ALASKA LEGISLATURE COMMITTEE FILES 1981-1982 8672

1344 HHESS HB 210 (#3) 1344

CIJI WARE:

You know, it is amazing how so much of the work has been done about parents, and very little about the children. And I realize, I was halfway through my book on joint custody, and I realized I had never talked to my son about how he felt in this very unusual way he was living. And it was great, because I said, you know, I sat him down and I said, would you mind, may I interview you? And he said okay. And I said what does it mean to be a joint custody kid? And he said, well, at my mom's house I sleep in the bottom bunk, at my dad's house I sleep in the top bunk. In my mon's house I brush with Aim toothpaste, at my Dad's I brush with Crest. Mom makes my sandwiches with whole wheat bread, Dad makes them with...

HERBERT KAPLOW:

Do you have any reservations about this?

CIJI WARE:

Well, I was scared when he said this. And I said, Jamie, isn't that confusing, ping pong, you know? He said, Mom, it's not confusing, it's complicated, but it's not confusing. So that in his mind, this was worth it, it was complicated, it required asking him, probably more than most kids, but he was willing to do it. And he's a happy kid. And I think...

HERBERT KAPLOW:

Can poor families go through this?...

JUDGE DONALD KING:

Yes.

HERBERT KAPLOW:

Is there any requirement for any sort of...

JUDGE DONALD KING:

No, it has nothing to do with that.

CIJI WARE:

No.

HERBERT KAPLOW:

Just let me ask you this, where else is this alternative seriously being considered or already may have been adopted?

JUDGE DONALD KING:

Well, a number of states have adopted it. Nevada just this year adopted it, in effect copied the California Statute.

HERBERT KAPLOW:

So the concept is being studied elsewhere, and there seems to be...

CIJI WARE:

About 13 states at the moment...

HERBERT KAPLOW:

...more and more interest being expressed in it.

JUDGE DONALD KING:

I firmly believe within 10 years almost every state in the country will have it as an option specified by statute.

HERBERT KAPLOW:

Thank you very much, both of you, for being with us today on Directions.

PLEASE NOTE: THE PRECEDING PAGES WERE TREATED AS A UNIT IN THE ORIGINAL DOCUMENT.

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

MEMORANDUM

January 20, 1982

SUBJECT: Domestic violence
(Work Order Number 12-2282)

TO: Representative Michael F. Beirne
Chairman, House Health, Education
and Social Services Committee

FROM: Tamara Brandt Cook
Legislative Counsel TBC

Here is a draft of the bill you requested dealing with domestic violence. You have also requested an analysis of the draft.

Sec. 1. AS 09.55.600 allows a person who is subject to domestic violence to petition a court for injunctive relief restraining the commission of further violence. After a hearing, the court may issue any order necessary for the protection of the petitioner or of a minor child in the care of the petitioner. Specifically, the order can include various itemized provisions, and this section adds a new provision to the list: allowing the court to award visitation of the child. An order is effective for no longer than 45 days. A copy of the order is sent to local law enforcement agencies, and peace officers are required to use every reasonable means to enforce the order (AS 09.55.630).

Sec. 2. The definition of "domestic violence" is amended to include the crimes of endangering the welfare of a minor, criminal nonsupport, failure to permit visitation with a minor, and contributing to the delinquency of a minor. If one of these crimes is being committed in a family situation, the injunctive relief provided for in AS 09.55.600 is available.

Sec. 3. The crime of failure to permit visitation of a minor is violation under existing law with a maximum penalty of a $300 fine. This section increases the maximum penalty

a $1,000 fine and a term of imprisonment of not more than days by changing the classification of the offense to a ass B misdemeanor.

wish to alert the committee to the fact that I do have me concerns about this bill. Redefining "domestic violence" o include crimes, such as nonsupport and failure to permit isitation, that are not violent in nature seems to me a uestionable practice. "Domestic violence" is now defined to include violent crimes, such as murder, assault, rape, kidnapping, that require immediate action in extending protection to the victims involved. In this type of situation an injunction serves an important function, but I question whether an injunction is appropriate to use in nonemergency situations. Since the order is only effective for 45 days, it will not do much for an ongoing problem involving failure to permit visitation.

In addition, including the crime of failure to permit visitation in the definition of "domestic violence" and then increasing the penalty for failure to permit visitation in a bill dealing primarily with domestic violence may not successfully avoid constitutional problems under Article II, sec. 13 providing in part, "Every bill shall be confined to one subject. . ." I would recommend that Sec. 3 of this draft be introduced as separate legislation, since it deals with a criminal penalty rather than with domestic violence as such.

TBC:csh

Enclosure

1850 Roberts Road
Fairbanks, Alaska 99701
March 2, 1982

Representative Mike Bierne
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Re: B 210, Joint Custody for Children
ork Order #12-2282, Failure to Permit Visitation

D Representative Bierne,

e been informed that House Bill 210 has been passed out of your committee with a "do pass" recommendation. I appreciate the work you and your staff did on this important issue. It is unfortunate that the presumption of joint custody has been removed from the bill because I think it is important to start with a positive approach rather than automatically assume that one person is bad or wrong. Properly used, the presumption of joint custody can prevent a lot of manipulation and maneuvering that uses children as tools, is demeaning to them and not in their best interest. However, any joint custody legislation is good legislation--it is a start.

Thank you also for initiating a change in the penalties for failure to allow visitation. I have already heard reports that the knowledge that this legislation has been proposed has had an effect in individual cases in Fairbanks.

Children need contact with both parents. Your work will be remembered.

Sincerely,

Larry R. Sweet

Larry R. Sweet

HB210

Marko Lewis
Box 136
Hyder, Ak. 99923

Dear Rep. Martin,

I am worried that the "rebuttable presumption" of shared custody clause will be dropped. This is a very important part of the bill for the following reasons.

Sincerely, Marko

PRESUMPTION OF SHARED CUSTODY- A CHILD'S RIGHT

More than anything, shared custody legislation should be considered a children's rights issues. I have had contact with literally hundreds of children from divorced families over the coarse of five years of children's work and I have had many cry to me how they miss their daddy. The present law is emotionally disasterous for children and non-custodial parents. It forces one parent out and I wonder how this can possibly be justified in the case of two fit parents. How does the state justify, in the face of overwhelming evidance that children and a non custodial parent continue to go through various degrees of hell years after a divorce, the presumption that sole custody as a result of embittered litigation is in the best interests of children? Children have a very well developed sense of justice and I NEVER met a child who wanted to lose a parent.

Certainly a man or woman who is phisi cally or emotionally abusive to a child should, in the strongest terms be forced to mend his or her ways. Child abuse is unfortunately perpetuated by as many females as males. I have worked at a children's hospital and seen the most sickening , disgusting treatment of children by both men and women. BUT, this isn't even the issue when we are considering custody legislation. The issue is:WHAT IS BEST FOR THE CHILDREN of two normal parents.

Sole custody does not allow a meaningful relationship. Visitation is demeaning. Alaskan schools treat a non custodial parent as if he or she were a child abuser. Parents treated as non-persons become non persons and cop out, not so much because they want to, as that court decrees make the relationship meaningless

anyway. The decrees are seen by almost all losers as unfair, they are seen by children as unfair and they only serve to reinforce hostile, bitter attitudes. One of the results of imposing unjust decrees on one parent is eventual desertion of financial as well as emotional support. So we have the problem of "pauperization of women" and their children. Sure, we can make harsher and stricter child support enforcement laws, child stealing laws and fill the jails up with fathers (as they have done in parts of Michigan). But what good does that do children or society? We should at least try and go to the root of the problem- a legal system that is unfair to children and one parent. When the state presumes sharing and equality and enforces it in the best interests of children, then we will see relationships, both emotional and financial, continuing as they should. We will eventually see this as the expectation of divorcing parents who are now children growing up. If we continue to presume that sole custody is best, we will have made no change in our social attitude...we will continue to see the same awful results.

I don't think it is a debatable point that the best thing for children after their parents divorce is for the two fit parents to reach an agreement which assures their children of a close, meaningful relationship with both, and stick to it. How can losing a loving parent to an imposed custody decree EVER be considered best for a child? Should the presumption be that there will be sole custody and a child will lose one parent, or should the presumption be that the child will be shared and retain a continuing relationship with both parents? Both presumptions are rebuttable, which one should we start with? If sole custody is kept as the presumption it supports a hostile attitude, it hampers any sort of agreement, especially after the decree is passed. Agreement

is of primary importance to the well being of children, yet how can we expect anyone to agree to complete powerlessness, which is what we do when we presume sole custody is best. Can you agree to complete powerlessness? If we are to encourage agreement we MUST make the presumption that compromise and sharing will be the norm. When we make this presumption, society will eventually follow suit and justice, compromise, agreement and sharing will become the norm.

I see present custody litigation to be analagous to child abuse. Aside from the ill effects on children, it is important to remember that they are powerless. Two parents, with the complete support of the law, are allowed to tear a child's emotional life to shreds. HB 210 is designed to bring an end to this and substitute a statuate supporting sharing and agreement. If you take away the presumption, which is supported by a great deal of data, that shared custody is the starting point, you will have torn the guts out of the new law. The state will thence continue to encourage selfishness and battling and children will continue to be emotionally torn to shreds.

Sincerely yours,

Marko Lewis

Sally A. Lauster
1908 W. Hillcrest #25
Anchorage, Alaska 99503

March 20, 1981

Committee on Health, Education
and Social Services
Pouch V
Juneau, Alaska 99811

Attn: Chairman Don Clocksin

Dear Mr. Clocksin and Committee Members:

I have been an Alaskan resident since 1962. While setting up a support group for joint custody parents through the Alaska Women's Resource Center, I learned of House Bill 210 and obtained a copy.

Three years ago while dissolving our marriage, my husband and I sought joint custody of our two children, then aged 2½ and 6. We were discouraged both by attorneys and the court system, but we persevered and have been operating as joint custody parents for three years. We feel the system is preferable to any alternative and is workable. Our two children are secure and loved, with no more than the usual childhood growing pains.

My feelings about joint custody are strong. If the parents are able to maintain some kind of co-parenting situation with healthy, albeit separate, relationships with the child(ren), I feel this is the best solution to an unfortunate situation.

Personally I know perhaps five or six pairs of parents making some form of co-parenting work. The children are all happy, healthy, and "normal". This is not to say that all divorced couples will be able to cooperate to the extent that legal joint custody would require, but I give my full support to the notion that the courts will no longer discourage couples who strive for joint custody in a knowledgeable, thoughtful manner.

It is exciting to think that Alaskans are creative and sensitive enough to legislate support to a relatively new form of custody. It seems to me a matter of ultimate good sense and sensitivity to children's needs to make both parents available to them in spite of

the end of a satisfactory marital relationship. There are several good books supporting and explaining joint custody which I would like to recommend, especially Joint Custody and Co-Parenting by Miriam Galper, and Mom's House, Dad's House.

Thank you for the time you have spent on this legislation.

Sincerely,

S. Lauster

Sally A. Lauster

1850 Roberts Road
Fairbanks, Alaska 99701
March 31, 1981

Members of HESS and Judiciary Committees
Alaska State Legislature
Juneau, Alaska 99811

Ref: House Bill 210 Joint Custody of Children

Dear Mr. Chairman and Members:

I am writing to ask that you support and pass House Bill 210 which provides for and formalizes joint custody for children.

I am the father of two sons and received joint custody two years ago in Fairbanks. I have read all the literature gathered by the House Research Agency and compared it to my own first hand experiences.

If the best interests of children are the main concern then they should not be "owned" by anyone except themselves Each parent has a joint responsibility for rearing the children and neither parent should prevent the other from sharing 50 percent of the time with the children.

Contrary to some popular notions the parents do not have to be in agreement to have joint custody or to make it work. If they agree on everything they probably should still be married. I know of many joint custody arrangements and I believe all are beneficial. I also know of many acrimonious sole custody examples. Unfortunately my own situation with my ex-spouse is extremely acrimonious--more so than anything that ever existed in the marriage, yet my sons have never been happier. I firmly believe that if HB 210 existed as law when my marriage was dissolved that both parents and children would be in a better place today.

I hope I can discuss any questions you may have regarding my own experiences via teleconference.

Sincerely,

Larry R. Sweet

Larry R. Sweet

Phone Numbers: Work 479-2241
Home 479-6762

M E M O R A N D U M March 26, 1981

To: Health, Education and Social Services Committee
House of Representatives

From: Grant Callow
General Counsel, Alaska Court System

Subject: HB 210 -- Joint Custody

Bill: Below is a summary of the major problems with the

1. Joint custody only works in 1 out of 50 cases. To work, it requires parents who are:

a) no longer hostile;

b) Reasonable, rationale and intelligent;

c) Willing to undergo individual counselling.

2. Where it is presumptive, then court must go along with parental "agreements" or prove itself that the joint custody is not feasible. Will result in extremely high rate of requests for modification.

3. Where parents at odds, teaches child to become a manipulator.

4. Only experimental in about six states. Approximately one year old in California and experiment appears to show unsatisfactory results. California provided large number of support services to deal with problems.

Marko Lewis.
Box 136
Hyder, Alaska 99923

dear Representative Martin:

During the hearings held on HB 210 - the Rogers and Gardiner shared custody Bill - many parents wanted to know more about shared custody. I have enclosed what is designed as a pamphlet which could be distributed after the new law (hopefully) goes into effect. It represents my own personal view of how the law will encourage parents to share more equally the care and responsibility for their children after a divorce. I welcome questions, criticisms and suggestions for the improvement of the pamphlet idea.

I am also xeroxing a dozen articles I wrote based on extensive research of custody related matter and my own experiences as a parent and a child care worker. Hopefully I will get this to you in time for some winter reading.

HB 210 is a very important bill and I believe it will be a great help to children and parents who are divorcing.

Sincerely yours,

-Marko L

You probably know all this stuff by heart by now. My N.S.F. project in Chicago is, thank goodness, over and I will be haunting the Coast Range again this week. I don't know if I'll make it to Juneau though. Dean Rogers office says HCSS will be making a model bill. Great!

April 30, 1981

Rep. Don Clocksin, Chairman
And Committee Members
Pouch V - State Capitol
Juneau, AK. 99811

Please consider the following changes and comments I have on House Bill No. 210; An Act Relating To Child Custody.

Re:

Sec.. 2., (c), (1) Substitute " educational" for "mental".

(2) "the capability and desire of each parent to meet these needs;" How is the "capability and desire" to be determined? It is my feeling that this needs to be more definitive.

