ALASKA LEGISLATURE COMMITTEE FILES 1981-1982 8672

1535 SHESS SB 723

1535

of the measures was not allowed to rigidify into a stalemate or stand-off that might once again have killed joint custody legislation.

A mandatory appellation becomes a mandatory assumption

Why is the measure so frequently referred to as California's "mandatory" joint custody law?

Midway in the legislative debates, AB 1480 was offhandedly characterized as "mandatory" joint custody, an appelation most often bestowed by opponents in an attempt to rationalize support toward SB 477. Followers of joint custody have also assumed the statute to be "mandatory".

The reasons for such an opinion seem to lie in an interesting amalgam of law, legislature and literature.

Just prior to introduction of AB 1480 to the legislature, Woodland Hills, California, lawyer Burton Bach had been counseling a divorced, non-custodial mother, who wished to seek the sharing of joint custody with her former husband. Earlier, upon divorce, she had opted for giving custody to the father since she was apprehensive about her ability to obtain work and establish a home and to assume the obligations of custody. But, prior to passage of AB 1480, and despite the aid which Bach could provide, she decided not to proceed in the quest for joint custody because of apprehension that custody litigation would create an atmosphere so antagonistic for child and parents as to jeopardize their already tenuous relationship.

Bach authors a satirical commentary, "The Bach's Score," published in the southern California newspaper for the legal community, The Los Angeles Daily Journal. He was intrigued by AB 1480. With tongue in cheek, and satire so obscure it may have eluded those who were compulsively intent on the joint custody topic, on June 11, 1979 he bemoaned the do-gooders in the legislature, "One of the few areas of litigation still permitted lawyers to make healthy contributions to their Keogh accounts was the good old-fashioned child custody fight. . . . between "no fault" divorce and the kind of clients whose assets usually range between zilch and zilch and a half, all the fun and most of the profit has evaporated from the domestic relations cases. The only thing left for the parties to fight about (and thereby enrich their counsel) is the custody of the children."

In defense of Bach and to rectify an impression most others failed to read, he concluded, "I ask you: Can we accept such a radical concept as that of 'joint custody?'. You bet we can—and the sooner the better!"

But, unfortunately, few read the satire to its conclusion. Instead most remembered the prominent bold face heading of the article, "Mandatory Joint Child Custody Bill—A Help Or a Hinderance to Lawyers?"

The headline became the popular definition of AB 1480. The bill, however, contained no demandingly rigid requirement for the decree of joint custody.

Subsequently, the adoption from SB 477 into AB 1480 of the requirement for the court to indicate reasons for not granting joint custody has caused jurists to remark that the effect is almost tantamount to "mandatory," however.

Transition: Public perception of court implementation

Sole custody defeats the use of divorce as a social remedy by perpetuating the winner, loser antagonisms. On the other hand, joint custody intervenes on behalf of the child's interests to curtail a parent's opportunity for extending predivorce antagonisms through captive custody by requiring more equitable access. For the June 6, 1979 Assembly Judiciary Committee hearings, Persia Woolley testified, "I interviewed and listened to literally hundreds of divorced parents with all kinds of child custody arrangements. My research shows this (that joint custody won't succeed unless parents have a "friendly divorce" and initiate joint custody between themselves) to be a completely erroneous assumption on the part of the professionals. It is not necessary to be friends with your ex spouse in order to become an effective co-parent, although most parents who agreed to share their

children reported that their hostilities diminished after sharing was instigated. All sharing parents interviewed reported that the paramount consideration was that each parent must respect the rights and needs of the children to have normal relations with the other parent."

A similar emphasis was conveyed to the legislators in correspondence from Virginia Anne Church, "It makes sense to me to design a therapeutic holding pattern, putting parents on notice that the children will continue to have two parents and that whether or not they love and desire to live with one another they will continue their responsibilities as parents, learning to cooperate, or forfeiting the rights to guide their children." Dr. Church is a psychologist, practicing attorney, former dean of a Chicago law school and past chairmen of the American Bar Association Committee on Marriage Counseling and Conciliation.

We are now in a period of transition. Chapter 915 of the Statutes of 1979 is being implemented. Implementation is being conducted by professionals in the several related fields who counseled, litigated and decreed under the former statute. Many are aware of the failures of the previous procedure, yet some retain a vested interest in past decisions and skepticism about the change. Until more experience is gained and new practitioners enter the field the transition may be uneven. The transition is not entirely the court's responsibility. As stated at the outset, the transition will be aided by the expectations of the parents prior to a court hearing conditioned by their awareness of the new statute. But, now we conclude with the caution of another parameter: the expectations of parents will also be conditioned by their impression of the court's implementation of the law's policy intent and precepts.

Literature and Sources

Throughout the 1970's articles and books for the professional and lay public about joint custody became available in at least three successive contents. First, during the early 1970's joint custody was acknowledged gradually in literature dealing primarily with the effects of divorce on children. By the mid-1970's literature specifically recognizing joint custody and advocating legitimization of joint custody appeared. Recently, a few literary works deal almost exclusively with the implementation of joint custody. Publications in the later category, that of 'how to' implementation handbooks, will probably become more numerous in the early 1980's. Temporarily, the relatively few 'how to' books reflect the concentration thus far by advocates in obtaining recognition of joint custody by legislatures and legitimization by statute. Having achieved legislative approval, those energies are now available for explanations, improvements, and implementation of joint parenting.

A comprehensive bibliography is available upon request from the author of this article.

Additionally, probably the most extensive, convenient and recent bibliography (September 16, 1979) itemizing 354 publications subdivided in 28 categories is available from its compiler, Richard C. Pasco, a newsletter editor of Equal Rights for Fathers, 235 College Avenue, Mountain View, California 94040.

A newcomer to the joint custody topic will find the following recent and relevant publications to be an efficient use of limited time. All were authored by specialists who gave their personal support and endorsement of AB 1480 to the California legislature and for signature into law by Governor Brown.

Diane Trombetta, Ph.D, and Betsey Warren Lebbos, Attorney at Law, "Co-Parenting: The Best Custody Solution," The Los Angeles Daily Journal Report, No. 79-12, pp. 11-23, June 22, 1979 and Conciliation Court Review, December 1979.

For the lawyer, parent and counselor, an annotated itemization of the effects of divorce and sole custody upon children and parents with references to joint custody solutions. An important and essential reference for individuals preparing to confront custody decisions in court.

Persia Woolley, The Custody Handbook. Summit Books, New York. 1979.

> Currently the most recent and pre-eminent guide to designing custody arrangements with particular emphasis on joint custody. Highly suitable for independent reading by estranged parents in demonstrating how joint custody plans are ahcieved even though divorced parents are not otherwise communicating.

Miriam Galper, Co-Parenting: A Sourcebook for the Separated or Divorced Family. Running Press. Philadelphia, 1978.

> A 'how to do it' handbook with suggestions for schedules, relationship with your ex-spouse, dealing with adjustment, and practical considerations. Lively, handy, fast-reading.

Ciji Ware, "Joint Custody: One Way to End the War," New West, pp 42-55, February 16, 1979.

> Opens the imagination to various possibilities for joint custody through interviews with several co-parents in differing situations. Conveys an understanding of joint custody through personal experiences. The publication and distribution of this article to California legislators, concurrently with the distribution of the text that became AB 1480 was an important factor in securing attention for and approval of AB 1480. Ciji Ware is currently authoring a 'how to' handbook: I Win, You Win, to be published by Putnam in 1980.

Jay Folberg and Marva Graham, "Joint Custody of Children Following Divorce," University of California–Davis Law Review, Special Symposium on Children and the Law, May, 1979.

> Analyzes the law of joint custody as well as its history, terminology and use. The concerns of attorneys, judges, and others are examined. Suggests criteria for joint custody and advocates its decree more often. An important guide for parents approaching court hearings and for legislative advocates. Jay Folberg, whose endorsement of AB 1480 was helpful in acquiring and reassuring legislator supporters of the measure, is a Professor of Law at Lewis and Clark College, Portland, Oregon, and Executive Director of the Association of Family Conciliation Courts.

Mel Roman and William Haddad, The Disposable Parent: The Case for Joint Custody. Holt, Rinehart and Winston, New York 1978.

> A widely read book that has been instrumental in stopping the overburdening of a sole custodial parent and of creating ex-parents from non custodial parents. Melvin Roman, Ph.D., Professor of Psychiatry and Director of Group and Family Studies at the Albert Einstein College of Medicine is one of the nation's pioneering proponents of joint custory.

Isolina Ricci. The following four items by Isolina Ricci, the former director of family services in Santa Monica, California, and currently completing her Ph.D. dissertation at Stanford University, are useful in establishing the legitimacy of joint custody.

> "Dispelling the Stereotype of the Broken Home," 12 Conciliation Courts Review 7, Iss. 2, 1976.
> "Cooperative Parenting after Divorce: Myth or Reality?," Conference on the Divorcing Family, University of Southern California, Jan. 27, 1979, reported in Los Angeles Times, Jan. 3, 1979, Part IV at 4, Col. 2.
> "Shared Custody," Conciliation Courts Review, January 1976. Mom's House, Dad's House, published source unknown.

