-04	#3220 Inbellino Ct 101, KTN AK 99901
46	Trish L. Escobar	3-1-04	4414 J Hatcha way KTN AK 99901
47	Cecile Boulet	3-1-04	124 Hill Road
48	William D. Weston	3-1-04	PO Box 23072 (501 Pittingent 2) Ketchikan AK 99901
49	<i>[Signature]</i>	2-1-04	2325 1st Ave. Ketchikan AK 99901
50	<i>[Signature]</i>	3-1-04	248 Humbert Ave # 204 Ketchikan, AK 99901
51	Kellicore	3-1-04	247 Halbut St Ketchikan AK 99901
52	<i>[Signature]</i>	3/1/04	DIANE NAAB, P.O. Box 23633, Ketchikan
53	Margaret Hamilton	3/1/04	Margaret Hamilton 802 Monroe ST Ketchikan 99901
54	Tessie Manabat	3/1/04	TESSIE MANABAT 418 Anderson DR
55	Anna Kinsman	3/1/04	Anna Kinsman 1416 Fairy Chasm
56	<i>[Signature]</i>	3-1-04	RITA KURTZ 900 EKSMAN ST KTN, AK
57	<i>[Signature]</i>	3/1-04	LINA KASTIMUSA - Box 7902 Ketchikan Ak
58	<i>[Signature]</i>	3/1/04	Bernie Buendia Box 6134 Ketchikan AK
59	<i>[Signature]</i>	3/1/04	P.O. Box 9478
60	FR. ALBA	3/1/04	818 EAST SESTON
61	<i>[Signature]</i>	3/1/04	MUNICIPAL 522 SUNSET DRIVE, KETCHIKAN, AK 99901
62	<i>[Signature]</i>		

We, the undersigned, hereby support and request passage of House Bill 0385
"An Act relating to awarding child custody; and providing for an effective date."

	Sign	Date	Name and Address (print clearly)
63	<i>Dennis L ME Carty</i>	<i>3/1/04</i>	<i>Dennis L ME Carty 300 Mill Site 22 Ketchikan</i>
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	Sign	Date	Name and Address (print clearly)
1	<i>J. P. Miller</i>	2/29/04	Jessica Picher 2533 4th Ave. Ketchikan AK 99901
2	<i>Patricia Stankovic</i>	3/1/04	Pamela Stankovic P.O. Box 9625 KTN, AK. 99901
3	<i>John M...</i>	3-1-04	Lawrie M... P.O. Box 9372 KTN AK 99901
4	<i>Robert J...</i>	3/1/04	Kendall Sawa P.O. Box 7847 KTN AK 99901
5	<i>Joan Nugent</i>	3/1/04	Joan Nugent 1320 Water St. KTN. AK. 99901
6	<i>Garth Nichols</i>	3/1/04	Garth Nichols, PO B. 745, Ward Cove AK 99901
7	<i>Timmy G. Desb...</i>	3/1/04	Timmy G. Desb... 713 Hill Rd. Ketchikan AK 99901
8	<i>Cody Davis</i>	3-1-04	Cody Davis 926 Brown Deer Rd. Ketchikan Ak. 99901
9	<i>James Cowie</i>	3-1-04	James Cowie 10377 Rocky Pt. B Drive Ketchikan AK AK
10	<i>Gigi Piche</i>	3-1-04	Gigi Piche 2749 Third Ave Ketchikan AK.
11	<i>Jessica Stone</i>	3-1-04	Jessica Stone 1256 W. TEK ST Ketchikan AK 99901
12	<i>Kate Turian</i>	3/1/04	P.O. Box 2310 Ktn. AK. 99901
13	<i>Kerry Kamm...</i>	3/1/04	BOX 1122 Ward Cove AK 99901
14	<i>Paula Smith</i>	3/1/04	PAUL SMITH TONGASS Ketchikan 99901
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Ref. HB 385

①

3/1/04

My name is Loretta Lundberg, 7446 South Tokguss, Ketchikan, Alaska.

The reason for my presence today for public comment on HB 385 is very interesting. If asked about this bill one week ago I wouldn't have known anything about it or interest in participating in public comment.

The events of last week and a tragedy we have experienced has caused pause for thought. HB 385 is very important and needs to be closely looked at. After a brief review of HB 385 I continue to wonder if there is a true, fact-based way to hear voice for the silent and be a voice for the young innocent victims.

One item that comes immediately to ~~my~~ mind is the need for a "cooling off" period, post ruling in a custody case. As you are aware, cases brought forth always are ridden with emotion. Even though a cooling off period (suggest 30 days) isn't an absolute guarantee, it does provide time for improvement or more thorough ~~assessment~~

Cooling off period means that



Alaska State Legislature

Please enter into the record my testimony to the

HOUSE JUDICIARY

committee name

Committee on

HB 385

bill # / subject

Date, JANUARY 22, 2004

MEMBERS OF THE HOUSE JUDICIARY COMMITTEE:

HB 385 is a fantastic bill with the potential for solving some very important issues that we Alaskan's are facing. Protecting children from domestic violence should be a nonpartisan priority! I believe that HB 385 will impact so many families in a positive way, by giving the Judicial system an expected standard when dealing with child custody cases which involve domestic violence. Passing HB 385 can save the state of Alaska a lot of money just by its enactment. HB 385 will reduce the involvement of Division of Family and Youth Services, as a preventive measure. By simply avoiding the placement of children with people who are violent, we could avoid placing these children into the DFYS system. We would see a dramatic & immediate effect. A reduction in the number of Children In Need of Aide cases!

The best result of HB 385 passing will be an improvement in safety with children's lives. We are not doing enough to protect children, who are innocent victims, from domestic violence. As Governor Murkowski pointed out in his State of the State address, a full third of Alaska's population are under 20 years of age. Passing HB 385 will send a strong clear message to the entire United States of America. Alaska values our most precious resource. The children who are living within the great state of Alaska !

I can see only one area for improvement in HB 385. Right now it's set out to be in effect on July 1, 2004 if the bill is passed and enacted into the statutes. I would much rather see HB 385 become effective immediately after it's passed into law, rather than waiting until July 1, 2004. PLEASE AMMEND HB 385 TO GO INTO AFFECT AS SOON AS IT'S PASSED !!!

Signed: LAURIE CHURCHILL

Testifier

SELF

Representing (optional)

P.O. BOX 7043 NIKISKI, AK 99635

Address

907-776-3499

Phone number