(3) re: "sufficient age and capacity"; Could this be more specific? I would like to see the child making a preference only if both parents agree for the child to make this decision. I would hate to see my child have to live with the burden and possible guilt of having to make such a choice.

(4) same comment as #2

Sec. 25. 20.100. Add: "Modification/termination or maintenance of status quo shall be determined on the basis of parents paticipation in evaluative mediation before the court, annually."

Sec. 25.20.110. "sufficient age and capacity" How is this determined? Could you be more specific?

Thank you for your time and consideration of the above. I hope I have been of some assistance.

Sincerely,

Dan W. Hallett

Dan W. Hallett
Box 381
Kenai, Ak. 99611

Evaluating the 'success' of joint custody decrees

Repeat court appearances as an indicator of custody stability

One measure of relative success is the frequency of return to court for relitigation of joint custody as compared with sole parent custody.

From:
James A. Cook
10606 Wilkins Ave.
Los Angeles, Calif.
90024

November 14, 1980

Two years of custody decrees evaluated in California analysis

On November 7, 1980, Commissioner John R. Alexander of the West District (Santa Monica) of the Los Angeles County Superior Court summarized the rates of controversy in joint and sole parent custody cases from the Fall of 1978 through September 30, 1980. In the next few months Commissioner Alexander will have completed a more extensive commentary on his statistical review. Meanwhile, this advance 'look' at his preliminary findings will be of special interest to the critics and supporters of joint custody.

Statistics were gleaned from case files and index cards compiled by Commissioner Alexander and fellow jurists in the Santa Monica family law court.

Joint custody awards compared with sole custody decrees

From Fall 1978 to September 30, 1980, 414 custody cases occurred in this court, of which 67% (277 cases) were sole custody awards and 33% (137 cases) were joint custody awards.

Joint custody relitigation one-half as frequent as sole custody

Of those cases, only 16% of the joint custody awards resulted in repeat courtroom appearances (22 of the 137 cases.) However, 31% of the sole custody awards resulted in courtroom reappearances (86 of the 277 cases.)

Results when one parent doesn't agree to joint custody

The gratifyingly high rate of 'stability' within cases where joint custo was decreed regardless of opposition to joint custody by one of the parents is illuminating

17 decrees of joint custody were awarded although parents objected (in 14 of which there was opposition to joint custody by one parent and in 3 of which there were 'defaults' by one parent.)

71% of those cases (12) resulted in no later flareups or courtroom controversy despite the initial objection by one parent to joint custody. 5 (of the 17) resulted in later controversy, 2 of which were settled by agreement, 2 were settled after contested hearing, and 1 is still pending, a notice of appeal having been filed August 26, 1980.

Joint custody decrees, even when there is no initial agreement, are more stable than arbitrary sole parent custody decrees

Obviously, a preference is for both parents to agree to joint custody,

But, even when both parents don't agree to joint custody there are fewer flareups in unconsented joint custody than in exclusive sole custody decrees. (29% are compared with 31%).

In short, a decree of joint custody even when one parent disagrees appears to be more stabilizing than the arbitrary and decisive decree of sole parent exclusive custody.

- -

Statistics as offered by Commissioner Alexander:
RATES OF CONTROVERSY IN JOINT AND EXCLUSIVE CUSTODY CASES.

Results of study conducted by John R. Alexander, Commissioner, Los Angeles County Superior Court, West (Santa Monica) District, Fall '78-Sept 30,'80.

Table 1 : Summary of Results

1. Total nr of cases studied	414
2. Exclusive custody awards, Total nr:	277
3. Controversies over custody or visitation arising from the 277 exclusive custody awards:	86
4. Coefficient of controversy (86/277)	0.3105
5. Joint custody awards, Total Nr:	137
6. Controversies arising from 137 joint custody awards:	22
7. Coefficient of controversy (22/137)	0.1606

- -

Table 2 : Unconsented joint custody awards follow-up

1. Joint custody awards made after,	
a) Default by one parent	3
b) Opposition by one parent	14
c) Total:	17
2. Cases with no later flareu of controversy	12
3. Ratio of stability (12/17)	0.7059
4. Flareups of later controversy	
a) Settled by agreement	2
b) Settled only after contested hearing	2
c) Still pending (notice of appeal filed, Aug. 26, 1980)	1
d) Total	5
5. Coefficient of controversy (5/17)	0.2941

(Compare with Table 1, line 4: Coefficient in all exclusive custody cases: 0.3105)

Considering number of cases studied, results are believed accurate within 1% plus or minus.

Initiating

JOINT CUSTODY PLANNING

Encouraging & facilitating joint physical & legal custody plans.

California's new Civil Code Sections 4600 and 4600.5 (Chapter 915 of the Statutes of 1979) propose joint legal and physical custody as an initial preference in a logical progression of choices for custody decisions concurrent with divorce of parents.

For good reason the law dictates no plan requirements.
Parents create their own joint custody plan.

The statute does not specify detailed plan preconditions on the assumption that the diversity of American culture as well as family-initiated solutions should not be limited to the perception of the legislation's authors at the time of the measure's passage. Instead, the statute is designed to encourage voluntary and cooperative plan preparation as divorcing parents assume that the initial consideration of the court will be joint custody prior to consideration of sole parent custody.

Also, a plan can be required before decreeing sole custody.

A parent who prefers not to participate in joint custody is cautioned that, unlike practice prior to Chapter 915 of the Statutes of 1979, the court is empowered to require a sole parent custody implementation plan in advance of the court's custody order as a means of discerning how cooperative a sole custodian parent is likely to be in facilitating frequent and continuing contact by the child with a non-custodial parent. Demonstration of a lack of cooperation, or submission of a sole parent custody implementation plan that foretells curtailment of "frequent and continuing contact" could jeopardize and potentially preclude a court order of sole custody to that parent.

Initiating the planning process.

How do Civil Code Sections 4600 and 4600.5 initiate the joint custody planning process?

At the time of, or prior to divorce hearing, each parent has the opportunity to submit, independently, a tentative outline of his/her personal preferences for the administration of joint custody issues. A submission of the tentative outline is similar to the present procedure of submitting a Form 1285.50, Financial Declaration, in advance of hearing. The tentative joint custody plan outline is for use by private or public-agency counselors, intermediaries, or the court. Parents need not compare their separate proposals in advance of hearing unless they desire to do so on the expectation that mutual consultation in advance will facilitate the court's process.

To encourage consideration of joint custody, this is a non-copyrighted procedure and basic plan available for reproduction and adaptation, in part or in whole.
Source: James A. Cook, 10606 Wilkins Avenue, Los Angeles, California 90024

Advantages of submitting joint custody preferences.

Independently submitted joint custody preference outlines, from each parent, have the following advantages:

- Giving evidence to the court of how cooperative each of the parents is likely to be in administering a joint custody plan.
- Providing information, in advance and possibly not previously available, on how each parent envisions conducting co-parenting.
- Relieving the court of dictating decisions that could be unacceptable to one or both parents.
- Providing a clue to preferences of each parent and a means of discerning which preferences coincide. Consequently, preferences upon which there is agreement need not become issues of contention.
- Winnowing-out for further discussion the remaining joint custody implementation plan preferences on which there is disagreement.
- Providing a priority ranking system to assist in the negotiation of those joint custody implementation preferences upon which there is disagreement.

Accommodating changes.

Child custody encompasses years during which children are maturing, needs and interests are changing, and the economic circumstances and other responsibilities of parents may also be changing. Therefore, custody plans created by this statute are not intended to be rigid, categorical or without evolution. By avoiding itemization of specific prerequisites within the statute, California's child custody statute of 1979 avoids making adherence to, or interpretation of, a custody plan an additional or substitute focus for the parents' animosities.

The purpose of custody planning within the statute, on behalf of the child's best interests, is to encourage negotiation in a spirit of cooperation and accommodation and to minimize accusation or the imposition of unnecessary restraints upon the options parents may envision for conducting joint custody.

The statute facilitates the resolving of joint custody issues by parents without state-directed impositions in matters of personal preference.

Customarily, child custody encompasses decisions regarding, but not limited to:

Medical care Education Religion Residence Travel Support

MEDICAL CARE

Propose names of doctors or clinics available or intended to use.

_____
_____
_____

Will you permit and encourage communication by the other parent with doctors and clinics?

Yes ___ No ___ Comment:

Would you be willing to grant either parent the ability to make medical decisions in emergencies when both parents are not available?

Yes ___ No ___ Comment:

Would you provide advance notification to the other parent about proposed and forthcoming medical care?

Yes ___ No ___ Comment:

Would you offer to participate in medical care costs?

Yes ___ No ___ Comment:

EDUCATION

In considering response to the educational questions, it is not necessarily essential that a child remain exclusively in a particular school especially if grade curricula is uniform in an educational system.)

If education is now in progress, do you offer to assure continuity of schooling?

Yes ___ No ___ Comment:

Would you exchange information of educational deficiencies or strengths?

Yes ___ No ___ Comment:

Would you make available the opportunity for the other parent to visit teachers?

Yes ___ No ___ Comment:

Indicate schools (and locations) available for present and next grade.

Name: Name:
Address: Address:

RELIGION

(The following does not purport to imply that the court either favors or discredits the response to questions on religion. Instead, the questions are posed to aid parents in recognizing and accommodating each others preferences.)

Are you interested in and willing to assume a religious education responsibility?

Yes ___ No ___ Comment:

Do you have a religious preference for each child?

Yes ___ No ___ Comment:

Do you have alternate preferences? Itemize

_____
_____
_____
_____

TRAVEL COSTS

Offer a solution to the child's travel costs if one or the other parent moves from, or is no longer resident in, the original home locality.

For instance, should the parent moving from the county of original residence be required to pay travel costs to and from the alternate parent's residence?

Yes ___ No ___ Comment:

Should travel costs be apportioned based on income and ability to pay?

Yes ___ No ___ Comment:

Will you assume travel costs of the child to fulfill residence with the alternate parent?

Yes ___ No ___ Comment:

SUPPORT

Initial inquiry to determine the assumption of child support costs.

Alternatives:

Will you assume all child support costs?

Yes ___ No ___ Comment:

Will you assume all child support costs while the child is resident with you?

Yes ___ No ___ Comment:

Will you participate in sharing of child support costs based on need and ability of each parent to pay?

Yes ___ No ___ Comment:

If costs are shared or allocated, will you provide a monthly itemization of actual support costs?

Yes ___ No ___ Comment:

Itemize anticipated child support costs by item on monthly or yearly basis:

RESIDENCE SCHEDULE

(Indication of where the child is resident, either on an alternating basis or consistently, and the sharing of significant calendar dates.)

Under the present statute it is no longer necessary to use the term 'visitation' with its connotations of superficiality, brevity, condescension or permission. A few parents may, or may not, wish to designate a primary and a secondary residence for the child but this ranking is not necessary for those parents establishing equality in joint custody.

Indicate preference and proposals for sharing residence.

Not all schedules need to indicate an exactly equal sharing of time, and you are encouraged to propose time schedules that are practical, realistic, and suitable for your personal schedule as well as accommodating to the probable schedule of the alternate parent.

In exchanging and allocating time available, consider not only alternate days, but alternate weeks, months, seasons or years as well as the sharing or trading of holidays.

In general, how would you prefer to apportion:

The school year?

The vacation season?

Are the following days important in your scheduling?
(Note. Many of these dates have not heretofore been alternated in conventional custody/visitation decrees with omissions occurring by intent or oversight. This list is intended to rectify an observation of non-custodial parents that many of these dates were omitted entirely from former visitation schedules.

Yes	No	Date	Preferred resolution
		Child's birthday	
		Your birthday	
		Christmas	
		Hannukah	
		Special religious dates	
		Winter vacation	
		New Year's Eve & Day	
		Washington's birthday	
		Lincoln's birthday	
		Valentine's Day	
		Spring (school) vacation	
		Memorial Day	
		Independence Day	
		Labor Day	
		Halloween	

continued on page 7

Yes	No	Date	Preferred resolution

continued from page 6

Thanksgiving Day
Thanksgiving Holiday
Mother's Day
Father's Day
Other relatives' birthdays
School or teacher-convenient days off

Are there events, club meetings, obligations or opportunities you would like to accommodate on behalf of the child? Itemize.

REMAINING ISSUES

Are there issues or considerations of particular importance to you, which have not been previously itemized, that would be helpful to you and to the child if indicated in a joint custody plan?

Itemize, comment:

While not as critical to the underlying functioning of an implementation plan as the items previously indicated, the following are secondary issues that will help both parents toward implementing joint custody.

Do you agree or permit that yours is not the only acceptable and satisfactory way to raise children?

Comment:

Do you recognize that the part-time absence of your child, and joint custody, is not a denunciation or derogatory reflection of your ability to parent?

Comment:

Will you substantiate with your child and with your other contacts that joint custody has established two equally valid homes?

Comment:

Do you agree not to estrange your child from the other parent?

Comment:

Will you respect the other parent's right to opinions and a reasonable freedom of action when with the child?

Comment:

Do you recognize that other people have differing philosophies and that it is permissible for a child to experience and evaluate those philosophies for themselves?

Comment:

If brothers and sisters are also involved, how would you prefer the relationship, residence and other activities be coordinated?

Comment:

How would you approach situations that conventional families usually attend together, such as graduation, recitals, athletic performances, etc.

Comment:

Will you facilitate the child's contact with grandparents?

Comment:

Communications

Describe the level of involvement you can tolerate with the other parent in joint custody implementation.

Comment:

Do you anticipate that your level of tolerance with the other parent will change, and under what possible circumstances?

Comment:

Is oral communication between parents satisfactory for you?

Comment:

Will you require written confirmation of verbal agreements?

Comment:

Will you facilitate telephone calls or chats by the child with the other parent during those times when the child is resident with you?

Comment:

Parenting and Services

Each parent has a different quotient of parenting skills, and varying degrees of interest and effectiveness in parenting skills. For realistic and efficient co-parenting both parents are well advised to recognize and admit these variations without rancor, ridicule or judgement. Insofar as parenting:

Which parenting task do you believe you do best?

Which tasks do you perform least well?

Which services and responsibilities would you most like to assume?

Which would you like least to do?

In making joint custody work, which service or consideration or task would you most like the other parent to do?

If baby sitting or equivalent service is needed, will you give the other parent the first opportunity to do so before selecting or engaging an individual other than the parent?

(Prior to enactment of Chapter 915 (AB 1480), Statutes of 1979, and for no discernible or equitable reason, one parent most often had to assume the expense and inconvenience of picking up and delivering the child so that the child had access to the other parent during "visitation." Since the new statute redresses the imbalance in such relationships, the following question is asked:)

Will you, or can you, pick up and deliver the child to the other parent as frequently as the same is done for you?