POSITION PAPER

SENATE BILL NO. 723

"An Act relating to child custody."

Senate Bill No. 723 provides a statutory basis for shared custody in judgements for custody. The Department feels the Committee Substitute improves on the original Bill. However, we would still question the language in Section 09.55.205(c) due to the deletion of the phrase, "all relevant factors include." This deletion seems to imply that the court's considerations are limited to those factors delineated in the section. It is felt that in the best interests of the child "all relevant factors" should be considered.

In addition, the Department would recommend that the definition of shared custody not necessarily include physical custody. This stems from the concept that, whenever possible, shared physical custody, as well as legal custody, is beneficial but recognizes that shared physical custody is not always possible.

RECOMMENDED BY: John R. Pugh
John R. Pugh, Director
Division of Family and
Youth Services

DATE: 4/2/82

APPROVED BY: Helen D. Beirne
Helen D. Beirne
Commissioner

DATE: 4-5-82

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. Senate Bill No. 723
Title "An Act relating to child custody."
Requested by Parr Date

II. FISCAL DETAIL
Agency Affected Department of Health and Social Services
Program Category Affected
BRU, Program Or Subprogram(s) Affected
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS,CLAIMS,ETC.						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS	-0-	-0-	-0-	-0-	-0-	-0-
OTHER (Specify Source)	-0-	-0-	-0-	-0-	-0-	-0-
	-0-	-0-	-0-	-0-	-0-	-0-
	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS

FULL TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART TIME	-0-	-0-	-0-	-0-	-0-	-0-
TEMPORARY	-0-	-0-	-0-	-0-	-0-	-0-
	-0-	-0-	-0-	-0-	-0-	-0-

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

Senate Bill No. 723 has no fiscal impact on the Department of Health and Social Services.

IV. DATE 2/17/82 PREPARED BY [signature] for John R. Pugh, Director
AGENCY Division of Family and Youth Services
PHONE 465-3170

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)
33-001 (Rev. 12/81)

SB 723 file

1850 Roberts Road
Fairbanks, Alaska 99701
March 7, 1982

Representative Brian Rogers
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Brian,

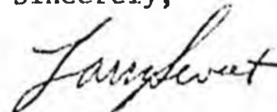
For over a year now, ever since I first became aware of House Bill 210 which will provide the alternative for a joint custody arrangement for children in Alaska, I have kept abreast of the progress of this bill. As you are probably aware I organized many of the joint custody parents in Fairbanks who have testified at the various hearings on this issue. I understand that HB 210 has been passed out of the House HESS committee with a "do pass" recommendation, but with the presumption of joint custody language removed.

I am relieved that Senator Parr has introduced into the Senate a bill which also supports the concept of a joint custody arrangement for children. The Senate bill includes provisions for mediation. No opportunity for mediation exists under current conditions in Fairbanks though other jurisdictions of the State have some support services. This is discriminatory to the children in the Fairbanks District.

Brian, I don't know who actually wrote the original version of HB 210 but they were very experienced or had done a great deal of research on the issue. Only someone who has been through the process can have an understanding for the mechanics of what happens to say nothing of the emotions involved. I hope I have a chance to meet that person someday. It is the presumption of joint custody clause that puts the power in the bill. Properly handled, that clause can be used to stop the courtroom maneuvering and manipulation that uses children as tools, to no one's best interest, least of all the children. It in no way mitigates the awarding of sole custody, which is surely appropriate in many cases.

Thank you for your support--any joint custody legislation is good legislation.

Sincerely,



Larry R. Sweet

cc: Senator Parr

723 Bill 2.

1850 Roberts Road
Fairbanks, Alaska 99701
March 14, 1982

Senator Don Bennett
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Re: Position of Custody Investigator, Fourth Judicial District

Dear Senator Bennett:

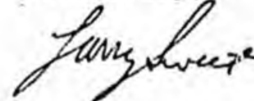
Last fall I corresponded with you regarding the position of custody investigator for the Fourth Judicial District which has been requested by Mr. Charles Gibson, the Area Court Administrator here.

In your response October 7, 1981, you mentioned that you would watch appropriations for this position. Can you tell me if the position has survived budget cuts to date and still exists in the budget request?

The Third Judicial District has had a position of Custody Investigator for several years. Many children in this District are being discriminated against because there is no such counterpart position in Fairbanks. There are no mediation or support services available to them within the Judicial System that can help work out an equitable arrangement which will allow them to have "an open and loving frequent relationship" with both parents as provided for by AS Sec. 09.55.205. As a result many children are left with a shattered tragic situation after their parents marriage is terminated.

I appreciate your help.

Sincerely,



Larry Sweet

cc: Senator Charlie Parr
Mr. Charles Gibson, Area Court Administrator, Fourth Judicial District
Mr. Francis Stevens, Custody Investigator, Third Judicial District

POSITION PAPER

SENATE BILL NO. 723

"An Act relating to child custody."

Senate Bill No. 723 proposes changes to the existing child custody statutes by providing for shared custody. Current statute provides for awarding custody on the basis of the best interest of the child, and states that neither parent is entitled to preference in awarding custody. This Bill also provides for mediation in cases of disputed custody; and, if parents cannot agree on custody following mediation, the judge has the option to either award joint custody, or to award custody to one parent with frequent visitation to the other parent.

Proponents of this Bill argue that despite the fact that the current statute does not give preference to either parent, judges, and attorneys continue to give preference to mothers both in actual awarding of custody by judges, and in advice given to the divorcing parties by attorneys prior to a court appearance. Some consequences of the present imbalance in the current situation include child stealing, the refusal of one parent to allow the child to have contact with the other parent, and, in some cases, the child being held hostage by one parent, the refusal of the other parent to then provide support when so ordered, not to mention the emotional anguish the child experiences.

The first question in considering this Bill is whether the concept of shared custody is good social policy; that is, is it in the best interest of the child? A review of the literature in the last 20 years indicates the importance of both parents to a child's development, and show the profound trauma divorce has on all parties involved, but perhaps most disastrously on children. One study reports that children of divorce are referred for out-patient psychiatric evaluation at nearly twice the occurrence in the general population. There is general agreement in the field of social work and family therapy that children need continuity in their relations, and that a child will suffer less from a divorce if he can continue to have a relationship with each parent. As one author said, "Divorce does not end relationships in post-divorce families, it changes them...joint custody is a concept that provides a better opportunity for the child to maintain a close relationship with each parent and, thus, gain the benefit of two separate but interdependent homes."

What is shared custody, and what does it take for it to be successful? Custody means having possession, power, authority, and responsibility for a person. Shared, or joint custody maintains both parents' legal responsibility for the child's upbringing, sharing as equally as possible the authority and responsibility for the decisions that significantly affect the life of their child. It may or may not include shared physical custody, and it can take many different forms or arrangements, since it requires the parents to negotiate an agreement as to the care of the child.

In order for shared custody to be successful, many writers agree that the following conditions must be present:

POSITION PAPER

SENATE BILL NO. 723
page 2

1. Former spouses, despite their continuing differences, must be able to communicate about parenting and must be able to negotiate agreements about the child's health, education, and welfare. (Both experience and studies have shown this is possible.)

2. Geographical proximity, or logistical ways of sharing parenting must be arranged.

3. The children must be agreeable to shared parenting.

4. No other major contraindications must be present. Examples of valid contraindications include, but are not limited to, physical or sexual abuse or assault of the child or of one former spouse by the other, unless there is evidence of rehabilitation.

The Department supports the concept of shared custody and recommends that the Bill be amended to include the conditions listed above. In addition, the Department has the following comments:

1. On Page 2, Lines 17-18, there appears to be an error, as there is reference to AS 09.55.205(c) which does not exist in present statute.

2. This Bill does not define joint custody. The term can refer to shared legal responsibility between the parents, or it can include shared physical custody as well. The Department recommends that this term be defined by statute.

RECOMMENDED BY: [signature]
for John R. Pugh, Director
Division of Family and Youth Services

DATE: 2/17/82

APPROVED BY: [signature]
Helen D. Beirne
Commissioner

DATE: 2-23-82

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. Senate Bill No. 723
Title "An Act relating to child custody."
Requested by Parr Date

II. FISCAL DETAIL
Agency Affected Department of Health and Social Services
Program Category Affected
BRU, Program, Or Subprogram(s) Affected
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS	-0-	-0-	-0-	-0-	-0-	-0-
OTHER (Specify Source)	-0-	-0-	-0-	-0-	-0-	-0-
	-0-	-0-	-0-	-0-	-0-	-0-
	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS

FULL TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART TIME	-0-	-0-	-0-	-0-	-0-	-0-
TEMPORARY	-0-	-0-	-0-	-0-	-0-	-0-
	-0-	-0-	-0-	-0-	-0-	-0-

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

Senate Bill No. 723 has no fiscal impact on the Department of Health and Social Services.

IV. DATE 2/17/82 PREPARED BY [signature] for John R. Pugh, Director
AGENCY Division of Family and Youth Services
PHONE 465-3170

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)
33-001 (Rev. 12/81)

FAIRBANKS CHAPTER, P.O. BOX 82254 FAIRBANKS, ALASKA 99708

November 20, 1981

The Fairbanks Chapter of the National Organization for Women supports the concept of House Bill #210 because of our belief in the equality of rights of women and men, as stated in our first letter to your committee.