Financial (other than child support)

Do you believe your joint custody situation calls for a budget and a mutual understanding about that budget?

Comment:

Do you have preferences or intentions about financial savings for the child?

Comment:

Discipline

Do you have opinions about the child's safety that you would like to guarantee or convey to the other parents?

Comment:

Do you have preferences and opinions about manners, deportment, and how the child behaves that you wish to convey?

Comment:

Do you have proposals or preferences regarding punishment?

Comment:

Will you honor the joint custody implementation plan even though a child's remarks may be counter to the other parent's preferences?

Comment:

Will you concur that if the child is upset at circumstances in one home that they can't merely pick up and move to the other house without communication between the parents?

Comment:

Decisions

Will you agree that the parent having day to day jurisdiction can make decisions of the moment?

Comment:

Do you believe that substantial decisions of longer term consequence should be resolved by consensus?

Comment:

Dispute

Do you have fears or apprehensions about joint custody not working?

What are they:

Do you believe that a plan should be subject to periodic review?

Comment:

Will you permit input about the plan from the child, even if the child's observations are critical of your preferences?

Comment:

Will you participate in property and custody settlements out-of-court?

Comment:

Would you be amenable to mediation or arbitration in case of serious custody dispute?

Comment:

Information and Records

Civil Code Section 4600.5 (g), Chapter 915, Statutes of 1979, prohibits a custodial parent from prohibiting access to records and information by a non-custodial parent.

So that each parent may anticipate which records and information regarding the child are likely to be desired by the other parent, indicate which of the following are of interest to you.

Medical
Dental
School
Religious

Diet
Rest
Living & sleeping accommodations
Clothing
Pets

Other

Camps
Clubs
Cultural or extra-curricular activities
Friends & associates

Hobbies & interests

Work
Income

Not every question can or need be fully answered.

The intent of this exercise is not to imply that every consideration needs to be resolved before joint custody can be implemented.

Instead, the intent of these questions has been to focus your attention on the practical considerations of implementing joint custody and to do so without the antagonisms or apprehensions that frequently accompany divorce.

Finally, our intention has been to demonstrate that since there is such a wide range of considerations (no single item need be crucial) parents are encouraged to be flexible and accommodating in recognizing each other's preferences and needs.

THE JOINT CUSTODY ASSOCIATION

10606 Wilkins Avenue
Los Angeles, California 90024
(213) 475-5352
James A. Cook
President

A Nonprofit Association concerned with the joint custody of children and related issues of divorce, including research, information dissemination and legal and counseling practices.

April 23, 1981

Representative Terry Martin
Alaska State Legislature
Pouch V
Juneau, Alaska 99881

RE: Alaska House Bill 210

Dear Representative Martin:

I urge your approval of House Bill 210 which deals with joint custody access to both parents by the children of divorce. Minor amendments are proposed in my concluding two paragraphs, but the overwhelming tenor of H 210 is one of the finest, most sensitive and most humane of all similar joint custody legislative proposals now being studied in the various state legislatures.

Enclosed is a selection of applicable items which I believe will not only aid your legislative evaluation of the topic but may also be increasingly valuable in your conversations with constituents about joint custody. If your constituents raise questions, feel free to duplicate and convey the enclosures to them.

Among the materials, on the third page of the paper marked "Alaska", I question the extensive list of prerequisites which a court might interpret as needing to be ide before joint custody will be decreed and as a "red flag" for an opponent-parent to assure that some of these issues are not satisfactorily rectified. Although I think each prerequisite is an excellent measure for counselors and parents to consider, as a statute and a legal guideline I surmise they might be decreed unconstitutional.

Lastly, let me mention an item we are all having 'second thoughts' about. That's the old benchmark that hasn't been thoroughly questioned of giving so much weight to the preference of the child. Thoughtful and observant psychiatrically-trained professionals are coming to the conclusion this gives too much impression of power to inexperienced and immature children, gives rise to potential future guilt for having decided for or against a particular parent, and contributes to parents 'catering' to a child in hopes of currying that child's particular approval of one of them exclusively. Hence, I urge you soft-pedal, or downgrade that particular proposal.

Regards,

James A. Cook

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K–STATE CAPITOL
JUNEAU, ALASKA 99811

(907) 465-3603

March 26, 1981

Donald E. Clocksin, Chairman
House HESS Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Re: House Bill 210

Dear Mr. Clocksin:

You have asked us to comment on HB 210, "an Act relating to child custody." Although this bill has no direct impact on our department, we do have some concerns over the policy expressed in the bill.

The intent of the bill is laudable. It addresses concerns that have been surfacing with increasing regularity around the country. The bill, in promoting shared custody, embodies the notion that it is in the child's interest to perpetuate his or her relationship with both parents. Shared custody also appears to be, in some cases, more equitable with regard to the parents, giving legal recognition to the rights of both parents to participate in decisions which significantly affect the child's life. Although judges probably have inherent power to make shared custody awards in appropriate cases, statutory recognition and authority for such awards may ensure that shared custody is given serious consideration as an alternative in custody disputes. Additionally, statutory authority for a shared custody award may help in surmounting the sexual stereotypes that often operate in custody disputes.

However, conferring upon the notion that shared custody is in the best interests of the child the status of a rebuttable presumption, and requiring that first preference in making an award be given to shared custody, regardless of whether, in either case, the parents actually agree on shared custody, may be going overboard.

cc-CSLH

By its nature, shared custody requires extensive cooperation between the parents. Without question, there are many instances in which such an arrangement is simply not feasible due to the existence of extreme antagonism between the parents, or perhaps due to other factors (this is implicitly recognized by the listing of the factors to be considered in making an award, § 25.20.120). Many states have recently authorized shared or joint custody awards, and several have accorded it the presumption that it is in the best interests of the child where the parents can agree on an arrangement, but we are aware of none which give shared custody the blanket presumption provided by this bill.

We would suggest the requirement that parents agree on a shared custody award, at least before the presumption and first preference come into operation. Additionally, it may be advisable to require the parents to submit to the court a proposal setting out guidelines for resolution of disputes, and a workable plan if shared physical custody is contemplated, rather than to leave it in the court's discretion.

Section 2, amending AS 09.55.205, is also problematic. Subsection (d) of that statute would prohibit consideration of several factors in making an award of custody -- the conduct, marital status, income, social and cultural environment, and life style of either parent, unless those factors are shown to have caused or to potentially cause emotional or physical injury to the child. While the intent here may be to dispose of many of the conventional but perhaps unfounded presumptions regarding what is and is not a proper and suitable environment for children, this section seems to leave little that can be considered. We wonder, for example, how an assessment of each parent's capability to meet the physical, emotional, mental, religious, and social needs of the child, as required by subsection (c)(2), can be made if there is an exclusion of all reference to the parent's social and cultural environment and life style unless it is shown to be detrimental. We believe that this section is overly broad.

Sincerely,

WILSON L. CONDON
ATTORNEY GENERAL

By: Linda Scoccia
Linda Scoccia
Assistant Attorney General

cc: Art Peterson

LS:ml

California Retires a Formula for Injustice in Child Custody Fights

By JAMES A. COOK

Curbside clutter last week marked the end of the holiday season. Forlornly awaiting garbage trucks, trees with dragging tinsel and heaps of crinkled gift wrap signaled the passing of anticipation and the beginning of memories.

But inside many homes, warm recollections had been purchased at a price of bitter conflict. While others were rushing about from store to store, planning close family gatherings around the tree or menorah, divorced parents in these homes too often were making frantic calls to their lawyers, petitioning courts and waging fierce battles over which one of them would spend the holidays with the children.

No other single time span incites such heated controversy between divorced parents as do the holidays. Wrapped as they are in the mood and myth of family unity, the holidays are meant to be shared with children. Children give purpose to tradition. Thus, this time of the year highlights, more poignantly than any other example how badly our courts have failed to protect a child's right to know the love of both parents.

Up until now, the courts have meticulously divided between divorcing parents all the material wealth of the marriage. The car, the couch, the house, were split 50-50. But the most precious part of that marriage, the children, went to one parent, the one designated as custodian, almost exclusively. The other parent was regularly left with only a very small portion of the child's time and frequently had to fight repeatedly, assuming devastating legal expenses, to even maintain that shred of contact with the child.

This formula for injustice is about to become a thing of the past. On Jan. 1, California's new joint custody law AB1480 went into effect. Hereafter, at the request of either parent, judges must consider joint custody awards. Such requests can be made not only for pending divorces, but also in the case of divorces already granted.

From now on divorcing parents will be encouraged either to sit down together and work out joint-custody arrangements or to work them out through their attorneys or counselors. In order to allow the utmost flexibility and, thereby, to insure that various ways of life can be accommodated under the new law, no rigid guidelines have been imposed on litigating couples. Thus, each joint-custody agreement can be tailor-made. Each set of parents can draw up a plan most practical and suitable to their situation. Legislators believe that this "self-ordering" (designing the court order under which they will be bound) will lead to more compliance with court orders on the part of parents, since most people are inclined to honor an agreement they negotiate themselves.

Further, since the court still has the authority to order sole custody to the parent most tolerant of the child's continuing relationship with the other parent, it is believed that this notion will prove to be an incentive to greater cooperation between negotiating parents.

The new custody law was inspired in part by the growing number of custody-change suits brought by fathers who had no recourse under the prevailing law to overcome custodial mothers who obstructed the father's attempts to maintain close contact with the child. Non-custodial mothers were also interested in the joint custody concept, though they are fewer in number and thus have not received as much publicity as have the fathers.

Divorced fathers have become more willing in recent years to express their anguish over the loss of their homes, their wives and their children. More people realize the important role a father plays in the child's life. And more fathers develop and value their parenting skills. In fact, the new movie "Kramer vs. Kramer" gains its power from the nurturant father role played by Dustin Hoffman. Still, the courts were caught in a cultural lag. Laws did not change fast enough or sensitively enough to respond to social changes.

The initial push for new legislation came from professionals in psychiatric, sociological and counseling fields. A gratifyingly large number of lawyers also endorsed the necessity of joint custody.

Actually, the outrage over custody awards began to build soon after the "no-fault" divorce Family Act of 1970 was enacted. Subsequent studies regarded the lack of a joint-custody option as the single greatest inequity left unrectified when the no-fault divorce was imposed. Since the statute still provided that custody could only be awarded to either parent (or an outsider under certain circumstances), the parent who demanded it of the court would receive a divorce without showing of cause. The other parent—who may not have been consulted, may not have been desirous of divorce and may not have wittingly given cause for divorce—could be promptly excluded from the child's life except for visitation based on a schedule decreed by the court without consulting the excluded parent.

In fact, the non-custodial parents often are treated as nonpersons. They have been barred from access to their children's medical records, although they often are financially responsible for the medical bills. School administrators and teachers have often colluded with the obstructionist parent by refusing to provide the non-custodial parent with any information whatsoever about the child—even though such refusals violate federal law.

The net effect was that law-abiding fathers whose conduct as fathers and husbands was theoretically not in question, were, nevertheless, severed from a normal relationship with their children in decrees as severe as if these men had committed a crime.

Los Angeles Times
Opinion
Interpretation Background
Editorials
PART V SUNDAY, JANUARY 6, 1980

ERASING CALIFORNIA'S UNJUST FORMULA

And, despite the myth of the irresponsible, footloose and fancy-free former husband, many divorced fathers are determined to remain committed parents to their children. Many yearn to rejoice with their child over a school award or to commiserate over a failure. They seek to share influencing and guiding their child through the formative years.

The new law should help avoid two problems that frequently endanger the well-being of children. In the past, excluded parents have sometimes resorted to "child stealing" or to abandoning child support for lack of frequent and extensive contact with their children. Certainly, a pattern of mounting frustration over not being able to see and share the child often precedes abandonment or child stealing by the non-custodial parent.

Studies show that about two-thirds of divorced fathers fall behind in child support after the first year of divorce, and if, as seems to be the case, a significant number of these fathers have had visitation obstructed before finally withdrawing support, joint custody should end this vicious cycle.

Moreover, the new law will shift the focus to a decision based on protecting the child's equal access to both parents regardless of custodial arrangements and on encouraging parental sharing of responsibility for the child. Thus, the new law stipulates that custody should be awarded in the following order of preference according to the best interests of the child: To both parents jointly or to either parent. When awarding sole custody, the court is encouraged to choose the parent who will most tolerate the child's frequent and continuing contact with the other parent. Preference of custodian will not be made on the basis of the parent's sex.

No longer can the reluctant or vindictive parent easily use custody, visitation obstruction or denial as a weapon against the other parent or use the court as party to such action.

Certainly, all children are entitled to the love and influence of both parents, but when they are pulled between two sparring parents they suffer acutely. Psychologists and psychiatrists have often warned of the long-lasting ill effects of such trauma.

After years of study, in fact, professionals have compiled a list of adverse reactions a child suffers as a result of sole-custody awards. Children immediately feel lost and abandoned regardless of the presence or excellence of the custodial parent. Feelings of anxiety and loyalty conflicts lead to strained relations with the custodial parent, disturbances in the child's social relations and learning problems. There is often confusion in sex-role identification.

But children are not the only ones to undergo trauma. Non-custodial parents feel anxious over the separation and at the loss of their close family members, and familiar roles and habits. Practical problems such as economic instability create added stress. The ability to parent declines as does self-concept. (Mothers feel less physically attractive and fathers suffer greater initial changes.) Feelings of rootlessness and extreme loneliness also pain these parents.

Joint custody, which preserves as much as possible of the existing relationship between parents and child, will soften many of these symptoms.

Every year about this time, much is written of the large number of Americans who suffer severe depression throughout the holiday season. Suicides increase. Some of these incidents are directly related to the shattered home. Many of my colleagues bewail the high stacks of litigation papers filed by clients who, in the face of the custodial parent's resistance, cling to the hope, however slight, of sharing the holidays with their child.

For these people and for the many, many children torn and confused by embattled parents, the new joint-custody law is a marvelous present for the new year. □

James A. Cook, an administrator of a nonprofit association that researches legislative, regulatory and judicial matters, initiated and ca[illegible]d the original version of AB 1480 which, as modified fo[illegible], took effect Jan. 1.

Los Angeles Times
Metro
LOCAL NEWS
EDITORIAL PAGES
CC PART II
WEDNESDAY, JANUARY 30, 1980

Joint Custody

Thank you for printing the article by Jim Cook on California's new joint custody law (Opinion, Jan. 6).

Cook has done more for the children of divorce—and their parents—than any other single individual in the last decade.