However, due to further research, we have some reservations about this bill, which include 1) the rebuttable presumption, 2) the possibility of problems with child stealing and 3) the continued accessibility to a battered spouse.

We suggest that the concept of joint custody need not be expressed in the law by means of a rebuttable presumption, and would rather see it as a specific statement in the law that joint custody is possible in a custody dispute. There have been some doubts expressed to us as to whether there is a right to award joint custody under current law.

We support the concept of custody being awarded by what is in the best interests of the child. We believe that an award of joint custody could be in the best interests of the child.

With regard to child stealing, we are concerned that joint custody may increase the problems of enforcing the provisions of the child stealing statutes. We suggest that physical custody under a joint custody arrangement be as specific as possible.

Third, we are concerned that an award of joint custody would give continued access to a battered spouse. We hope the Court would take this issue into serious consideration in deciding to award joint custody, on an individualized basis.

723 Bill 2

1850 Roberts Road
Fairbanks, Alaska 99701
March 14, 1982

Senator Don Bennett
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Re: Position of Custody Investigator, Fourth Judicial District

Dear Senator Bennett:

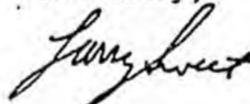
Last fall I corresponded with you regarding the position of custody investigator for the Fourth Judicial District which has been requested by Mr. Charles Gibson, the Area Court Administrator here.

In your response October 7, 1981, you mentioned that you would watch appropriations for this position. Can you tell me if the position has survived budget cuts to date and still exists in the budget request?

The Third Judicial District has had a position of Custody Investigator for several years. Many children in this District are being discriminated against because there is no such counterpart position in Fairbanks. There are no mediation or support services available to them within the Judicial System that can help work out an equitable arrangement which will allow them to have "an open and loving frequent relationship" with both parents as provided for by AS Sec. 09.55.205. As a result many children are left with a shattered tragic situation after their parents marriage is terminated.

I appreciate your help.

Sincerely,



Larry Sweet

cc: Senator Charlie Parr
Mr. Charles Gibson, Area Court Administrator, Fourth Judicial District
Mr. Francis Stevens, Custody Investigator, Third Judicial District

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. Senate Bill No. 723
Title An Act relating to Child Custody
Requested by Senate Health, Education and Social Services Committee Date 3/18/82

II. FISCAL DETAIL
Agency Affected Alaska Court System
Program Category Affected Administration of Justice
BRU, Program, Or Subprogram(s) Affected Trial Courts
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES		383.7	422.0	464.2	510.6	561.7
200 TRAVEL		40.0	44.0	48.0	53.0	58.0
300 CONTRACTUAL		4.0	4.4	4.8	5.3	5.8
400 COMMODITIES		4.5	4.9	5.4	5.9	6.5
500 EQUIPMENT		18.0				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		450.2	475.3	522.4	574.8	632.0

FUNDING (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
GENERAL FUND		450.2	475.3	522.4	574.8	632.0
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
FULL TIME		9	9	9	9	9
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

See attached analysis.

IV. DATE 3/31/82 PREPARED BY Richard P. Barrier
AGENCY Alaska Court System
PHONE 264-0545

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Leg[illegible]ator Named)
33-001 (Rev. 12/81)

ANALYSIS OF FISCAL IMPACT OF SB 723

Under this Act, the court would be required to order parties to a child custody dispute to participate in pre-trial mediation.

Mediation services are not currently available through the court system, although the custody investigator in Anchorage occasionally uses mediation techniques in the course of conducting his evaluation.

This fiscal note is prepared with the assumption that the legislature intends that mediation services will be provided by the court.

Current files indicate approximately 6,000 divorces statewide on an annual basis, of which approximately 600 involve contested custody. Approximately 300 of these cases can be expected to settle; another 300 would proceed to trial.

Professional literature and experience in a similar program in California indicate a team approach is required in mediation. This team is comprised of a legal business expert and social/psychological expert. The two experts work together to mediate all issues in the divorce.

It is estimated that custody mediation would require the following time allocations: two months of one team's time in Nome, four months in Fairbanks, four months in Juneau, and two teams year round in Anchorage. These needs would be met by one mediator/administrator (Range 22) to administer the program, six mediators (Range 20), and a two-person clerical staff (Range 10 and Range 12). The mediation program would be based in Anchorage, with substantial travel to other court locations, since year-round positions can only be justified in Anchorage.

An alternative to mediation through the court system would be to contract for mediation services. However, there are no identifiable private mediation programs in Alaska at present. The Anchorage custody investigator estimates that if such programs existed, 10% of custody litigants could afford to pay for private mediation services. Contracted services would be required for the other 90% of custody disputants who cannot afford to pay the cost of mediation. Specific costs of this approach cannot be projected, since no mediation programs exist at present.

FY 83 BUDGET FOR IMPLEMENTING SB 723

Personnel:

Salaries

1 - Mediator Administrator (Range 22)	$41,928
6 - Mediators (Range 20)	218,808
2 - Secretaries (Range 10)	38,712
	$299,448

Benefits

Variable (15.64% of Gross)	$46,834
SBS	17,690
Health Insurance	19,764
Total Salaries & Benefits	$383,736

Travel	$40,000
Contractual	4,000
Commodities	4,500
Equipment	18,000
Total FY 83 Budget	$450,236

POSITION PAPER

SENATE BILL NO. 723

"An Act relating to child custody."

Senate Bill No. 723 proposes changes to the existing child custody statutes by providing for shared custody. Current statute provides for awarding custody on the basis of the best interest of the child, and states that neither parent is entitled to preference in awarding custody. This Bill also provides for mediation in cases of disputed custody; and, if parents cannot agree on custody following mediation, the judge has the option to either award joint custody, or to award custody to one parent with frequent visitation to the other parent.

Proponents of this Bill argue that despite the fact that the current statute does not give preference to either parent, judges, and attorneys continue to give preference to mothers both in actual awarding of custody by judges, and in advice given to the divorcing parties by attorneys prior to a court appearance. Some consequences of the present imbalance in the current situation include child stealing, the refusal of one parent to allow the child to have contact with the other parent, and, in some cases, the child being held hostage by one parent, the refusal of the other parent to then provide support when so ordered, not to mention the emotional anguish the child experiences.

The first question in considering this Bill is whether the concept of shared custody is good social policy; that is, is it in the best interest of the child? A review of the literature in the last 20 years indicates the importance of both parents to a child's development, and show the profound trauma divorce has on all parties involved, but perhaps most disastrously on children. One study reports that children of divorce are referred for out-patient psychiatric evaluation at nearly twice the occurrence in the general population. There is general agreement in the field of social work and family therapy that children need continuity in their relations, and that a child will suffer less from a divorce if he can continue to have a relationship with each parent. As one author said, "Divorce does not end relationships in post-divorce families, it changes them...joint custody is a concept that provides a better opportunity for the child to maintain a close relationship with each parent and, thus, gain the benefit of two separate but interdependent homes."

What is shared custody, and what does it take for it to be successful? Custody means having possession, power, authority, and responsibility for a person. Shared, or joint custody maintains both parents' legal responsibility for the child's upbringing, sharing as equally as possible the authority and responsibility for the decisions that significantly affect the life of their child. It may or may not include shared physical custody, and it can take many different forms or arrangements, since it requires the parents to negotiate an agreement as to the care of the child.

In order for shared custody to be successful, many writers agree that the following conditions must be present:

POSITION PAPER

SENATE BILL NO. 723
page 2

1. Former spouses, despite their continuing differences, must be able to communicate about parenting and must be able to negotiate agreements about the child's health, education, and welfare. (Both experience and studies have shown this is possible.)

2. Geographical proximity, or logistical ways of sharing parenting must be arranged.

3. The children must be agreeable to shared parenting.

4. No other major contraindications must be present. Examples of valid contraindications include, but are not limited to, physical or sexual abuse or assault of the child or of one former spouse by the other, unless there is evidence of rehabilitation.

The Department supports the concept of shared custody and recommends that the Bill be amended to include the conditions listed above. In addition, the Department has the following comments:

1. On Page 2, Lines 17-18, there appears to be an error, as there is reference to AS 09.55.205(c) which does not exist in present statute.

2. This Bill does not define joint custody. The term can refer to shared legal responsibility between the parents, or it can include shared physical custody as well. The Department recommends that this term be defined by statute.

RECOMMENDED BY: [signature] for John R. Pugh, Director
Division of Family and
Youth Services

DATE: 2/17/82

APPROVED BY: [signature]
Helen D. Beirne
Commissioner

DATE: 2-23-82

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. Senate Bill No. 723
Title "An Act relating to child custody."
Requested by Parr Date

II. FISCAL DETAIL
Agency Affected Department of Health and Social Services
Program Category Affected
BRU, Program, Or Subprogram(s) Affected
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS	-0-	-0-	-0-	-0-	-0-	-0-
OTHER (Specify Source)	-0-	-0-	-0-	-0-	-0-	-0-
	-0-	-0-	-0-	-0-	-0-	-0-
	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS

FULL TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART TIME	-0-	-0-	-0-	-0-	-0-	-0-
TEMPORARY	-0-	-0-	-0-	-0-	-0-	-0-
	-0-	-0-	-0-	-0-	-0-	-0-

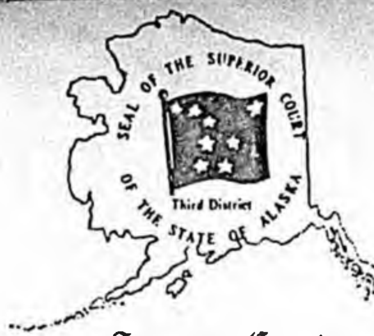
III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

Senate Bill No. 723 has no fiscal impact on the Department of Health and Social Services.

IV. DATE 2/17/82 PREPARED BY [signature] for John R. Pugh, Director
AGENCY Division of Family and Youth Services
PHONE 465-3170

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/81)



Superior Court
State of Alaska
THIRD JUDICIAL DISTRICT
303 K Street
Anchorage, Alaska 99501

(907) 264-0428

FRANCIS M. STEVENS, ACSW
Custody Investigator

ARDIS J. CRY
Custody Investigator

May 1, 1981

Larry R. Sweet
1850 Roberts Road
Fairbanks, AK 99701

Dear Mr. Sweet:

I have your letter, along with the copy of the letter that you had sent to John Reese expressing your concerns about the fact that there is a difference of opinion between yourself and Mr. Reese and myself on House Bill 210. I am making available to you the supplemental statement that I sent to Representative Clocksin, and I have underlined portions of it for emphasis for you as I think there is a difference in our perspectives, and I believe that the perspective that I am coming from is somewhat impersonal, and hopefully professionally and without an emotional slant. I would suspect that part of the differences and understanding do come from where we both start from, in that you are a parent with a divorce, with an experience in the Court that apparently was less than what you would expect the Court to have provided.

Apparently there is a distinct difference between management of domestic relations in the various judicial districts in Alaska. The Third Judicial District, having over half of the population of the State as one might expect, would have well over one-half of the domestic relations disputes coming before it, and because of the volume would require some extra attention or some specialization, if you want to use that term. You may not be aware, but about twelve years ago when Justice Boney was on the Supreme Court, there was established by regulation, a Family Court and a judge was hired specifically to head up that particular Court in Anchorage. The Court was separate from the regular calendar, did have a position of Marriage Counselor with it, and did do it's own calendaring. Unless the judge was pre-empted by the attorneys or the parties, all contested custodies

were heard by him. About seven years ago, with the retirement of Judge Butcher, who had been the Family Court Judge, a decision was made administratively to do away with the Family Court concept. I had been here as Marriage Counselor prior to the decision of abolishing the Family Court, and because of about the same time there was a Supreme Court Opinion, Granada Vs. the State of Alaska, which specifically stated the Court could not order custody investigations done by the Division of Social Services in domestic relations, the decision was made by the Presiding Judge in Anchorage to convert the Marriage Counselling position to the position of Custody Investigator. The result of this action by our Presiding Judge, was the establishment of certain practices in Anchorage that probably do not exist in other Districts. All contested custodies are referred to the office of Custody Investigator for evaluation prior to the Court hearing. Custody Investigator is required to be available to testify in the hearings, and is requested to make a recommendation to the Court as to the best interests of the child or children.

In actual practice, what has developed, is a form of investigation, arbitration and mediation within the office of the Custody Investigator resulting in a 96 percent settlement rate of the contested custodies. This, in fact, means that the litigants have reached an agreement as to the best option available for themselves and their children and the matter goes to Court stipulated non-contested. In four percent of the cases, it is not possible to arrive at a mediated or acceptable recommended solution and the matter is litigated.

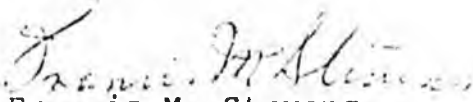
In your letter you indicate that something obviously is missing, and I would have to agree with you. I believe the thing that is missing is adequate support services in the area of domestic relations. They are neither available in the broad community, nor within the Court System. You might be interested in securing the findings of the White House Conference of Families which does address the issues that you are concerned about and strongly urges all Court Systems to establish a Family Court bench, which would result in specialization on the part of the Judiciary and the development of the support services that many professionals, including myself, feel are essential to meet the problem that you and many of the people who are supporting House Bill 210 are concerned with. I don't think you are looking for something particularly different from what Mr. Reese and I have talked about. I believe the distinction comes with an emotional commitment to the thought there is only one solution, and that this solution is joint custody, and it will solve everyone problems. I would have to argue that joint custody is a method, that it does not solve many of the problems that were brought up in the teleconference. It would not

guarantee visitation; it would not guarantee shared parenting; it would not meet any of the guarantees that many of the people were asking about anymore than single custody to father or mother would provide these guarantees.

You mentioned that you are concerned about the very wording that is opposed by John Reese and myself is the same wording that you feel had it existed when your marriage was dissolved, all the parties would be in a better place today. I can accept the position you are coming from and possibly for you that is true. I do not believe, however, that it is true as a general statement for the majority of the parties going through a divorce process and I would have no problem, as I indicated in the letter, my testimony in having legislature acknowledge joint custody as one of the methods, particularly in view of the fact that it has been acknowledged in the Court System for a number of years. I do have a problem though, if it puts the burden on the Court to establish that people are not capable of handling joint custody in order to not grant it in those cases where it is not in the best interests of the children to do so.

I hope that this kind of either clears the air in terms of where I am coming from, or gives you some thoughts as to how to respond and find the common ground, as I do believe that we are both looking for the same thing, but I believe as a professional the pitfalls in this Bill might be very destructive.

Very truly yours,



Francis M. Stevens
Custody Investigator

FMS/lfs

cc: John Reese

Attachment

Alaska State Legislature

House of Representatives

Committee on Judiciary

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

Memorandum

To: Charlie Parr, Chairman

From: Peggy Berck, Staff MMB

Date: October 23, 1979

Current Alaska law makes child stealing a crime. AS 11.15.290. In order for criminal liability to attach the child must be under the age of twelve. Punishment for this offense is: by imprisonment in the penitentiary for not more than ten years or less than six months or by imprisonment in jail for not more than one year, or by fine of $500 or both.

The new criminal code establishes the crime of custodial interference in the first and second degrees. Custodial interference is defined as keeping a child or incompetent person from his lawful cutodian with the intent to hold the child or incompetent person for a protracted period. As child is defined as one under the age of 18, the new criminal code provisions are broader in application than existing law. However criminal liability is limited in two respects. First, the perpetrator must be related to the child or incompetent person and, second, the perpetrator must realize that he has no legal right to abduct the child or incompetent person.

Custodial interference in the first degree involves removal of the child or incompetent person from the state. Custodial interference in the first degree is punishable by a Class C felony which carries up to a five year prison term. Custodial interference in the second degree is punishable by a Class A misdemeanor which carries up to a one year prison term.

Copies of both the existing law as well as the new criminal code provisions are enclosed.

I did speak to Larry Weeks, Assistant District Attorney, Anchorage, this morning to attempt to determine any prosecutorial problems not apparent on the face of the existing law and whether the new criminal code provisions would correct any such difficulties. Mr. Weeks was not familiar with any specific problems. He did state that some problems had arisen as a result of interpreting "lawful charge" as contained in current law. In my mind a custody provision would clearly fall within the meaning of "lawful charge". Furthermore Mr. Weeks said that it was really more of a social problem. He said that spouses frequently do not like to send each other to jail and suffer the loss of child support as a result. He said that these persons shouldn't go to jail.

Mr. Weeks did refer me to another assistant district attorney in Juneau. I intend to pursue this issue with him in the immediate future. However I thought that you might want to relay this statutory information to your constituent who brought this matter to the attention of the House Judiciary Committee at its public hearing in Fairbanks. (Carla Slaughter, Director WIC, was the witness who brought this matter to the Committee's attention.)

P.S. Charlie, I would be happy to write Ms. Slaughter on your behalf, but I can't find an address for the WIC in the Fairbanks phone book in our office.

Sec. 11.15.260. Kidnapping. A person who knowingly and without lawful reason kidnaps, abducts or carries away and holds for ransom, reward or other unlawful reason another person, except in the case of a minor by his parent, is punishable by imprisonment for a term of years or for life. (§ 65-4-25(a) ACLA 1949; am § 1 ch 99 SLA 1957)

Distinction between kidnapping and child stealing.—The kidnapping statutes, which were applicable alike to adults and children, more generally viewed the offense as one against the person unlawfully taken, while the statute against child stealing (AS 11.15.290) has in view principally the right of the parent to the custody, dominion, and care of the child so that stealing the child from its parents is primarily an offense against the parents. State v. Metcalf, 278 P. 974 (Ore. 1929), construing the Oregon statutes.

Am. Jur., ALR and C.J.S. references.—31 Am. Jur., Kidnapping, § 1 et seq.

Forcing another to transport one as constituting offense of kidnapping or abduction, 62 ALR 200.

Secrecy, or intent of secrecy, as necessary element of kidnapping, 68 ALR 719.

Belief in legality of the act as affecting offense of abduction or kidnapping, 114 ALR 870.