As a father whose daughter was taken away from him by a judge who believed that girls should be reared by their mothers (even incompetent ones), and as a mental health professional who has treated dozens of children and countless divorced adults, I am keenly aware of the destructive effects of our former system.

Cook's incredible devotion and determination was absolutely essential for the creation and passage of the new law. He is now working to facilitate joint custody legislation in many other states. I expect we will be able to look back in 10 years and see this law as one of the most important pieces of social legislation ever enacted.

The "rules" of human relationships are changing. Whether we like it or not, marriage is not what it used to be—nor will it ever again conform to the old model. The joint custody law is an essential step in the social acknowledgement of contemporary family structure.

DONALD D. LATHROP MD
Los Angeles

FAMILY LAW REFORM AND JUSTICE COUNCIL OF ALASKA, INC.

P.O. BOX 4-1646
ANCHORAGE, ALASKA 99509

RUDY JOHNSON, PRESIDENT
(907) 333-6693
"ALASKANS FOR CHILDRENS RIGHTS"

FAIRBANKS - BOX 73256
KETCHIKAN - BOX 7176
SITKA - - BOX

February 17, 1981

Representative Brian Rogers
Pouch "V"
Juneau, Alaska 99811

Dear Representative Rogers:

Two weeks ago I received a letter from Mark Lewis of Hyder. Alaska. His letter was centered around a desire for a bill, this year, dealing with joint custody and mediation in reference to divorce proceedings in Alaska.

We have been actively involved in Alaska since 1974, in these areas. I worked extensively with Representative Mike Bradner, then of Fairbanks, and if you read the statutes you will see them in an evolutionary process that represents years of our efforts and the efforts of many legislators that shared our concerns. My involvement is more detailed in the enclosed copy of the July, 1979, article printed in the Anchorage Daily News.

In 1975, we participated in Representative Bradner's mediation bill that passed and gives divorcing people an opportunity to seek mediation. The bill was a fine piece of legislation and is a stepping stone to solving some of the real problems.

Some of those real problems are:

1. 40% of all homocides are directly related to domestic relations disputes;

2. 90% of the American prison population is from a broken home;

3. 4 out of 5 women on welfare are a direct result of divorce.

I could write a book on the related problems but these few well known statistics help appreciate the depth and also that legislation which will help alleviate these results are an investment many times returned.

We firmly believe the introduction and passing of the enclosed California joint custody bill will help tremendously in this problem area. The bill is fine just as written except it needs to be changed a little to fit Alaska Statutes. Mr. Lewis felt you would be willing to introduce this and babysit it through. It appears to me to be an excellent time to do this as with everyone concerned about money items, I would think, it would sail through with very little adverse attention. I am enclosing some articles for your information showing some strong arguments in support of the bill. Boiled down all the research says;

> joint custody (joint parenting) feels better for the family involved.

Joint custody does not necessarily mean equal time but is a simple statement in a divorce decree that recognizes the importance of both paren's roles in raising their children after divorce. By that simple recognition it in effect encourages parents to work together after a divorce in raising their children. It feels much, much better for the non-custodial parent. Without a joint custody clause the parent without physical custody is by law not, authorized to grant medical treatment or even attend a parent-teacher conference without permission. How degrading! These kinds of seemingly little things begin a chain of events that trigger emotional trauma upon emotional trauma and makes a creative divorce very unlikely, if not impossible. When the parents feel alright, the children feel alright, and visa versa.

I am a member of the Association of Family Conciliation Courts, an organization consisting of social scientists, lawyers, and judges who are concerned with family law problems. As a result of my affiliation with the Association I have an abundance of research and position papers from professionals in the field in support of the joint custody concept. The Association itself has taken a strong stand in support of mediation and joint custody. I also have the most current collection of case law in support of this.

If you would be willing to introduce this bill for us we shall surely make our research available and will testify in committee. James Cook, who originally lobbied the California legislation through, has also agreed to come here and testify if we need him. However, I believe this will easily fly with little opposition. You will notice the bill gives a judge the discretion he needs to not award joint custody but requires him to simply state his reasons.

We will surely appreciate your help if you are interested in this bill. I have worked extensively with Representative Gardiner throughout the years and I believe he would be very supportive of this legislation. I also feel Representative Meekins and Representative Bucholt will help.

Please do let us know if you care to handle this legislation and what we may do to assist you.

I wanted to let you know the reason we are contacting you is because I am assuming you have some kind of a personal interest and understanding in faily law issues. We feel this legislation is vitally important and I know from past experiences it will take a bit of personal dedication to walk this bill through to the Governor's desk.

I will be looking forward to hearing from you.

The enclosed research is but a small sample of what I have available.

Sincerely,

RUDY JOHNSON
President

RLJ:ej

Enclosure(s)

FAMILY LAW REFORM AND JUSTICE COUNCIL OF ALASKA, INC.

P.O. BOX 4-1646
ANCHORAGE, ALASKA 99509

UDY JOHNSON, PRESIDENT
(907) 333-0693
ALASKANS FOR CHILDRENS RIGHTS

FAIRBANKS - BOX 73256
KETCHIKAN - BOX 7176
SITKA - BOX

June 3, 1981

Representative Donald Clocksin
Alaska State Legislator
Chairman, HESS Committee
Pouch "V"
Juneau, Alaska 99811

Dear Representative Clocksin:

Having just received the file on HB 210, joint custody, I wanted to comment on Mr. Francis Stevens' letter of April 28, 1981.

Mr. Stevens letter needs a little clarification. On page 4 of his letter he mentioned I had stated 60 - 80% of all cases being mediated in California were being settled out of court with joint custody being the result. I know that is not what I meant and felt Mr. Stevens must have misunderstood me so I went back and listened to the tape to varify what I had said. As it turned out, he was correct, I apologize.

What I meant to say was, 60 - 80% of all cases going to mediation are, in fact, being settled through the process and joint custody is a first option which is explored by many of the mediators with many people agreeing mutually to joint custody. Tho e figures come from the heads of the diffe_ent programs themselves and I personally acquired that data from these people in the form of studies, conversations and their written correspondence to myself.

I, too, am a member of the Association of Family Concilations Courts and it is true no one in Alaska is authorized to speak in behalf of the Association and I certainly never meant to imply I was. However, the Assocation has provided some very innovative information to its members and has indeed done a lot of research on an individual basis that is shared at the meetings, depending on your particular interest.

The Association is made up of people with a wide range of interest. You will find custody investigators there that state, the only father that wants the children are those who want to hurt the mothers, to others that are appauled at the present system. You will also find the same diversity in judges and attorneys that are attending the meetings. The difference is those people that really care take the time to compile statistical information to support their positions rather than simply state an opinionated opinion. Depending of where your intersts are, you would find support from the members on any issue. Knowing this, I work very hard to justify my positions and to support them with facts.

Beyond the mistake I made in my oral testimony the facts and figures I have shared with you are extremely accurate and well researched.

Mr. Stevens is indeed correct in stating some judges are opposed to joint custody but it is equally true that a number of judges recognize its value and are very supportive.

Sincerely,

RUDY JOHNSON

cc: Francis Stevens

FAMILY LAW REFORM AND JUSTICE COUNCIL OF ALASKA, INC.

P.O. BOX 4-1646
ANCHORAGE, ALASKA 99509

RUDY JOHNSON, PRESIDENT
(907) 333-6693
"ALASKANS FOR CHILDRENS RIGHTS"

FAIRBANKS - BOX 73256
KETCHIKAN - BOX 7176
SITKA - BOX

Representative Don Clocksin

Re: Judge Justin Ripleys' letter of April 7, 1981

Re: H. B. 210 - Joint Custody

Dear Mr. Clocksin,

I want to begin this letter by stating that Judge Robbin Taylor wrote his letter of May 3, 1979, at my request and certainly not for the purpose of being exploited by myself in Alaska. The issues involved at the time he wrote the letter are well qualified in his letter. He did not intend it to be distributed to the Alaska Bar, and he never, ever gave me his permission to do so. I have been very careful not to misuse it or to embarrass him by unauthorized use of his very candid letter. When I served on the Governors Task force of the Revised Childs Law Task force in 1977, the director, Ms. Betsy McQuire, wondered why she could not get an Alaskan Judge to any of the meetings although they had all been invited. When Judge Shultz showed up, she was elated. Do any of you wonder why it is difficult to get a judge to speak out and testify before your committees now?

When I sent Judge Taylors' letter to your committee, I did so with the thought that it was not going to be circulated to the legal community or even available to the public. I am sure that when he wrote it, he did so with the same understanding. His letter is a valuable, candid and ACCURATE review of the American divorce courts. I believe he would be the first to tell you, as I do, that not all courts are as he described in his letter. The letter was not intended to apply to all courts, but he does accurately describe the majority of courts.

The studies we have compiled since 1977, show that out of 350,000 child custody disputes, only 4.5% were decided in favor of the fathers. We also noticed the only thing that brought the figures up to those appaling levels, was because of a few judges who had records of awarding children to the fathers (35% and sometimes 40% of the time). There are many, many more judges who

have never awarded custody to a father or those others whose records show that they have done so 3 or 4 % of the time. As I say that, it is important to remember, we do not advocate Mens Rights, we are concerned about children of divorce and the record I spoke of, in my written testimony of April 26, 1981, shows that these childrens' interests have not and are not being protected as the rule.

Judge Ripley's statements, on page 2, paragraph 2, talk about how the doctrine of a custodial parents' willingness and ability to foster an open and loving relationship between the child and the noncustodial parent are interesting. I wonder if he knows that the statute originated in my living room, back in 1976. I also wonder if he has any idea what it took to overcome the opposition of this simple statements inclusion into the statutes. I know, and it costs us thousands of dollars in printing costs, travel expenses and time to successfully provide the research and information necessary to convince the legislature this was a good idea. The opposition back then, was as fierce as it is today from people who saw their power being threatened. The bill has worked remarkably well as we showed it would with our research from other states. It began a change in attitudes just as House Bill 210 will.

As for Judge Ripleys' remarks on page 2, as to how House Bill 210 will increase the future litigation of the parties, I refer you to the study we submitted from Judge Alexander of Santa Monica, California. Those are facts that measure the results, not opinions or innuendos. On page 2, he speaks of the justification of meaningless phrases like, "Reasonable Visitation". Each day in the court room amounts to over $1000 in costs to each of the parties involved with the preparation time etc. Most people simply cannot afford to go back to court to establish their, already, court ordered visitation rights. We see the results of these decrees on the long term basis, where Judge Ripley and people like him assume that all worked out because he never heard from the people again. I hear from them on the average of 20 times a week. Denial of visitation rights is so prevalent that one national divorce reform organization has actually sought political asylum for themselves and their children in all countries outside of the United States that are cosigners to the Universal Declaration of Human Rights, signed in Geneva in 1954. Their letter is enclosed and cannot be given too much weight in analyzing just what a tremendous problem we are dealing with. Then in the late 70s' a plot was discussed to have a mass execution of judges, meeting in Los Angeles, to demonstrate the need for reform. And how about the book, "Rape of the Male", by Richard Dole, that advocates mass and extensive physical violence against judges, social workers and custody investigators, complete with addresses for information on how to build your own bombs etc. Although I certainly do not agree with these peoples means to accomplish their goals. they have my empathy in recognizing there is indeed a problem that needs to be dealt with.....they live with the orders of the court that the "Judge Ripleys'" issue!

Are these people crazy? Dr. Carl Abbruzzese, who is the author of the letter to the embassies, is a world famed medical surgeon who is recognized in Who's Who in the West and Who's Who in Europe. I have personally dealt with attorneys, social workers and psychologists who have been so traumatized by their experiences in american divorce courts, that they were crying like children as they explained their ordeal to me and their frustrations with the famous, unenforceable visitation clause that says, "Reasonable rights of visitation!"

Oh, and as for guardians (or attorneys) for the children, the Alaska Supreme Court made it very clear in Veasey vs. Veasey, what their role should be. But I personally know of over a dozen cases, where the attorney for the children did not even go to court and in some of those cases, with the approval of the judge. Sometimes the guardians recommendation is coupled with a third party such as the state custody investigator. Many of these people end up in our files and it appears that the custody investigator in Anchorage spends an average of about one hour with each parent to determine the fate of the children involved. He has a staff of two and they have some three hundred cases a year to work on. Although I know he is grossly overworked and could not possibly investigate each case, adequately, I am astonished to hear him tell me that he is always sure when he submits his reports.

As Judge Ripley states, a party or their attorney can always appeal an illegal order. Although this is theoretically correct, the practicalness of this is questionable. An average appeal in Alaska takes about one and a half years. The only real value of an appeal beyond a stay is making some good law that will benefit others until we find a way to get the judges to obey the Supreme Courts decisions. You see the Alaska Supreme Court issued stays 8 times to 1 in favor of mothers when custody of a child is involved. That is significant because in following up the cases I have learned that in virtually all cases where a stay had not been issued and the lower court was reversed, the Supreme Court always remanded the case back to the original trial judge, where he would simply clean up his wording and reaffirm his own decision. In many of the cases where a stay had been issued, the Supreme Court simply reversed and it was out of the trial courts hands. Those appeals costs each party an average of $10,000 and for the most part, were meaningless in terms of relief, except for making law that is apparently unenforceable. Again we must change attitudes and House Bill 210 will do that!

Judge Ripley is correct in stating we believe in the best interest of the child doctrine but what does that mean? It means something different to every judge. I remember when that particular issue came up on the task force, Judge Shultz said, "I could go over there to the Court House and round up a few judges and get a hell of an argument going over this definition." He then went on to explain how the deciding factor with fit parrents must be their attitudes toward each other, because those attitudes will greatly effect the children.

Any judge can justify their decision, legally, with such an ambiguous phrase. In 1977, a judge from Alaska, decided the best interest of the children involved would be served by their being in the custody of their father, who had already been found unfit by another judge because he had been sexually abusing his sons and daughters regularly. (See Horton vs. Horton 519 P 21131, Ak.,1974). Then take a look at Nichles vs. Nichles, 516 P 2732, Ak. where the judge awarded custody of a child to a mother who had physically abused her child, to the point, the child needed hospital care (the child had been in the care of the father for some time). Both of these cases were overturned by the Alaska Supreme Court and stays had been issued in both. The children never actually were returned to the abusing parent in either case. Do you know where that judge is today? He is the Family Court judge here in Anchorage and he daily decides what "In the best interestof the child" means. Judge Ripleys' record is not impressive either, but I will wait until the total results are in on the study we are presently doing of the Anchorage Court System, before I elaborate on that!