1 C.J.S. Abduction § 1 et seq.; 51 C.J.S. Kidnapping §§ 1 to 7.

Sec. 11.15.270. Conspiracy to kidnap. If two or more persons conspire to violate § 260 of this chapter and one or more of them does any overt act to effect the object of the conspiracy, each is punishable by imprisonment for a term of years or for life. (§ 65-4-25(b) ACLA 1949; am § 1 ch 99 SLA 1957)

Cross reference.—As to distinction between kidnapping and child stealing, see note to AS 11.15.260.

Am. Jur. and C.J.S. references. — 11 Am. Jur., Conspiracy, § 13.
15 C.J.S. Conspiracy § 49.

Sec. 11.15.280. Receiving, possessing, or disposing of ransom. A person who receives, possesses, or disposes of money or other property or a portion of it which at any time has been delivered as ransom or reward in connection with a kidnapping under § 260 of this chapter, knowing it to be money or property delivered as ransom or reward, is punishable by a fine of not more than $10,000, or by imprisonment for not less than one year nor more than 10 years, or by both. (§ 65-4-25(c) ACLA 1949; am § 1 ch 99 SLA 1957; am § 9 ch 43 SLA 1964)

Cross reference.—As to distinction between kidnapping and child stealing, see note to AS 11.15.260.

Effect of amendment.—The 1964 amendment substituted "less than one year nor more than 10 years" for "more than 10 years" at the end of the section.

Section inapplicable to offense committed before October 1, 1961.—See 1961 Op. Att'y Gen., No. 8.

Sec. 11.15.290. Child stealing. A person who maliciously, forcibly or fraudulently takes or entices away a child under the age of 12 years, in a manner other than as provided in § 260 of this chapter, with intent to detain and conceals the child from its parent, guardian, or other person having the lawful charge of the child, is punishable by imprisonment in the penitentiary for not more than

Current Alaska law re: Child Stealing

10 years nor less than six months, or by imprisonment in jail for not more than one year, or by a fine of not more than $500, or by both. (§ 65-4-26 ACLA 1949; am § 2 ch 99 SLA 1957)

Distinction between kidnapping and child stealing.—The kidnapping statutes, which were applicable alike to adults and children, more generally viewed the offense as one against the person unlawfully taken, while the statute against child stealing has in view principally the right of the parent to the custody, dominion, and care of the child, so that stealing the child from its parents is primarily an offense against the parents. State v. Metcalf, 278 P. 974 (Ore. 9129), construing the Oregon statutes.

A child is incapable of consent to seizure and removal, and, being taken from its lawful custody, it must be deemed to have been taken without its consent as a matter of law State v Metcalf, 278 P. 974 (Ore. 1929), construing the Oregon statute.

Cited in United States v. Meyers, 16 Alas. 368, 143 F. Supp. 1 (D. Alas. 1956).

ALR and C.J.S. references. — Fiction of loss of services as condition of action for abduction of child, 72 ALR 847.

Kidnapping or other criminal offense by taking or removal of child by, or under authority of, parent or one in loco parentis, 77 ALR 317.

51 C.J.S. Kidnapping § 1 et seq.

Sec. 11.15.295. Use of firearms during the commission of certain crimes. A person who uses or carries a firearm during the commission of a robbery, assault, murder, rape, burglary, or kidnapping is guilty of a felony and upon conviction for a first offense is punishable by imprisonment for not less than 10 years. Upon conviction for a second or subsequent offense in violation of this section, the offender shall be imprisoned for not less than 25 years. (§ 1 ch 144 SLA 1968)

Cross reference. — As to weapons generally, see AS 11.55.

Legislative committee report.—For report on ch. 144, SLA 1968 (HB 333), see 1968 House Journal, p. 434.

Sec. 11.15.300. Blackmail. A person who, either verbally or by written or printed communication, (1) threatens injury to the person or property of another or to the person and property of a person standing in the relation of parent or child, husband or wife, or sister or brother to such other; or (2) threatens to accuse another of a crime, or of immoral conduct which, if true, would tend to degrade and disgrace him or to expose or publish any of his infirmities or failings; or (3) threatens in any way to subject him to the ridicule or contempt of society, with intent to extort pecuniary advantage or property from him, or with intent to compel him to do an act against his will, is punishable by imprisonment in the penitentiary for not more than five years nor less than six months, or by imprisonment in a jail for not more than one year nor less than three months. (§ 65-4-27 ACLA 1949)

Object of section.—The object of this section is to forbid persons from assuming the character of prosecutor for crime for the purpose of extorting gain for themselves. Elliott v State, 36 Ohio St. 318, construing the Ohio statute.

"Extortion."—Extortion is the obtaining of money or other valuable thing, either by compulsion, by actual

(Effective January 1, 1980)

* **Sec. 11.41.320. Custodial interference in the first degree.** (a) A person commits the crime of custodial interference in the first degree if he violates § 330 of this chapter and causes the victim to be removed from the state.

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

ALR and C.J.S. references. — Fiction of loss of services as condition of action for abduction of child, 72 ALR 847.

Kidnapping or other criminal offense by taking or removal of child by, or under authority of, parent or one in loco parentis, 77 ALR 317.

51 C.J.S., Kidnapping, § 1 et seq.

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

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

Sec. 11.41.370. Definitions. In §§ 300 — 370 of this chapter, unless the context requires otherwise,

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

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

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

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

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

Article 4. Sexual Offenses.

Section
410. Sexual assault in the first degree
420. Sexual assault in the second degree
430. Sexual assault in the third degree
440. Sexual abuse of a minor
445. General provisions
450. Incest
455. Unlawful exploitation of a minor
470. Definitions

* new criminal code provisions

1850 Roberts Road
Fairbanks, Alaska 99701
October 10, 1981

Representative Bette Cato
P. O. Box 775
Valdez, Alaska 99680

Ref: House Bill 210--Joint Custody for Children

Dear Mrs. Cato,

At the teleconference hearing April 22, 1981 regarding House Bill 210 you asked questions of many of the people who testified about what they considered to be an age at which a child could reasonably state which parent they chose to live with. We have discussed this subsequently and I still have strong feelings that this can put many children in an impossible situation which can give them psychological problems in the future.

House Bill 210 starts with a positive approach by presuming that a child has two loving and responsible parents (most do) and that each parent wants to maintain "an open and loving frequent relationship between the child and his other parent." (1). The second step in the preference of award in HB 210 would be to give custody to the parent who would "allow the child to have frequent and continuing contact with the parent not granted custody."

I have a situation in which the children have 50% time with each of their parents. This is a situation I have found that many other fathers would like to have because it is equal. I asked my sons, individually, what they think of the present arrangement. They both responded in the affirmative, and stated that they could not think of a better or more equitable arrangement and said, "besides, we get twice as many birthdays and Christmases and have two homes".

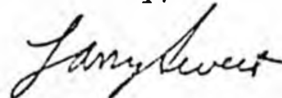
I know other children in similiar circumstances and they like it, whether or not their parents live in the same town.

The following statement made by Ms. Karen DeCrow, Past President of the National Organization for Women (1975-77) on August 28, 1980, sums things up:

> "(Joint custody is) definitely the custody arrangement of the future.
>
> The practice of nearly always awarding custody of children to the mother reflects negatively on women who aren't awarded custody; the public automatically thinks they are unfit to care for the children."

Mrs. Cato, I have deeply appreciated our open discussions and I hope you can support HB 210 this next session.

Sincerely,



Larry Sweet

cc: Representative Mike Bierne, Chairman, HESS
Senator Charlie Parr
Representative Brian Rogers

(1) Alaska Code of Civil Procedure, Sec 09.55.205 JUDGEMENT FOR CUSTODY, paragraph (6).

FAIRBANKS CHAPTER, P.O. BOX 82254 FAIRBANKS, ALASKA 99708

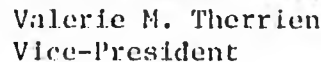
"Joint custody is definitely the custody arrangement of the future.

The practice of nearly always awarding custody of children to the mother reflects negatively on women who aren't awarded custody; the public automatically thinks they are unfit to care for the children."

House Bill 210 is good legislation because it removes bias, is equal, and facilitates preservation of the child's needs for contact with both parents; it reduces use of the courtroom by one parent to destroy the other parent, to the detriment of the child's best interests.

We urge you and the committee to vote favorably on House Bill 210 so that more children in this state can be allowed to have an "open and loving frequent relationship" with both their parents after a marriage is terminated.

Sincerely yours,



Valerie M. Therrien
Vice-President

cc: Representative Terry Martin
Representative Bette Cato
Representative Sally Smith
Representative Hugh Malone
Senate Judiciary Committee
House Judiciary Committee
Senate HLSS Committee

FAIRBANKS CHAPTER, P.O. BOX 82254, FAIRBANKS, ALASKA 99708

Representative Mike Bierne
Chairman, HESS Committee
PO Box 4-1539
Anchorage, Alaska 99509

Re: House Bill 210 Joint Custody for Children

Dear Representative Bierne:

The Fairbanks Chapter of the National Organization for Women supports House Bill 210 because it is consistent with the statement that "equality of rights under the law shall not be denied or abridged by the United States or by any state on account of sex."

House Bill 210 is also consistent with the intent of current Alaska Statutes governing the granting of custody of minor children because it provides a positive framework so that after a marriage is terminated, the children can maintain "an open and loving frequent relationship with (both parents)" (Sec. 09.55.205, Judgment for Custody, paragraph 6).

In most states, including Alaska, a form of no-fault divorce exists,in which it is not necessary for one parent to decimate the other in the public record, which is to no one's advantage. Joint or shared custody for children is the companion to that process because it removes the stigma of sole custody and will tend to prevent bitter, acrimonious and hostile custody battles, which are to no one's best interest, least of all the children who are defenseless in a process that can have far reaching consequences to their future lives, if handled improperly.

The preference for joint custody is an important concept because it provides a positive basis for each parent to continue their parenting responsibility.

If a joint custody relationship is not desired after a marriage is terminated, the second step in the preference for award process, provides for granting sole custody in a traditional fashion "to the parent determined by the court to be most likely to allow the child to have frequent and continuing contact with the parent not granted custody."

House Bill 210 is consistent with the following statement by Ms. Karen DeCrow, Past President, National Organization for Women (1974-1977) on August 28, 1980:

SOCIAL CHANGE IN SWEDEN

No. 19
September, 1980

RECEIVED
SEP 29 1980

"YEAR OF THE CHILD" PROVIDES NEW RIGHTS FOR SWEDEN'S KIDS AND PARENTS

by Amelia Adamo

Amelia Adamo, a free lance journalist, has written this article in consultation with Bertil Ekdahl, legal adviser to the Swedish Ministry of Justice, and Bo Carlsson, children's ombudsman of Sweden's Save the Children Federation.

Sweden's unflagging concern for children and their welfare received added thrust under the impact of the International Year of the Child. Attention focussed on a wide range of questions which included such subjects as: Habitat --.the child in his neighborhood, at school, at home; child abuse; children's rights; providing for immigrant children.

There is no doubt that most of the initiatives taken would have been realized eventually. However, the significance given to 1979 as a special Children's Year served as a catalyst to speed decisions and bring them to fruition within the specified period.

In addition to reforms adopted at national and local levels of government, the unique nature of the year was observed by national agencies, schools, public libraries and special interest organizations with varied events, debates, exhibitions, theater presentations and other children-oriented programs.

The main reforms and activities which marked Sweden's observance of the International Year of the Child are described briefly below.

Ban on corporal punishment

Corporal punishment has been prohibited as of July 1, 1979 by the Parenthood and Guardianship Code, the section of Swedish law governing the relationship between parents and children. The Code actually says that children must not be subjected to corporal punishment or any other humiliating treatment. The background to this law is as follows.

It has long been agreed by child psychiatrists and child psychologists that corporal punishment of children is a reprehensible practice. The use of violence can inflict physical and mental harm on children, and possibly result in physical disabilities and prolonged mental disturbances. Their ability to develop contact with and affection for other people may be stunted. Individual punishments can cause children of any age to suffer from shock, and repeated punishments may result in profound changes of personality. Even lenient punishments can entail risks. Quite often they lead to progressively severe punishments and, at worst, brutality.

It is possible for humiliating treatment to produce the same effect as corporal punishment, namely, lack of self-confidence and a change of personality which may dominate childhood and adolescence and leave its mark on adult life as well.

Swedish law now forbids all forms of corporal and mental punishment. Mental punishment -- referred to in the Code mentioned above as "humiliating treatment" -- includes, for example, locking a child in a closet, or subjecting it to threats, intimidation, ostracism or direct ridicule.

Previously, Swedish law contained no express ban on corporal punishment, with the result that many people believed it to be permissible. The new provision incorporated in the Code has eliminated this lacuna. No specific penal sanction has been attached to the ban on corporal punishment, but corporal punishment inflicting bodily harm on a child or causing pain which does not rapidly subside is regarded as criminal assault. The amendment to the Code makes it impossible for a parent charged with child assault to plead that he believed he was entitled to administer corporal punishment.

Parental education

A general program for parental education, in effect as of January 1980, is gradually being introduced under the aegis of the county councils. The basis for the legislation was a report from the Commission on Child Care concerning parental education in connection with childbirth. During the spring of 1980 the Commission presented a final report on parental education for parents of pre-school and school children.

Parental education in connection with childbirth is to be provided as part of the activities of maternity care centers, maternity wards and child health centers. It proposed that these activities should be conducted on a group basis, with groups of about ten parents meeting for eight or ten sessions with the staff before and after confinement.

Participation in this general scheme is optional, but as an incentive parents are offered leave of absence from their jobs and compensation out of social insurance for any loss of earnings involved by attendance. The purpose of this parental education is to make parents better informed about the development and needs of children, about relations between children and parents and between adults themselves, about social conditions and about social benefits for young families, and also to provide opportunities of contact and shared experience between parents themselves and between parents and staff. The questions discussed by the parental groups relate to the goals of parental education activites, and the curriculum is decided jointly by parents and staff. Aspects of pregnancy and childbirth, baby care and personal development are discussed, together with social topics like housing conditions, child care amenities and so on.

Parliament has emphasized that difficulties confront immigrant parents and as a consequence special attention must be devoted to planning parental education for immigrants. The National Board of Health and Welfare and the National Immigration and Naturalization Board have been specially instructed to submit detailed proposals on this subject.

Bilingual language instruction

Several reports have focussed on the difficult linguistic situation of immigrant children. One of the important viewpoints that has emerged is that each individual needs to have full command of one language in order, among other things, to be able to learn other languages properly.

For this reason, native language instruction is offered to all elementary and upper secondary school pupils who have at least one parent with a language other than Swedish, if that language is regularly used in the home. One of the aims of mother tongue instruction is that the students become actively bilingual. The National Board of Education ensures that municipal authorities offer all immigrant children the opportunity to have native language instruction, which is provided partly during regular school hours. The costs entailed by this instruction are borne by national authorities. Some municipalities have classes at the junior and intermediate levels of elementary school consisting entirely of immigrant pupils speaking one and the same language, in which case all teaching is conducted in the pupils' native language.

Parents not accepting the offer of bilingual instruction for their children will be contacted in their homes.

Municipal pre-schools are also responsible for the linguistic development of im igrant children. Home country language training for all eligible five-and six-year-olds attend g municipal pre-schools has been financed by the State since July 1979. Increasing numbers of day nurseries have established single-language groups for immigrant children. This gives the children a better opportunity of developing their command of their native language and preserving their cultural identity.

Children and divorce

The first report presented by the Commission on Children's Rights contained the proposal that corporal punishment be made illegal. The second report of the Commission deals with the rules concerning custody, right of access and the execution of judicial decisions concerning custody. This report has been circulated to a large number of public authorities and organizations for comment.

Proposed new arrangements include the following:

The main principle contained in the report is that parents, whether married or unmarried are to share the custody of their children. This joint custody is to continue even after divorce or separation if neither parent demands otherwise.

In certain situations it will be possible for custody to be transferred from biological parents to other persons, e.g. foster-parents, if a child has been living in a foster-home for some time and has "taken root" there.

As soon as their age and developmental level permit, children are to be enabled to influence their own situation in matters which concern them, e.g. divorce proceedings.

The Commission wants it to be the duty of municipal authorities to offer parents involved in divorce proceedings assistance in resolving the conflict between them and in assuming responsibility for decisions to the benefit of all concerned. This assistance is to be provided in the form of interviews with, for example, a psychologist or family counsellor.

It is proposed that right of access should imply that a child is entitled to associate with both parents, even if they are living apart.

Children are to be eligible as parties in proceedings concerning custody and right of access, and they are to be entitled to legal assistance. Each child litigant is to be represented during proceedings by a Child's Attorney appointed by the court.

The social welfare committee is to be empowered to appoint a special liasion officer to help and support the individual child deprived of parental support - for example, in a marital crisis.

Finally, the Commission proposes that a Children's Ombudsman be appointed in every municipality in order, among other things, to provide the public with an advisory service in various matters concerning children.

The Children's Ombudsman

The Children's Ombudsman, appointed by the Swedish Save the Children Federation, is an official with no counterpart in any other country. The Swedish Save the Children Federation is a voluntary organization working for the benefit of children both in Sweden and in other countries. The Children's Ombudsman acts as the children's spokesman, mobilizes opinion and disseminates information concerning children's needs and works to strengthen children's rights. He does not have any legal powers of intervention in particular cases. His duties can be summed up as follows.

1. To publicize the situation and needs of children through such channels as news media, lectures, publications and seminars.

2. To put pressure on public authorities and policy makers.

3. To propose and initiate actions which can improve conditions for children.

4. To help children faced with particular problems, e.g. immigrant children, foster children, maltreated children.

5. To support research about children.

6. To induce more people to work for the promotion of children's interests.

7. To maintain a telephone emergency service for the support and assistance of individual children in distress.

The basic purpose of the activities of the Children's Ombudsman is to generate a positive attitude towards children so as to increase the number of people siding with them. Another important aim is to

induce all adults to assume responsibility for all children. Children will always grow up primarily on the terms defined by the adults in their immediate surroundings, and it is therefore important for children to have in their immediate surroundings many adults with whom they can feel secure. The Children's Ombudsman encourages these efforts, for example, through his efforts to transform the attitudes of adults.