As for Judge Ripleys' remarks about me (page 4 - 2nd paragraph of his letter), I agree whole heartily that the record speaks for itself in my case. In the one and a half year interim, between the original decision of the trial court to take my children away from me because of the "Tender Years" doctrine, (See Johnson vs. Johnson 564 P 271 Ak., 1977), after the first judge had given me custody, he was reversed or remanded by the Supreme Court of Alaska 5 times! This cost over one hundred thousand dollars between my ex-wife and myself. The end results were the same after going through the system and having the trial judge simply clean up his wording and reaffirm his own decision. He went a step further.....he took all my visitation rights away from me except for one day a month, which my ex-wife refused me. Obviously Judge Ripley has not read the record he refers to. I invite him to do so!

In closing, I think it is mportant to boil down the issues surrounding House Bill 210. They boil down to two points:

1. If we agree with Judge Ripley and people like him, that a decree of divorce is an instrument, giving one parent exclusive right to raise the children of a divorced home and that it is a healthy procedure to exclude one parent, then House Bill 210 is not a good idea.

2. If we agree with Judge Shultz and people like him that it is the responsibility of both parents to minimize the grief of divorce for children and to encourage a frequent and loving relationship with both parents after divorce, then we need House Bill 210 immediately!

The available research unequivocally supports the second proposition and House Bill 210.

The opposition is based totally upon personal opinions, unsupported by facts or even logic in many cases. The attitudes expressed in the opposition are exactly those attitudes that have created the horrendous problems surrounding parents and children after divorce.

I wonder if Judge Ripley opposes House Bill 210 or the fact that Rudy Johnson is associated with it.

This letter is not intended for anyone other than those it is addressed to.

Sincerely

Rudy Johnson

enc/1

ccs/ Judge Ripley
Judge Robbin Taylor
Rep. Terry Gardner
Rep. Brian Rogers
Rep. Cato
Rep. Duncan
Rep. Beirne
Rep. Martin
Equal Rights For Fathers-Alaskans For Childrens Rights

/11

Alaska State Legislature

PERMANENT ADDRESS:
1527 H STREET
ANCHORAGE, ALASKA 99501
(907) 276-4188
WHILE IN SESSION:
POUCH V
JUNEAU, ALASKA 99811
(907) 465-3777

CHAIRMAN
HEALTH, EDUCATION AND
SOCIAL SERVICES COMMITTEE
VICE CHAIRMAN
JUDICIARY COMMITTEE

Representative Don Clocksin

DISTRICT 7

June 4, 1981

Rudy Johnson, President
Family Law Reform and Justice
Council of Alaska, Inc.
P.O. Box 4-1646
Anchorage, Alaska 99509

Dear Rudy:

I received your recent letter regarding Judge Ripley's letter and the letter of Judge Taylor from 1979. I am returning it to you because of your request that it be kept confidential from everyone, other than to whom it is addressed.

There is nothing in my Committee files that is confidential. This legislation is public business and should not be kept secret. A point you may wish to consider which relates to your plea for confidentiality is that you were not a direct recipient of Judge Ripley's letter. If our files were selectively closed off from the public you would never have obtained a copy of that letter.

I appreciate your input into this matter and I can certainly understand your concern, but I will not have the HESS Committee operating "under wraps" with "privileged" information.

Sincerely,

Rep. Don Clocksin

DC:len

Dear Mr. Clockain,

Thank you for your letter of June 4, 1981. I certainly was not suggesting in my letter ~~of~~ that your committee should operate "under the wraps with privileged information". My comments concerning confidentiality were simply a courtesy for Judge Ripley. ~~[illegible]~~ Judge Taylor's letter is obviously sensitive and circulating it to someone did, in the judge's judicial community appear to me to be pretty irresponsible.

He must as I believe Judge Ripley has a right to express any opinion to your committee. I also believe it is important the opposing opinion be made available to anyone reading the file on H.B. 218. I enclose this Xerox containing my letter to you with my statement of confidentiality removed. (last page, last sentence.)

I also would like to mention I have just discovered a typographical error in my written testimony to your committee on H.B. 218, dated 4-26-81. On page 2 last par. it is stated 10 of 11 homicides are the direct result of — over —

EQUAL RIGHTS FOR FATHERS OF ALASKA
"Alaskans for Childrens Rights"

Children of Divorce Coalition

Second Partners Coalition

A NON-PROFIT ORGANIZATION

February 11, 1982

Michael F. Beirne, Rep.
Chairman, HESS Committee
Pouch V
Juneau, Alaska 99811

Dear Representative Bierne:

Many hours of testimony have been taken concerning House Bill 210. I believe both sides are well presented. I an others I represent, are very distressed over the committee's intention to remove the "rebuttable presumptive" clause from the bill. I cannot urge you too strongly to reconsider that action, as the bill is "gutted" without these two very important words. It is still better than nothing, but without any force or teeth.

The hast has shown us that to legislate family law statutes without teeth is futile. I refer to our study which we performed, utilizing the court's own records. The study pertained to the Anchorage Superior Court custody awards for the years 1979 and 1980. During the years studied, only 2.6% of disputed child custody cases were settled in favor of the father. This is raw bias and presents only the tip of the iceberg in view of the over all problem. These shocking results are in spite of the fact that our state statutes prohibit discrimination in areas of child custody and our Supreme Court has further strengthened those statutes.

The testimony you have heard came from all walks of life, and can be condensed into several categories:

1. Lay-people testifying without any specific knowledge of what is really happening, but nevertheless with strong opinions one way or another.

2. Lay-people who have been affected and have tried in vain to enforce the orders of the court granting them unenforceable visitation.

3. Knowledgeable professionals concerning the area of family law, both pro and con.

3605 Arctic Blvd., #588, Anchorage, Alaska, 99503 (907) 272-2345 or 333-9284. MEMBERS IN: Anchorage, Sitka, Sutton, Ward Cove, Hyder, Palmer, Kenai, Fairbanks, Ninilchik, Wasilla, Ketchikan and Soldotna
CHAPTERS IN: Fairbanks

I believe that it is fair to say that all the testimony is reflected in the letters of Judge Ripley, dated April 7, 1981: Judge Taylor, dated May 3, 1979 and June 24: Judge Schultz, dated May 4, 1981 and Rudy Johnson, dated March 31, 1981 and April 7, 1981.

If those documents are reexamined, the truth about how the system works can be gleaned as well as solutions to prevent further abuses.

In closing, I wish to iterate my strong convictions that House Bill 210 will help change attitudes and that is the key to truely changing our outmoded and obsolete system for adjudication of child custody cases.

It is unbelievable that the bar association (the very element creating the atrocities in domestic relations) represents such a minority and could wield the power to gut House Bill 210!

It is equally unbelievable that those legal scholars opposing a rebuttable presumption clause do so under the guise of a need for clarification! Rebuttable is just that, irrebuttable is something quite different and if that was the magic word, the bar would have a valid concern.

I can tell you from past experience that even with the "rebuttable presumptive" clause, the courts will continue to do what they have for the past fifty (50) years. The difference is the appellate courts will clarify the wisdom of a presumption and will further the concept of changing attitudes. In a number of years, attitudes will change to the point when a person goes to his/her attorney and says "I want a divorce and the kids," they will be pointed in the right direction with council that tells them the relationship between the other parent and the children must continue and be protected, short of showing the unfittness. They will be given legal advice, salted with this goal in mind and the long term negative impact on all children of divorce will be greatly reduced. Even with the presumptive, the court only need state it's reason(s) for denying joint custody! Without the presumptive we will lose years in the battle of merely desiring to change attitudes!

If what I have stated above was simply the opinion of one man, Rudy Johnson, it may be looked upon as suspect. But instead, this and my other testimonies are supported with studies, facts and the concurring testimonies of Judges and other members of the bar, not to mention the citizens of the State of Alaska!

To allow a few individuals within the bar association to gut House Bill 210 would be a travesty of justice to the thousands of Alaskan children who will suffer the consequences of their parent's divorce over the next few years. Please do not force these children to inherit the problems we are working so very hard to rid ourselves of...problems our parents passed onto us. Put the "rebuttable presumptive" back in!

Sincerely,

RUDY JOHNSON
President

RJ:peh

HB 240

JUDGE SUGGESTS ELIMINATION OF CUSTODY CONCEPT

Phoenix, AZ — Addressing the November meeting of AFACT (Association for Fathers and Children Together) Maricopa County Superior Family Court Judge Robert W. Pickrell strongly endorsed Joint Custody for Arizona, but offered a new viewpoint, which he felt might be more palatable to passage by legislators. "We should eliminate the word "Custody" from our family laws, and substitute "child care arrangements." The Court, according to Pickrell, would no longer have to decide whether or how to "divide" the children, a task he reluctantly performs each day. Rather, the Court would set "Child Care Arrangements", including schedules of where the child would reside at various times and how support responsibility would be shared. The parents would execute the Court's order as "Officers of the Court," having responsibilities comparable to court-appointed custodians. Judge Pickrell stated that enforcement of a duty thus assigned would be easier for the Court, and potential penalties for disobedience at least as great as with present contempt remedies. He felt that by defusing the emotional trauma and stigma of "custody" awards, increased post-divorce cooperation regarding children would become possible.

THIS CONCEPT SOUNDS GOOD ENOUGH TO STUDY FURTHER

-MARK LEWIS

-Copy- Rep Terry Martin

February 16, 1982

John M. Holmes,
Attorney at Law
P.O. Box 309
Barrow, Alaska 99723

Tel: 852-2311

The Honorable Hugh Malone,
Representative
Alaska State Legislature
Pouch V, Mail Stop 3100
Juneau, Alaska 99811

Re: House Bill No. 210
Relating To Child Custody

Dear Representative Malone:

During the recent teleconference on House Bill 210, on January 29, you asked that I submit written comments regarding the bill. A copy of my written testimony of November 29, 1981 is enclosed. I would just make the following additional written comments.

I have not been involved in the issue which has generated the momentum behind this bill. I do not personally know the people who are behind the bill.

I would make one general comment, which is based on a general feeling of concern. I hope that the child custody law is not being rewritten only from the perspective of an interest in joint custody; I hope that the child custody law is not being used only as a vehicle to enact joint custody legislation. To do so would throw this whole sensitive, emotionally-charged area of the law out of balance. The concerns of those interested in joint custody can be legislatively recognized, for instance, without limiting the necessary discretion of the court. In fact, in practical terms, unless the parties themselves are capable of minimal communication and cooperation (which usually results in stipulations anyway), there is probably little that the court can do to fashion a workable joint custody arrangement.

Here are some specific comments:

1. My main concern has been with what is now designated to be

§25.20.120 Award Of Custody To NonParent. This section would permit non-parents to compete for custody on an equal basis with parents. It violates the constitutional rights of parents to the care, custody and control of their children. It violates the Alaska Supreme Court test in Turner v. Pannick, Alaska, 540 P.2d 1051 (1975), which specifically rejected the 'best interests test' as a standard for determining custody between a parent and a non-parent.

I would recommend that the language be changed to read "...unless the court finds that the parent is unfit, or that the parent has abandoned the child, or that an award of custody to the parent would be detrimental to the welfare of the child."

Please see my enclosed written testimony of November 29 regarding this issue.

2. §09.55.205(a) Judgments For Custody

I would just note that, except for maybe one other passing reference to legal separation, there is no direct reference in the statutes to legal separation as a separate cause of action. Of course it is accomplished in court anyway.

3. §09.55.205(c) Judgments For Custody, continued

(3): It is enough to say "the child's preference". The additional language is ambiguous and will raise problems of definition. The former proposed section, §25.20.100, Preference Of The Child, seems to have set out a good standard which does relate to how the courts approach the issue of children's preference, but I do not see it in the last draft.

(7): I think that this factor (variety of life experiences) could work to the detriment of rural people. A judge may be convinced that an urban life would offer a greater variety of life experiences, per se. It seems to me that it will be a common argument, and unfortunately convincing to some people, that an urban alternative will offer greater variety and advantages for a child; and this could be the deciding factor in some cases, to the disadvantage of rural families. This section will cause confusion and litigation.

4. §09.55.205(d) Judgments For Custody, continued

This whole paragraph should be deleted. In the first place,

how does a court define "well-being of the child"? It is ambiguous and will lead to litigation. In the second place, the factors listed (conduct, marital status, income, social or cultural environment, or life style) are terms which are mostly so general in scope that they cannot help but be relevant to a determination of custody. Whoever drafted the paragraph had an objective in mind, but the paragraph does nothing but create questions.

5. §25.20.060(a) Custody Of The Child

The paragraph should be clarified in one detail, and I think that its an important detail since it relates to absolute legal preference for the placement of children with their own preference. The sentence should add the words "between the parents of the child": it would then read, "If there is a dispute between the parents of the child over child custody...".

As I look at the paragraph, I see another problem in it. The following language should be deleted: "all relevant factors including". The sentence should read, "In determining the best interests of the child, the court shall consider those factors enumerated in AS 09.55.205(c)." To say that the court should consider "all relevant factors" is to draft so broadly that the phrase has no meaning. It would just raise questions as to what is relevant: the weather on the day of the hearing? Astrological conditions - by whose horoscope?

6. §25.20.070 Denial Of Shared Custody

This paragraph should be deleted. The judge is not required to state his reasons for the record for all of the other placement alternatives not chosen, and there is no particular reason why he should do so with regard to shared custody. It may not even be always in the best interests of the parties to see those reasons on the record. This seems to be an attempt by proponents of one placement preference to restrict the discretion of the judge.

7. §25.20.100 Factors For Consideration In Awarding Shared Custody

This whole section should be deleted. The factors relevant to shared custody are the same factors relevant to other placement alternatives. Shared custody should be controlled by §09.55.205(c). This seems to be another example of where persons with a particular objective are trying to change the whole body of child custody law in order to attain that objective. But, in so doing, child custody law then gets out of balance. It makes no sense to have one set of

determining factors in §09.55.205(c) and another set of factors in this section. Maybe the drafter was trying to do it in two stages: to determine from §09.55.205(c) whether there should be shared custody and, if so, to work out the shared custody arrangement according to factors listed in §25.20.100. But it is not written that way at all. Having two sets of factors will only create confusion and litigation.

The factors listed in §25.20.100 create even more problems than several of the factors crticized in §09.55.205(c).

(1): "the needs of the child" is so general and ambiguous as to be useless. It would create litigation. It should be deleted.

(3): "the quality and the continuity of the education" is too general and would be prejudicial to parents in rural areas. Urban people could point to the variety of formal educational experiences available, and this could be interpreted as being the thrust of this factor - formal education. Rural areas offer both formal and informal education, and that should be specifically recognized in a statute.