From the very outset, the work of the Children's Ombudsman has also focussed heavily on questions relating to children and violence. Violence affects many children directly, and the Children's Ombudsman is endeavoring to overcome the various violent tendencies in society and to assist individual children subjected to violence.

War toys

In 1979 the National Board for Consumer Policies and the Play Environment Council concluded a voluntary agreement with the toy trade to discontinue the sales of war toys. The purpose of this agreement is to end the exploitation of the two world wars. Playing at war means learning to settle disputes by violent means. Children need an outlet for their aggressions and tensions in form of play and play materials, but this can be accomplished by means other than war toys.

The agreement covers toys depiciting modern warfare from 1914 onwards, and the category "war toys" includes weapons, games and model soldiers among other things.

Parental insurance

Beginning in 1980, parents are entitled to nine months leave of absence from work, plus compensation out of social insurance for loss of earnings in order to care for a new baby. Three of these nine months can be saved up and utilized at any time before the child reaches the age of eight or completes its first year of school, and parents can divide the total period between them.

A parent is entitled to stay at home from work and receive compensation out of social insurance for up to sixty days per annum in order to provide temporary care for a sick child. A medical certificate is required after the first seven days.

Activities during the International Year of the Child

Needless to say, many activities took place during the International Year of the Child. One which attracted particular interest was a day when children took charge of all radio broadcasts. The children produced all the programs broadcast on the three radio channels on an ordinary Saturday between 6 a.m. and midnight. For example, they read the "Poem of the Day," held the daily act of worship, made live broadcasts of sports events and made interviews and commentaries. It was such a success that the broadcasting company plans to make it a regular feature. Opinion polls indicated unusually high listening figures.

Another widely publicized arrangement was a week of seminars, debates, exhibitions, lectures, theatre performances, sing-songs etc., organized by the Swedish Save the Children Federation on the subject of children and with children participating. These activities were attended by 45,000 people and received coverage in all daily newspapers and on radio and television.

The initiative taken by the Swedish trade union movement to invite parents to take their children with them to work for a day was also appreciated. On the designated day, large numbers of children invaded Sweden's workplaces to see what things were like there and what their mothers and fathers did at work.

Further information is obtainable from the following:

The Ministry of Justice, S-103 33 Stockholm, Sweden. (Ban on corporal punishment, children and divorce)

The Ministry of Health and Social Affairs, S-103 33 Stockholm, Sweden. (Parental education, parental insurance)

The National Immigration and Naturalization Board, P O Box 6113, S-600 06 Stockholm, Sweden. (Home language instruction)

The National Board for Consumer Policies, Fack, S-162 10 Stockholm, Sweden. (War toys)

The Children's Ombudsman, Rädda Barnens Riksförbund, P O Box 5866, S-102 42 Stockholm, Sweden. (The activities of the Children's Ombudsman)

TRAVEL GRANTS FOR RESEARCH IN SWEDEN

Qualified American citizens with well-developed projects in the fields of political institutions, public administration, interest organizations, working life, human environment, mass media, and education, are invited to apply for travel grants from the Swedish Bicentennial Fund.

Grants of approximately $2,500 will be made to support three to six week study visits to Sweden, beginning late summer 1981. There is also opportunity to apply for a three to six month research grant for a project carried out in Sweden at a research institution or university.

Application deadline: February 13, 1981. Awards announced: around May, 1, 1981.

For information and application form write:

Swedish Information Service
Bicentennial Fund
825 Third Avenue
New York, NY 10022

"THE DEFENSELESS CHILD" - A SERIES OF SEMINARS

on the prevention of child abuse and neglect, arranged by the Swedish Information Service in cooperation with the Swedish Embassies in Washington and Ottawa, will be held in Washington, New York, Chicago, Los Angeles and Ottawa March 23 - April 5, 1981. For further information write the Swedish Information Service, New York.

SOCIAL CHANGE IN SWEDEN

No. 13
September, 1979

TO COMBAT VIOLENCE IN THE CHILD'S WORLD
SWEDISH EFFORTS TO STRENGTHEN THE CHILD'S RIGHTS

by E. Michael Salzer

E. Michael Salzer has been Scandinavian correspondent with leading European and American newspapers since 1947. He specializes in questions of education.

Violence breeds violence. If a parent beats his child, there is a risk that the child will use violence in his future life to achieve his aims. Corporal punishment shapes the child to an authoritative pattern and seems unfitting in a society which aims to develop the child into a peace-loving independent individual.

With these thoughts in mind, an overwhelming majority of the Riksdag (259 to 6) recently outlawed corporal punishment in Sweden by adding a new clause to the Parenthood and Guardianship Code (Föräldrabalken):

"The parent or guardian should exercise the necessary supervision in accordance with the child's age and other circumstances. The child should not be subjected to corporal punishment or other humiliating treatment."

The Commission on Children's Rights proposed this clause to clarify that society can no longer accept the use of violence as a method of upbringing.

In 1920 -- when "husaga," the master's right to flog his servant, was abolished in Sweden, the law still stipulated that parents had the right to punish their children. In 1949 the word "punish" was replaced by "reprimand." Not until 1966 was the right of the parent to resort to violence deleted from the Code of Parenthood, and the punishment of children of more than "insigni-

ficant corporal correction" considered maltreatment, to be judged by the same rules which apply when "adults commit acts of physical violence towards adults."

The new law does not imply that any parent who gives his offspring a box on the ears or smacks his bottom will be immediately drawn into court. The educators, psychologists, sociologists, doctors, social workers and lawyers who supported the legislation, intended to establish a norm for parents and guardians and to initiate a wider disussion of the dangers of violence in all its different forms to which children are constantly exposed in everyday life.

"Even in our well-advanced welfare system, despite our high standard of living, our far-reaching school reforms, the low infant mortality rate and the considerate care of immigrants," Rigmor von Euler explains,"the conditions of the child are far from ideal." Rigmor von Euler is Sweden's (and probably the world's) first Ombudsman for Children and is employed by the Swedish Save the Children Federation. People must be informed again and again about the dangerous consequences of the physical and mental punishment of children. A recurrent general program to educate parents and guardians about their rights and their responsibilities seems essential and should be initiated as soon as possible, especially in view of the large number of immigrants, who come from countries with other basic values of family unity, and where the spanking of children still is part of the cultural pattern. Surveys have clearly shown that the "battered child syndrome" also exists in many modern Swedish suburbs, where youngsters are predestined to become hard, unfeeling adults, putting their own interests first, often neglecting those of their own children.

Some Members of Parliament opposed the new law arguing that it was "unnecessary and even dangerous," because by removing the biblical right of the father to chastise his child, "many well-meaning parents would be stamped as criminals and many children would never learn how to behave." Sixten Pettersson (Cons.) put them right. "In a free democracy like our own we use words as arguments,not blows," he said during the debate. "We talk to people,not beat them. If we cannot convince our children with words, we shall never convince them with a beating."

The Swedish Children's Ombudsman

"Society assumes in the first place that parents care for their children and know how to satisfy their needs, and takes action 'in the child's best interest' only, when the parents fail to do so," says Rigmor von Euler, who is retiring from her job as children's ombudsman after seven years of trail-blazing work. "There is still a lot of cruel repression and maltreatment. Legislation has to create a climate where the family can flourish. But we cannot rely upon legislation to afford adequate protection to the child either. The child needs its own spokesman to safeguard its rights."

"Ombudsman" is a Swedish word for representative or delegate. In English and other languages it is identified with "an official empowered to investigate complaints of bureaucratic injustice." The role of the ombudsman of the Swedish Save the Children Federation, however, is merely that of a spokesman or advocate without legal or political power, charged with protecting children's rights through investigation, recommendation and information.

"One of my tasks is to help the individual child in immediate need of assistance," declares Bo Carlsson, a former teacher, sociologist and local politician, who succeeded Rigmor von Euler as the Swedish children's ombudsman on May 1, 1979. "My overall aim is to make the public aware of children's precarious situation and to be a thorn in the flesh of reluctant bureaucrats and authorities."

He intends to exert pressure on local authorities to improve the children's environment, he wants the expression "what is best for the child" to be more clearly defined and he insists that the child's own wishes should always be considered before a final decision about custody or public care is taken.

Continuing the efforts of his predecessor to create a more effective organization to assist children in need of moral and legal aid, he would like to introduce the institution of the children's ombudsman on a municipal level throughout the country: "There should be someone paid by the local government, with sufficient authority to intervene, and to act as the child's spokesman in court, on social committees, in the town planning office, everywhere where the fate of children is at stake or when parents dispute the custody of their children, when the child is sent to a public institution or a foster home, and to assure adequate play and leisure facilities in new residential areas. Children should always know that there is someone outside the family on call to help them if need arises."