(4): The "advantages of maintaining the child in the same community" is so general as to be useless. How are the elements of this clause ascertained? This clause would only lead to confusion and litigation. It could also hurt rural people.

(5): "the advantages of providing a varied life experience to the child" is another clause which is so general as to be meaningless. It should be deleted. There are no objective criteria for a court to apply when considering this factor. A 'varied life experience' is open to anybody's interpretation. As a practical matter, however, the clause would probably tend to hurt rural people.

(6): Maybe this subsection is what the drafter was after when he drafted this section. It is a breakdown of factors to be considered in working out a shared custody arrangement. It seems harmless; it may be useful. But it seems to me that the pertinent point is this: if a court has to go so far as to refer to these factors, the parties problem are in disagreement over custody and shared custody is not a practical option anyway.

In my opinion this whole section, §25.20.100, should be deleted.

8. §25.20.120 Award Of Custody To NonParent

As discussed above, this section is dangerous. It places the nonparent on an equal standing with the parent in competition for

placement. It fails to recognize the constitutional right of parents to the care, custody, and control of their children. It violates the Alaska Supreme Court decision on the subject of the 'best interests test' vis a vis the 'detrimental to the welfare of the child test' in Turner v. Pannick. The drafter of the section got the language of both of these independent standards tangled in speaking of "detrimental to the best interests".

The section should be changed to read, "...unless the court finds that the parent is unfit, or that the parent has abandoned the child, or that an award of custody to the parent would be detrimental to the welfare of the child".

9. §25.20.130 Confidentiality

It seems to me that this section is too broad, too general, and that it could diminish the longstanding public policy which favors open court proceedings in this country. Most court proceedings involve disputes, and most disputes involve facts which the parties would probably prefer to keep private, whether in civil or criminal proceedings. The general reaction to the recent U.S. Supreme Court decision which permitted certain aspects of pretrial procedure to be held in camera was that a freedom was being eroded (criminal defendants apparently did not necessarily mind; they did not like to have embarrasing information revealed publicly either .

This kind of a provision should be carefully considered and carefully drafted. Perhaps it would be possible to draft a provision which would permit a judge to invoke the custody-determination part of the divorce as a child custody proceeding, with the confidentiality provisions attendent in such a proceeding.

10. §25.20.140 Access To Records Of The Child

This section seems to me to be very shortsighted. In saying that the noncustodial parent may have "medical, dental, school, and other records of the child notwithstanding any other provision of the law", the paragraph says that the noncustodial parent can have these records under any circumstances. There are aerious, even dangerous, child custody cases in which it would be preposterous to give such information to the noncustodial parent. Even the Legislative Intent section of this bill recognises that it is "generally desireable" (not always desireable) for the child to have continuing contact with both parents.

This section, like some others above, tries unreasonably to restrict the discretion of the court. It would make more sense to draft the paragraph so as to give the non-custodial parent a right to the information, absent a successful motion by the custodial parent - or the court acting on its own motion - to restrict access to the information.

11. §25.20.150 Definition

The first clause speaks of an "award of custody". Since it is a definition, it should be more specific; are we talking about legal custody, physical custody, temporary custody?

The second clause of the sentence should be deleted (delete: "and includes an award of physical custody that assures the child of frequent and continuing contact with each parent"). That clause describes not only joint custody but also other kinds of placements, such as custody in one parent with reasonable visitation in the other, or custody in one parent with specific schedules of visitation for the other. The proposed definition would cause the definition of shared custody to lose its intended specific meaning.

Summary

It appears to me that this bill needs a lot more consideration. It is such an important area of the law. I would recommend that the Committee take as much time as necessary to thoroughly analyze the proposed revision.

Sincerely Yours,

John M. Holmes,
Attorney at Law

Encl: Testimony of November 29, 1981

cc: Members of the House Committee

John M. Holmes
Attorney at Law
P.O. Box 309
Barrow, Alaska 99723
Tel: 852-2311

TESTIMONY BEFORE THE HOUSE OF REPRESENTATIVES'

COMMITTEE ON HEALTH, EDUCATION & SOCIAL SERVICES

HOUSE BILL NO. 210

November 29,1981

My name is John M. Holmes. I am employed as a staff attorney with the Alaska Legal Services Corporation at Barrow, Alaska. I worked in the Fairbanks ALSC office from December, 1977 until August, 1978, and have worked in the Barrow ALSC office since August, 1978. A significant number of my cases involve issues of divorce and child custody.

I am concerned about two aspects of the bill which may not be receiving the focus which they deserve. This testimony will be limited to the following two issues: 1) The erosion of the parent's right to custody, as against a non-parent [AS 25.20.130,150] and 2) The factors enumerated in the proposed best interests test [AS 9.55.205(c); 25.20.120]

I. THE EROSION OF THE PARENT'S RIGHT TO CUSTODY, AS AGAINST A NON-PARENT [25.20.130,150]

This bill would give non-parents nearly equal priority with parents in competing for custody of the child. It thereby erodes the constitutional right of the parent to the care, custody, and control of the child. It also directly contradicts the Alaska Supreme Court's statement in Turner v. Pannick, Alaska, 540 P.2d 1051 (1975), that a non-parent cannot be awarded custody absent a finding of unfitness or abandonment on the part of the parent, or that the welfare of the child requires it. The Court clearly rejected the best interests test, which it distinguished as follows:

> "In order to satisfy the "welfare of the child" requirement, the non-parent must show that it clearly would be detrimental to the child to permit the parent to have custody.

> On the other hand, under the "best interests" test, the court is free to consider a number of factors including the moral fitness of the two parties; the home environments offered by the parties; the emotional ties to the child by the parties; the age, sex or health of the child; the desirability of continuing an existing child-third party relationship; and the preference of the child." (P. 1054, supra)

The "welfare of the child" test is therefore a totally independent test, and one which serves to protect the right of the parent to custody of the child. There may be instances where a parent is not unfit and yet is also in no position to exercise custody; this could happen if the parent were a single parent who had severe medical problems. Under such circumstances a court would not be inclined to adjudge a loving parent 'unfit'; however it might grant custody to a non-parent on the ground that the welfare of the child required it. The parent would still be able to retain priority to exercise custody should his or her condition improve.

The parent's right to custody can be defeated only by showing unfitness, abandonment, or that the welfare of the child requires other placement. Otherwise it is unpersuasive that the child might enjoy superior advantages elsewhere, might be happier elsewhere, or might prefer to live elsewhere.

The proposed Preferences On Award set out in AS 25.20.130(4) and the proposed Award Of Custody To NonParent set out in AS 25.20.150 are dangerous to the constitutionally protected rights of parents to raise their own children. The bill would put the parent on the defensive

against any third party who could demonstrate superior advantages to those the parent could offer. It would greatly prejudice the rights of rural parents, whose own valuable lifestyle could be ignored as a third party painted compelling images of the advantages of urban life. The bill presently violates its own Intent section, § 1, which promotes the historic and continuing public interest in the preservation of the nuclear family.

II. THE FACTORS ENUMERATED IN THE PROPOSED BEST INTERESTS TEST [AS 9.55.205(c); 25.20.120]

Several of the factors listed in 9.55.205(c) and 25.20.120 could be prejudicial to the rights of rural parents. Both list "the desirability of offering the child a variety of life experiences". AS 25.20.120 also lists "the advantages of maintaining the child in the same community as compared with the potential advantages of a new community".

These factors could be easily misapplied, on the assumption that an urban lifestyle would be more 'varied' and offer more 'advantages'. In the midst of a custody case, an urban parent would point to the variety of formal educational possibilities and to other activities available in urban areas. A court could then overlook the comparable advantages of rural life.

AS 9.55.205(c)(6) and AS 25.20.120(4)(5) should be deleted from the bill. Subparagraph (6) diminishes the protection given to rural parents in AS 9.55.205(d).

In summary, it is my request that the bill be redrafted so as to protect the constitutional right of parents to the care, custody, and control of their children. The Alaska Supreme Court provides guidance in Turner v. Pannick, Alaska, 540 P2d 1051 (1975). Factors relating to custody determinations between parents should not be drafted so as to favor urban placements over rural placements.

Thank you for your consideration of these comments. Please contact me at any time if you have any questions regarding this testimony.

Sincerely Yours,

John M. Holmes

John M. Holmes,
Attorney at Law

P.O. Box 309
Barrow, Alaska 99723
Tel: 852-2311

Decree or Agreement

Joint Custody Provisions & Clauses

For convenient reference by judges, attorneys, counselors and parents a selection of options among joint custody provisions and clauses are itemized on the following pages.

The intent is to offer a selection of options and not to imply that every topic needs to be decided by decree or agreement.

The terminology has been constructed to facilitate use as a decree by a judge or, alternatively, for agreement by parents. California's Civil Code section 4600 permits decree of joint custody before submission of a plan, or after submission of a plan. To preserve a child's equitable access to both parents, and in those situations where one parent has petitioned for joint custody or where both parents may be "fit parents" but have not yet acquiesced to joint custody midst the acrimony of divorce, judges will find these decree options useful in channelling the parents toward joint custody on behalf of the child's best interests.

In keeping with the intent of "frequent and continuing contact with both parents" as stated in California's Civil Code section 4600, the emphasis of the following provisions and clauses is upon the physical sharing of care and companionship. On the other hand, for the individual parent who is distant and removed by reason of military or overseas service or who, by circumstances of remarriage is not available for joint physical custody, that parent may petition the court for joint legal custody.

A child's equitable and assured access to both parents is, in effect, denied by merely joint legal custody, and all practitioners are cautioned not to thwart a cooperative parent's tolerance of the opposite parent and quest for joint physical custody by frustration with imposition of merely joint legal custody.

The following provisions and clauses deal with topics of:

Intent	Medical
Residence	Child support
Time allocation formulas	Implementation
Holidays	Review
Travel	Remarriage
Moving residence	Decisions
Education	Conflict resolution

- -

From: James A. Cook, 10606 Wilkins Avenue, Los Angeles, California 90024

INTENT

(Father's name) and (Mother's name), hereinafter respectively referred to as father and mother, are the parents of _____, born _____.

The intent of this decree is to assure the minor child(ren) of frequent and continuing contact with both parents and to encourage and facilitate the ability of the parents to share the rights and responsibilities of child rearing.

(Father) and (Mother) will share and participate in the joint physical and legal custody of (minor child(ren)).

Physical custody will be shared jointly by both parents.

RESIDENCE

options

(note: The physical location of child and respective parent is described in the following clauses as "residence" rather than use of the demeaning term "visitation". Furthermore, since both parents share the rights and responsibilities of custody regardless of the child's location, the following utilizes the terminology of "residence" rather than "physical custody will be with...etc" which tends to diminish the intent of sharing physical custody jointly.)

Since a "fixed schedule" is neither necessary or desirable at this time, and since the parents are capable of implementing a residence schedule informally, the resolution of the residence schedule will be guided by the intent of the joint custody agreement (decree).

Exclusive of holiday and vacation periods, residence of the minor child(ren) will be alternated between parents on the basis of:

__Freedom of movement by the child(ren) between two homes.

__3½ days / 3½ days

__One week / One week

__Two weeks / Two weeks

__One month / One month

__Two (Three) months / Two (Three) months

__School year / Entire summer vacation, with equalizing weekends and "overnights."

__Workday week / weekends

__Child(ren) remain in home and parents alternate

TIME ALLOCATION FORMULAS

Residence will be allocated according to the following specifics:

3½ days / 3½ days. Each parent will have the exclusive responsibility for assuring the minor child's schedule of school, activity, play and rest according to the following schedule based on a time split of 3½ days / 3½ days.

The minor child will be resident with the (mother/father) from 12 noon, Wednesday until the following 9:30 PM Saturday or 8:00 AM Sunday. The minor child will be resident with the (opposite parent) during the alternate 3½ day period.

(Note: Three and a half day schedules may also be staggered in at least two other alternatives:
(1) To provide a parent with a unified Saturday and Sunday weekend, or
(2) Provide each parent with a full, but alternate, weekend, and split residency of the five remaining week days.)

One week / One week. The minor child will be resident with the (mother/father) from 5:30 PM Friday until the 5:30 PM Friday one week later commencing the first full week in January 1980. The minor child will be resident with the (opposite parent) during the alternate week.

Two weeks / Two weeks. The minor child will be resident with the (mother/father) from 5:30 PM Friday until 5:30 PM Friday two weeks later commencing the first full week in January 1980. The minor child will be resident with the (opposite parent) during the alternate two weeks.

One month / One month. The minor child will be resident with the (mother/father) from 9:30 PM on the last day of the month until 9:30 PM on the last day of the ensuing month commencing with the last day of December, 1979. The minor child will be resident with the (opposite parent) during the alternate month.

Two (three) months / Two (three) months. The minor child will be resident with the (mother/father) from 9:30 PM on the last day of the month until 9:30 PM on the last day of the month two (or three) months hence commencing with the last day of December, 1979. The minor child will be resident with the (opposite parent) during the alternate two (three) month period.

School year / Entire summer vacation. The minor child will be resident with the (mother/father) from the first day of school in the Fall until the last day of school at the conclusion of the Spring. The minor child is resident with the (father/mother) alternately, during the summer period. To balance the available residence time, however, during the school year the minor child

will be resident with the (father/mother) every other weekend commencing the second week after school has opened in the Fall and the minor child shall be entitled to an additional one night a week 'overnight' with the (same parent) during the school year.

During the holidays occurring throughout the school year, residence by the minor child will be alternated, every other year, with the opposite parent from the one having residence during the school year.

In exchange for residence with the (father/mother) during the summer vacation, the minor child will be resident with the (opposite parent) one weekend a month during the summer from 5:30 PM Friday until 8:30 AM Monday. Unless mutually agreed by both parents, the summer exchange weekend-a-month will commence on the third weekend after school has adjourned at the conclusion of the Spring school semester.

During individual one-day holidays occurring throughout the summer vacation period, residence by the minor child will be alternated, every other year, with the (opposite parent from the one having residence during the summer vacation.)

Workday week / Weekends. The minor child will be resident with the (father/mother) during the workday week to extend from (hour) M (day) until (hour) M (day). Alternately, the minor child will be resident with the (opposite parent) each weekend from 5:30 PM Friday) until (8:30 AM Monday.)

The minor child will remain resident in the family home. The parents will alternate residence in the family home and will enjoy the prerogatives of scheduling the care and responsibility for the minor child during their residence in the family home according to the following schedule. (Each parent's schedule of time available for residence in the home.)

HOLIDAY options

(Note: Customarily, when plans which decree the child's residence with each parent on alternating weekends, and when a national holiday occurs on a Friday or a Monday, the child remains in residence for the additional one-day holiday with the parent customarily responsible for the child's residence during the adjoining weekend.

Therefore, if an alternate weekend plan prevails, you may wish to incorporate the following provision:)

During national holidays on a Friday or a Monday, with the exception of Christmas, the minor child will remain in residence for the additional one-day holiday with the parent customarily responsible for the child's residence during the adjoining weekend.

The following days, holidays and events will be apportioned accordingly:

Minor child's birthday. From 8:00 AM or non-school days and from 5:00 PM on school days, until 9:30 PM the minor child will be with the (mother/father) on even-numbered years and with the (opposite parent) on odd-numbered years.

Father's birthday. Mother's birthday. From 8:00 AM on non-school days and from 5:00 PM on school days, until 9:30 PM the minor child will be with the respective parent during that parent's birthday.

Christmas Eve & Christmas Day.
(Unless alternate arrangements are proposed and preferred by the parents, the following is suggested for the resolution of Christmas residence.)

On odd-numbered years (ascertain that this is the opposite year of that pertaining to allocation of the child's birthday) from 5:00 PM on Christmas Eve until 11:00 AM Christmas Day, the minor child will be resident with the father, and for the remainder of Christmas Day until 9:30 PM the minor child will be resident with the mother. The residence schedule will be reversed between the parents during even-numbered years.

Hannukah. The court, and parents, may also find the time allocation proposed for resolution of Christmas residence to be suitable for allocation of residence during Hannukah.

Winter vacation. (Consider allocation of the period between the closing of school in December prior to Christmas Day and the reopening of school in January after New Years' Day. Unless special arrangements are made for Christmas Day and for New Years' Day a proposed allocation could be apportioned:)

On even-numbered years, from 5:00 PM on the day school closes for the Winter/Christmas holiday, until 11:00 AM Christmas Day the minor child will be in residence with the father, and thereafter during the Winter Holiday until 8:30 AM on the opening day of school in January the minor child will be in residence with the mother.

On odd-numbered years the Winter/Christmas holiday schedule will commence, instead, with the minor child in residence with the mother and conclude with residence with the father.

New Year's Eve & Day. An allocation similar to that accorded to Christmas Eve and Day can also be scheduled for New Year's Eve and Day.

Washington's Birthday. (Unless allocated as a three-day national holiday weekend with time apportioned to the parent wherein the child is already scheduled for residence during the adjoining weekend, the following may pertain:)

During odd-numbered years, at 5:00 PM on the eve prior to Washington's Birthday until 9:30 PM on the day of Washington's Birthday, the minor child will be in residence with the father. On even-numbered years the same residence time schedule will prevail for the mother and the minor child.

Lincoln's Birthday. (Unless allocated as a three-day national holiday weekend with time apportioned to the parent wherein the child is already scheduled for residence during the adjoining weekend, the following may pertain:)

During even-numbered years, at 5:00 PM on the eve prior to Lincoln's Birthday until 9:30 PM on the day of Lincoln's Birthday, the minor child will be in residence with the father. On off-numbered years the same residence time schedule will prevail for the mother and the minor child.

Valentine's Day. During odd-numbered years, from 8:00 AM until 9:30 PM on Valentine's Day the minor child will be in residence with the father. On even-numbered years the same residence time schedule will prevail for the mother and the minor child.

Spring, or Easter, School vacation. During Spring or Easter, School vacation, on odd-numbered years, from 5:00 PM on the day school closes until 8:00 AM on the day school reopens, the minor child will be in residence with the mother. On even-numbered years the same residence schedule will prevail for the father and the minor child.

Memorial Day. (Unless allocated as a three-day national holiday weekend with time apportioned to the parent wherein the child is already scheduled for residence during the adjoining weekend, the following may pertain:)

During odd-numbered years, at 5:00 PM on the eve prior to Memorial Day until 9:30 PM on the day of Memorial Day, the minor child will be in residence with the father. On even-numbered years the same residence time schedule will prevail for the mother and the minor child.

Independence Day. (Unless specially allocated as a consequence of an alternating summer vacation period, the following may be suitable:)

During odd-numbered years, from 8:00 AM until midnight on Independence Day the minor child will be in residence with the father. On even-numbered years the same residence time schedule will prevail for the mother and the minor child.

Labor Day. (Unless specially allocated as a consequence of an alternating summer vacation period, the following may be suitable:)

During odd-numbered years, from 8:00 AM until 9:30 PM on Labor Day the minor child will be in residence with the father. On even-numbered years the same residence time schedule will prevail for the mother and the minor child.

Halloween. During even-numbered years, from 5:00 PM until 10:00 PM the minor child will be in residence with the father. On even-numbered years the same residence time schedule will prevail for the mother and the minor child.

Thanksgiving Day and Holiday. During odd-numbered years, from 5:30 PM on the day preceding Thanksgiving Day, until 9:30 AM on the Monday following Thanksgiving Holiday the minor child will be in residence with the father. On even-numbered years the same residence time schedule will prevail for the mother and the minor child.

Mother's Day, Father's Day. During Mother's Day and Father's Day the minor child will be resident with the respective parent from 8:00 AM until 9:30 PM.

The minor child will be resident with the (father/mother) for an exclusive six weeks during the summer vacation period; the period of time being selected at the convenience of the (parent who is working fulltime with little or no vacation flexibility is usually accorded the opportunity to set this time period) upon two weeks notice to the (other parent).

TRAVEL

options

Travel costs will be apportioned based on income and ability to pay according to a formula of (% / $) by the (father/mother) and (% / $) by the (opposite parent).

The (father/mother) will assume travel costs of the child to fulfill residence with the opposite parent.

Neither parent shall take the child(ren) out of the State of California without a prior 30 days' notice and subsequent consent of the other parent.

MOVING RESIDENCE

The parent moving from the county of original residence will be required to pay the travel costs by the minor child to and from the alternate parent's residence.

Neither parent will effectuate a superior custody position by moving their residence.

EDUCATION

All school records of the minor child will be available and accessible to both parents.

MEDICAL

options

All medical, surgical and dental records of the minor child will be available and accessible to both parents.

Each parent will permit and facilitate communication by the other parent with doctors and clinics regarding the minor child's welfare.

Each parent has the ability to make medical decisions in emergencies when both parents are not available for mutual and prior consultation.

Each parent is directed to provide advance notification to the other parent about proposed and forthcoming medical care.

Each parent will have the right to sign any and all medical, dental and/or surgical authorizations and/or consents.

In the event that employer-related medical insurance is available for the minor child, the (father/mother) will be responsible for assuming such coverage.

All medical expenses for the minor child will be assumed equally by both parents until the minor child is (eighteen or twenty-one) years of age.

CHILD SUPPORT

options

Each parent will assume all child support costs while the child is resident with the respective parent.

In view of the separate incomes of each parent, no child support is directed to be paid by either parent to the other parent.

The parents will share child support costs based on need and ability of each parent to pay according to a formula of (% / $) by the (father/mother) and (% / $) by the (opposite parent.)

Child support of $____ will be paid monthly by the (father/mother) to the (opposite parent.)

Child support dollar levels will be determined in accordance with the U.S. Department of Agriculture, Agricultural Research Service, Consumer and Food Economics Research Division "Cost of Raising a Child" with consideration for the appropriate geographic region, age of child, residence area, income-cost bracket, and numbers of children within a family.

All school expenses for the minor child will be assumed equally by both parents until the minor child is (eighteen or twenty-one) years of age or graduates from college at the Bachelor degree level.

In the event that a college education is academically feasible for the minor child, and to provide finances for such education, each parent will contribute $____ per month into an annuity plan (or similar financial arrangement) until the minor child's (eighteenth or twenty-first) birthday.

In view of the assumption of the minor child's expenses equally by both parents, the (mother/father) shall claim the dependency exemption for the minor child on federal and state income tax returns for even-numbered years and the (opposite parent) shall claim the exemption for the odd-numbered years.

In view of the assumption and obligation of the larger dollar share of child support expenses by the (father/mother), the (same parent) shall claim the child's dependency exemption on federal and state income tax returns.

IMPLEMENTATION

Both parents will sign and implement all documents necessary to carry-out the intent of this decree (or agreement).

REVIEW

Annually, at a mutually convenient time between January 1st and commencement of summer vacation, the parents will confer and review the joint custody plan for adequacy, feasibility and appropriateness in consideration of the minor child's developmental age.

REMARRIAGE

The terms of this decree (or agreement) shall not be affected or abrogated by the remarriage of either parent.

DECISIONS

The parent having day to day jurisdiction can make decisions of the moment affecting the minor child.

Substantial decisions of longer term consequence will be resolved by consensus of the parents.

During the time period when the minor child is in residence with a particular parent, it shall be the responsibility of the respective parent to assure the obligation of appropriate activities, food, clothing and accommodations.

Residence is an exclusive privilege and right of the child and of the respective parent with whom the child is residing. The alternate parent is enjoined from planning or scheduling activities for the minor child during the time period when the child is resident with the other parent without the consent, in advance, of the opposite resident parent.

CONFLICT RESOLUTION

If the parents are unable to resolve directly and personally any interpretation or controversy arising from the schedule and provisions as itemized in this decree (or agreement) the parents will:

First, seek a solution mutually by mediation, or
Second, seek a rectification and agreement by conciliation , or
Third, seek a decision by arbitration before proceeding to:
Fourth, formal litigation and resolution by the court.

The parents agree that the terms of this agreement shall become the order of the Court, and shall be merged into and become a part of the interlocutory decree in the above-entitled matter.

2221 Muldoon
Space 521
Anchorage, Alaska
99504
May 28, 1981

Represenative Donald E. Clocksin
Alaska State Legislature
Pouch "V"
Juneau, Alaksa 99811

Dear Representative Clocksin:

I would like to start my letter by saying I am a second wife and co-parent/ tri-parent.

My husband has been involved in a custody dispute for five (5) of the five (5) years we have been married. It seems as if I have lived my marriage in a courtroom with the judges making all the decisions for his life, my life the childrens and our marriage. All of this agony was because a man loved his children.

We had to fight for visitation every step of the way. His ex-wife refused to talke to him or allow him any kind of courtesies, such as going to the school to speak to the childrens teachers. He was court ordered to stay away, even though his step children, my daughters, were attending the same school and they wanted him there.

Then, after more courtoom confrontations his ex decides to move out of town to a city 1,500 miles away. Again, court because their was no compromise, by the ex she just left town. Supreme Court here we come! No idea where the children are, how they are doing or if we were going to have the court ordered visitation for the summer. We managed to get an order from the Supreme Court, and off went my husband to try to locate the children to enforce the order. He found them and we were able to have a very nice summer with them.

Then, court again to change the visitation schedule, why because of the distance. Again, no speaking between the parents because she would not. This attitude was re-enforced by the presiding judge (Carlson) when he stated, "why should a divorced spouse be expected to speak to an ex-spouse". In court we were stripped of every other weekend, every Wednesday night, ten (10) days at Christmas and told one twenty-four (24) hour period a month. By this time we were completely thrown for a loop. When my husband went to the new city to see the children he was told not on Monday, church, not on Tuesday, meeting, not Wednesday something planned, etc., etc. But he could have them for two (2) hours after school.

At that time a decision was made to take the children. We did, right, wrong or indifferent we were put in an unrealistic position because the custodial parent had all the cards and the non-custodial parent had nothing.

We, at this time, were sick of hearing take me to court if you do not like it. I have custody, I will make the decisions. My husband was not only treated by the courts and his ex as if he did not exist but as if he were in the way.

During this period of time my ex-husband had gone to court because of the pressures put on him by others. We went to court and I won, at least, as far as the courts were concerned. Buy my husband always felt that both parents needed to be able to have a say in the childrens lives. So we went about offering my ex-husband a co-parenting arrangement and he agreed.

The co-parenting agreement has been a wonderfully creative thing for our childre.. You see, their step-father allowed and in fact invited the childrens father to participate in their lives, such as their father staying in our home when he was in town, if fact when we go home to visit we stay in my ex-husbands home.

Today, I am seperated from my husband (no relationship could survive what we have been through in our five (5) years of marriage) and we have also been able to work out a co-parenting arrangement.

I want this committee to know that parents need to work out what is needed and is best for their children. They after all, know their children better than any person the judicial system could find to make that determination. The judicial system as it is now feeds the fire and make a controlable fire uncontrolable.

I know from experience a co-parenting arrangement means the children are not left sitting on the sidelines but put in front and considered first, despite the parents feelings about each other.

Today, as I read a letter from Judge Ripley, regarding HB 210 and Rudy Johnson, I decided to also include a response to that. Rudy Johnson is my husband, but as I stated before we are seperated. He has tried to live his life the way he believes and has been very supportive of my children during this period of our lives.

Rudy is a wonderful father who cares deeply for his children, natural and step. He, is at this time tri-parenting, with the approval of the childrens natural father. The children are very secure and happy knowing that they have three (3) parents that love them enough to put asihe their problems and concentrate on them. He, also contribates to the children financially and emotionally. He has a scheduled visitation of every other we-kend. But I would like to state here that he continues to come to the house every evening after work to see the children and hear about their day and they go to his home often in addition to the structured arrangement we have.

For us as parents, it is not easy, but at least the children are comforable and we as parents are making the decisions. We do this by communicating with one another. The children are able to be children because we are not fighting among each other for the children and they are not put in a position where they have to choose sides.

Please accept this as support of HB 210 and also as a written letter of recommendation toward Rudy Johnson's character and sincerity.

I can not sit back and watch as a judicial officer tries to destroy a truly sincere man in succeeding in something he believes in. I know, I have been through the tears in the evenings and the sharing of his ideals and dreams to make it a better situation for the children of divorce.

If you need me to appear before you or any other committee or person I would gladly do so.

Thank you for taking the time to consider this letter.

Sincerely

Eva Johnson

Eva Johnson

cc: Bette M. Cato
Jim Duncan
Michael Beirne
Terry Martin
Judge Taylor
Mr. Callow
Governor Hammond
Terry Gardiner

Representative of
Family Law Reform and Justice Council of Alaska, Inc.
Alonda Johnson
P.O. Box 7871
Ketchikan, AK 99901
225-6364

April 29, 1981

Representative Don Clocksin
Chairman HESS Committee
Pouch U
Juneau, AK

Dear Mr. Chairman and members of the committee:

The purpose of this letter is to condense my testimony presented at the telconference on HB 210 into writing.

I strongly support this piece of legislation and feel it has far reaching positive effects for families, society, and most inportantly children.

As a social worker I see the detrimental effects divorce has. Those children harmed the most are those whose access to a parent is very minimal or cut off completely.

Children have the RIGHT to a relationship with both parents. We need joint custody because our present system is failing to ensure this. There are innumerable cases where visitation is blocked or denied. Even one instance is intolerable as it destroys lives. This is a major problem with sole custody arrangements.

Joint custody will better meet children's needs and provide for healthy development. We have many, many studies available indicating the psychological damage children experience when a relationship with a parent is restricted.

The data available on joint custody indicates better adjustments for both children and parents. See:

The California study entitled, "California's Children of Divorce" by Judith Wallerstein and Joan Kelly.

"Fathers, Children and Joint Custody" by Dr. Judith Brown Grief.

Judge Thomas Shultz would like to recommend reading: "Child Custody: Why Not Let the Parents Decide?" by Jessica Pearson

I've worked with joint custody families and witnessed the benefits for both children and parents. As parents are assured access to their children we will see a decline in litagation around custody issues, events such as child stealing and domestic tragedies like homocide. It is a fact that some of the domestic violence is a result of parents frustration over access to their children being denied.

As for joint custody not providing continuity and stability, I don't believe this is true. To my knowledge there is no data that supports this at this time. There is data that show positive effects. As one joint custody father states from "Fathers, Children and Joint Custody" the scheduling he and his wife have provides consistency and stability. These joint custody fathers set up living space for the children in their homes, with special toys, clothing, etc. The children do not arrive with suitcase in hand. Although all of the fathers acknowledged an initial period of adjustment on the part of their children, none felt this persisted unduly, nor that their children currently felt disoriented about when they spend time with each parent.

Ron Leighton is a police officer here in Ketchikan and also a joint custody father. He has given me permission to state his support of HB 210. He believes we may see some decline in Juvenile Delinquency and alcohol and drug abuse as a result.

Judge Thomas Shultz also asked me to state his support of this piece of legislation. He would like to recommend that the mediation be mandatory. I also believe this is very important and would like to see financial provision for those unable to seek it due to this factor.

Bob Crutcher, Director of Ketchikan Children's Homes sees HB 210 as a very positive and would like to recommend passage.

Mediation will give parents an avenue to vent their feelings helping to separate this from the children. As this is accomplished most parents will be mature enough to focus on parenting issues. In Califonia 60-80% of the disputed custody cases are being resolved by the parents themselves with the help of mediation. That is SUCCESS.

A belief about joint custody is that children end up being pawns in the midst of parental battles and that this produces a situation of divided loyalties. Quite to the contrary, children seem "used" in sole custody arrangements because of the inherent unequal power distribution.

It is my understanding that some opposition to joint custody is coming from parents who have been abused by their ex-spouse. The argument being they have experienced enough trauma with that person and have the right to completely severe the relationship. I agree, they have that right. However, they do not have the right to severe the childrens relationship with that parent if the children have not been abused. I would like to point out that the law presently says custody shall be determined in accordance with the best interests of the child. One factor in determining this is the ability of each parent to allow and encourage an open and loving relationship between the child and the other parent. The law states clearly a parent desiring to severe the childs relationship with one parent SHOULD NOT HAVE CUSTODY.

This bill will be a beginning in changing attitudes in our society. As parents realize they are expected to share parenting after they divorce they will gradually accept this and become more committed to that responsibility. Presently in our society if a woman does not have custody everyone feels she has to be an unfit mother. This stigma will be lifted by HB 210 and will let women realize it's ok to share parenting.

I agree we will have some problems as we implement joint custody. But as society internalises the value that "PARENTS ARE FOREVER" cooperation in shared parenting will increase.

In closing I would like to ask the legislators to remain focused on children's rights and needs as you listen to opposition on joint custody and evaluate accordingly. Children need HB 210.

Respectfully yours,

Alonda Johnson

Alonda Johnson

Memorandum

Alaska Court System

TO: WILLIAM HITCHCOCK
Standing Master

DATE : MARCH 10, 1981

FROM: FRANCIS M. STEVENS
Custody Investigator

SUBJECT: JOINT CUSTODY

I have reviewed House Bill 210, entitled "An Act Relating to Child Custody", and have a number of comments I would like to share with you. The initial observation would be taken from the recent publication, "Divorce, Child Custody, and Family," formulated by the committee on the family group to the advancement of psychiatry, where they have referred to joint custody and how it has been labeled "shared custody-divided custody-and alternating custody". They indicated the common element in all these terms is the child lives with each parent a substantial amount of time allowing for a more realistic, normal relationship with each parent. In this arrangement, each parent assumes equal responsibility for physical and psychological development of the child, and they share with each other equal responsibility for major decisions that affect the child.

The advantage of joint custody, if a satisfactory arrangement can be worked out, is that it is most likely to preserve a meaningful access to both parents. Moreover, neither parent "loses" tha child or becomes a visitor in the child's life.

The disadvantage of joint custody, even assuming that the parents are able to keep the child out of any residual battles between themselves, is that a child may continue to feel a sense of uncertainty and anxiety as he/she moves back and forth between two homes.

There is not a significant amount of data available to establish the effectiveness of joint custody as a primary method in divorce. There have been some small studies, and in over a short term, they have indicated that in the families studied, the joint custody has worked. The studies, however, indicate that there are certain conditions in these families; most of the divorced parents continue to live in the same neighborhood as their ex-spouses so the children have the same friends and the same schools regardless of which home they are in at any given time. It was also noted in the studies referred to that the parents have had counselling or psychotherapy prior to or well into the process of setting up the joint arrangements. It was also

and probably most important, each parent in the cases studied, expended a great deal of time and effort to make the plan work. In the cases studied where joint custody was given a positive review, it was noted that the actual amount of time spent in each home by the children did not have to be equal or balanced for them to feel positive about the plan, but what was important was the fact that they had access to both parents.

In response to the question, "Is joint custody the solution?" the answer has to be, "Not for every family". The answer depends on the wishes, motivations, and capacities of the parents and as the children get older, theirs as well. Specifically, the parents need to be moving to an emotionally completed divorce. They need to have a strong commitment to resolve their disagreements outside of court and/or have a back up arrangement for counselling to help them do so. While there are certain psychological advantages to the parents in the joint custody arrangement; that is, neither wins or loses the child. The same kind of arrangement could often be worked out informally in a sole custody situation, if the parents can, in fact, agree about the care of their children. The critical factor is the capacity for the parents to come to an agreement about the care of their children.

The concept of joint custody is not a solution for parents unable to come to an agreement. It definetly should not be imposed on a fighting couple as a way of compromising or resolving the dispute. Experiences show such arrangements simply cannot work. Joint custody, we believe, should be a goal; an end for divorcing parents to work toward, assuming that both of them can see it's value.

The legislation contemplated, starts with an assumption that shared custody or joint custody is the first order of priorty in custodial plans.

In the experiences of this Custody Investigator, it should not be ranked as the preferential method of awarding custody. The method of awarding custody, used in this court for a number of years, has been what is best for the specific family situation.

On reviewing the Bill, I would expect passage of this piece of legislation could very well have a serious impact on the operation of the courts. In Anchorage alone, there are approximately 2,500 divorces a year. Currently, 10 percent of these cases come through the Custody Investigator's office as contested custody cases, and are handled through

investigation/mediation and court presentation, either on a stipulated basis or in a contested matter for the final hearing. This Investigator would be very surprised if the impact, in terms of additional work load, on initial divorce filings were less than double with the consideration of shared custody being the preferable method. In addition, this Investigator would be very surprised if we were not to see a substantial number of filings for modification of decrees where sole custody existed, but where, because of the presumption, the non-custodial parent would file for equality in the divorce decree through the modification process.

FMS/lfs

Rudy;

Perhaps you saw a copy of the letter to a poor slob in Michigan whose ex-wife threatened to kill the child before allowing visitation, from the "Friane of the Court" a/k/a/ Guardian ad litem... In which he suggested rather than upset the poor woman further, make no attempt to visit and drop everything. It never occured to the ass to take the children into protective custody and turn them over to the father... This is just the thing an idiot like your Judge Ripley would be likely to do.

Sincerely

Ken

Don Lamb has copies of the letter.

5-II-81

Dear Sir,

I Sherry Watkins am writing this letter at the request of an old family friend Rudy Johnson. It is in reguards to separation and joint coustody.

I set down and told my husband-Don, and son-Larry Iwas going to move to Alaska.

After twelve years of haressment from Don's ex-wife I decided it couldn't be that way for any one Don might want in his life and no way was I going to be up tight and caddy as she was. Our child was not going to suffer like theres did.

Larry was ten and we lived in California. When I moved out I drove to Alaska and softened the shock with the promis to Larry that he could fly on an Airplane to visit, that excited him and in two weeks he flew up for a fue days visit. Don, his father realized how important the trip was and paid half.

I had no intention at that time of giving up my son. Tarse months later I moved back to California. I stayed with Don and Larry for six months to get a job and apartment. Promising I would get an apartment with a pool. This made the moving easer again. I don't know if the promises were right or not but I kept each one and it did make it easier for all involved.

Letting things ride for a while before I made any big decisions I realized while I was gone Don and Larry had developed a new relationship between the two of them. They were spending tremendous aeounts of time together Motercycle riding, camping, fishing and working hard with Larry on school work. I could see Larry developing in School as well as in sports, it was terrific. Naturally I had some adjustments to make. Also I realized I financually I couldn't take care of Larry the way I would like. I don't beleave any child should have to suffer by being taken out of the home inviroment, moved from school and friends. it's enough not to have both parents together.

The settlement was probably the easiest ever, Don kept the home and all furniture except the extras not needed which I took to start over again and 25,000.00 cash settlement.

It's been 2½ years, we have had problems.

I have a rule I go by, when I get really upset with something Don is doing concerning Larry I wait two days before saying anything. This gives me time to cool down and to be able to discuss things in the proper manner. Then we set down and discuss the problem. Don has made some changes. It's not easy for a father to take over when every thing was taken care of by a wife for so many years.

Don is doing a good job and I am proud of him and of Larry for adjusting so well.

Larry is a good boy and we both love him. I would love to have him live with me but what is most important is what is best for him.

I've taken a lot of riticule and even been called an unfit mother. I am adjusting also feel it's easier for me to make the adjustments then it would be for either of them.

Don was married before, had two boys when his wife left she tookboth boys and gave Don a lot of static, heart break. He use to cry at night because he loved them so much and wanted them. He could see there was little if any discipline in there home. Well they are grown now, they are not modle citizens but naturally he still loves them. One is 21 and the other is 23. The youngest lives with him and the other he sees often. Anyway I didn't think Don could handle having another son taken from him.

All the changes we have made in our lives have been done between us deciding what is best for Larry, no Attornies no relatives no friends no courts. We haven't even filled for a devorce. We feel at this time there is no need, when one of us decides to re-marry again then we'll take care of the small details, in the mean time Larry is the one that is most important.

We can all give a lot if we want to and we can all adjust to changes if we try.

Small instance: Larry has a small wieght problem. Don doesn't allow him sweets. Easter came and I showed up with an Easter basket full of fruit. Larry loved it and also his father was pleased.

Larry lives with his father that I can see him any time I want. I don't go there with out calling first and they don't come to see me without calling first, this gives us both the privacy we need.

Don decides he needs to go out once in a while, he drops Larry off with me. This took a while Don said he didn't want to take advantage if me as a babysitter. Larry is almost 13 now but he still dosen't like being alone at night so we work it out together.

We think we've got things pretty well in control between the three of us. There is one small thing that Don and both have problems with: Relationships with other people, they can't quite accept the idea that Don and I are so close and we try hard to keep a good atmosphere between us because of Larry, they think we are still in love with each other. There is nothing sexual between us but I think even if Larry wasn't between us I would still like to keep Don as a friend for life. He has his faults just as I do but I feel he is still a very special person.

So far so good. I think we're going to have a son to be proud of as a good human being.

We are working on it together, and we would like to think other people in the same position could try to help each other also.

Donald A Watkins

1850 Roberts Road
Fairbanks, Alaska 99701
September 26, 1981

Representative Mike Bierne
P. O. Box 4-1539
Anchorage, Alaska 99510

Attn: Jens Zebbe

Ref: House Bill 210--Joint Custody for Children

Dear Dr. Bierne:

As I mentioned in our meetings enclosed are the following:

- My May 21, 1981 letter to Representative Brian Rogers which contains an analysis of documentation furnished to you by Rudy Johnson;
- James Cook's April 13, 1981 letter to Representative Brian Rogers giving a critique of House Bill 210. James Cook drafted the California bill which became law in that state on January 1, 1980;
- A statement in favor of Joint Custody by Ms. Karen DeCrow, past president of the National Organization of Women;
- An article from a California Newspaper analysing how well joint custody has worked in California in the first year.

Sincerely,

Larry Sweet

Sally A. Lauster
1308 W. Hillcrest #25
Anchorage, Alaska 99503

March 20, 1981

Committee on Health, Education
and Social Services
Pouch V
Juneau, Alaska 99811

Attn: Chairman Don Clocksin

Dear Mr. Clocksin and Committee Members:

I have been an Alaskan resident since 1962. While setting up a support group for joint custody parents through the Alaska Women's Resource Center, I learned of House Bill 210 and obtained a copy.

Three years ago while dissolving our marriage, my husband and I sought joint custody of our two children, then aged 2½ and 6. We were discouraged both by attorneys and the court system, but we persevered and have been operating as joint custody parents for three years. We feel the system is preferable to any alternative and is workable. Our two children are secure and loved, with no more than the usual childhood growing pains.

My feelings about joint custody are strong. If the parents are able to maintain some kind of co-parenting situation with healthy, albeit separate, relationships with the child(ren), I feel this is the best solution to an unfortunate situation.

Personally I know perhaps five or six pairs of parents making some form of co-parenting work. The children are all happy, healthy, and "normal". This is not to say that all divorced couples will be able to cooperate to the extent that legal joint custody would require, but I give my full support to the notion that the courts will no longer discourage couples who strive for joint custody in a knowledgeable, thoughtful manner.

It is exciting to think that Alaskans are creative and sensitive enough to legislate support to a relatively new form of custody. It seems to me a matter of ultimate good sense and sensitivity to children's needs to make both parents available to them in spite of

the end of a satisfactory marital relationship. There are several good books supporting and explaining joint custody which I would like to recommend, especially Joint Custody and Co-Parenting by Miriam Galper, and Mom's House, Dad's House.

Thank you for the time you have spent on this legislation.

Sincerely,

S. Lauster

Sally A. Lauster