Rigmor von Euler dealt with several hundred cases a year involving the maltreatment of children. A neighbour would ring and report that a certain child was often heard crying, when left alone in the apartment next door. "It sounds heartbreaking, can't you do something about it?" The ombudsman would immediately contact the local Social Welfare Committee (Socialnämnd) and ask them to investigate discreetly. A social worker collects more information and finds a young, distressed mother, unable to cope with her situation, who could not get anyone to look after her 3-year-old girl. A place in a day-care center finally solves the problem. Or a relative of an 8-year-old boy telephones: "The poor kid is being beaten for the slightest offence. His stepmother is terribly rough with him." Once again the subtle contact machinery is set to work. A social worker talks to the boy, later to the stepmother, who readily admits that she cannot cope with the child. All involved, including the boy, agree to a foster home.

All information is treated as strictly confidential, all investigations are made very discreetly. "Our aim is to help the child, not to penalize anybody," says Rigmor von Euler.

Quite independent of this kind of work for individual children, the Swedish Save the Children Federation is constantly mobilizing public opinion and providing information on bringing up children, fighting drug abuse by supporting research and treatment, striving for better contacts between immigrants and Swedes and for an increased understanding of the plight of immigrants, whose children so often fall between two different cultural patterns.

"The South-European pattern of upbringing may sometimes look like 'maltreatment' from the Swedish point of view," explains Mrs. von Euler, "but as far as the gross ill-treatment of children is concerned, it has been established that immigrant children not generally are exposed to greater risks than some Swedish children."

BRIS, Children's Rights in Society

In fighting violence in Swedish society the children's ombudsman has been greatly assisted by one of the most active voluntary organizations, BRIS (Barnens Rätt i Samhället), Children's Rights in Society. It was formed in 1971 as a kind of "Children's Defense League" and as a pressure group to combat child cruelty, when death of a young child after prolonged maltreatment by the person responsible for her care had aroused nationwide indignation.

Volunteers of BRIS maintain regular telephone service twice a week, advise harassed parents, follow up cases of maltreated children before passing them on to the authorities and then check the final outcome. They are assisted by a panel of child psychologists, doctors and lawyers and handle some 150 cases a year. With a grant from Stockholm municipality they produce and distribute information and educational material on child cruelty, parent training, divorce and custody proceedings, mainly for all the professional groups whose work involves children -- social workers, teachers, police, hospital staff, lawyers, public prosecutors, City Councillors and Members of Parliament.

BRIS was also instrumental in arranging a much discussed exhibition "Violence creates Violence," together with the Save the Children Federation and the Swedish Peace and Arbitration Association (Freds- och skiljedomsföreningen).

Prohibition of War Toys

This exhibition sparked off a nationwide debate on the effects of violence as reflected in the mass media, newspapers, films and comic strips and eventually led to the withdrawal of war toys from the warehouse shelves as from January 1, 1979, and also to the promotion of the recent legislation to ban corporal punishment. The exhibits informed the public that 1.7 million of the 8 million Swedes are children under 15 years of age, that 239,000 of them live with single parents, 119,000 are of non-Swedish origin, almost 40,000 are annually taken into care in accordance with the Child Welfare Act (barnavårdslagen), over 7,000 are killed or injured in traffic accidents, 15,000 are placed in foster homes, and that majority of drug-abusers are around 19 years old.

Research showed that the sale of comics, where most conflicts are solved by violence and where uninhibited contempt is shown for the weaker members of society, amounts annually to Skr* 110 million. Adults were made aware of the fact that violence towards their children is an abuse of power, and often too, a sign of impotence, of an inability to deal with a situation. They were told that a child needs love, security and the opportunity of self-realization in order to grow into a harmonious human being and that to chastise is no way to teach.

In study circles parents were informed about the pattern-forming and blunting effects of violence shown in news reports and especially in entertainment programs, and advised to help their children by talking to them about it, so that the child is not left alone with his fears of something which he does not understand. Both BRIS and the children's ombudsman continue to keep the debate alive and try to promote alternative television programs, films, plays and literature without violence for children.

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* 1 Skr = 23 cents

Joint efforts have also been made to improve conditions for children in hospitals. Doctors and hospital staff were helped to understand better the children's need for special care, play facilities and frequent visits by their parents. Most hospitals now provide accommodation for the parents of sick children, and parents' travel expenses are reimbursed from public funds in cases of need.

Special emphasis is placed on a continuous exchange of experience and information with other countries. An international research symposium on "Violence towards Children" (based on a book of the same title by Professor Åke W. Edfeldt) was sponsored by the Save the Children Federation (May 14 - 16, 1979) in Stockholm, to elucidate the international aspects of the problem in the International Year of the Child.

"We must do everything we can to protect our children from violence, mainly by our own example," said Astrid Lindgren, the celebrated children's author. In her address on being awarded the Peace Prize of the German Book Trade (Deutschen Buchhandels) last autumn, for her efforts to promote tolerance and responsibility, she told a little story, which brings the whole problem of violence towards children into sharp relief. "A young mother, firmly believing in the biblical wisdom of 'he who loves his son, punishes him,' and who considered that her little boy had deserved a good spanking, sent him in to the garden to collect a rod. He came back after a long while, crying: 'I could not find a stick, but here is a stone, you can hit me with that.' The mother looked at her boy and started crying herself. Suddenly she saw it all with the eyes of the child, who must have thought: 'My mother wants to hurt me, so she may as well use a stone.' For a long time they hugged each other, then she put the stone on a kitchen-shelf and vowed: 'No violence!' Perhaps we should all put a stone on our kitchen-shelf to remind ourselves and our children: 'No violence!' It might be a tiny contribution towards peace in the world."

The author alone is responsible for the opinions expressed in this article.

LITERATURE
available free of charge from the Swedish Information Service, New York.
Please include a self-addressed mailing label with your order.

- ☐ THE CHILD-PARENT RELATIONSHIP by Ulla Jacobson
(CS 224, June, 1979)

- ☐ THE CHILD'S RIGHT TO PLAY: THE SWEDISH CONCEPT FOR BETTER PLAY FACILITIES by Michael Salzer.
(CS 220, May, 1979)

- ☐ CHILDREN, RADIO AND TELEVISION -- NOW AND IN THE FUTURE by Cecilia von Fellitzen.
(CS 222, June, 1979)

- ☐ SWEDISH THEATER FOR CHILDREN AND YOUNG PEOPLE by Per Lysander.
(CS 219, May, 1979)

1850 Roberts Road
Fairbanks, Alaska 99701
May 10, 1981

House Judiciary Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Sandra Stringer
For your information

Dear Representative Brown and Members of the Committee:

The purpose of this letter is to urge that you act on House Bill 210 this year which will provide joint custody for children. California has had a similar law in existence since January 1, 1980, and they have in their legislature at the present time a bill to add presumptive joint custody to their current law.

Nevada signed into law a joint custody bill last month; the states of New York, Florida, and Georgia are actively working on joint custody bills.

Presumptive joint custody is analogous to no fault divorce in that it takes the positive approach. Today it is no longer necessary to prove that one individual in a marriage is bad or wrong. Similarly it should not be necessary to prove that one parent or the other is unfit. But that is what we have today. In recent tradition mothers have always received custody. How can a father have a chance to get one half time with his children? By proving that the child's mother is an unfit person? In what percentage of situations is this actually the case? A Fairbanks judge recently told me that in his experience only 1 or 2% of cases he has seen is one parent unfit. This makes sense to me. Why must we then prove unfitness?

Presumptive joint custody takes the positive approach and can act to defuse manipulation, maneuvering, coercision or threat. It can remove the children from being used as tools for psychological or material gain. It can curtail child stealing.

I can speak from my own experience in obtaining joint custody in Fairbanks two years ago which left four individuals with shattered, bitter and acrimonious feelings. The text books say that joint custody can not exist without cooperation; that is not correct and I can speak for that.

I have found out in recent months that the Third Judicial District handles divorce entirely differently than the Fourth Judicial District. I am convinced that if HB 210 had existed as law at the time of my divorce then it would have been handled with some degree of ration, reason, and planning and four people would be in a better place then they are today.

For the legal professionals who are opposed to certain wording in this bill I urge them to suggest alternative wording rather than just being against it, and I further urge them to talk to the counselors, psychologists, and child psychiatrists about what is in the best interests of children. My own discussions with both groups shocks me to see how far apart some of their thinking is with respect to the impact on children.

Please pass some version of HB 210 this year.

Sincerely,

Larry R. Sweet

Larry R. Sweet

cc: B Rogers, C. Parr

SECOND THOUGHTS ON JOINT CHILD CUSTODY

There is currently a disturbing and growing national trend toward awarding custody of children to both parents jointly, i.e. giving both parents the right to share equally in the decision making process regarding the child. (See Joint Custody chart available from NCOWFL.) While intended to equalize the responsibility of childrearing between the parents, joint custody, when parents are not able to agree or do not communicate well, only serves to interfere with the ability of the primary caretaker to make the decisions needed to carry out responsibilities to the child.[1]

Almost all experts concur that joint custody is only "appropriate" where both parents are basically in agreement and able to participate in joint decision-making. Such cases are in the minority, and those parents will have an informal joint custody arrangement regardless of court order. Thus the current new legislation would largely affect those parents who are not in agreement--the very cases which the experts agree are not suitable for joint custody and where, in fact, it would be detrimental to the child's best interests.

Legislators are seeking to make joint custody a statutory preference/presumption which would apply even when one parent opposes the arrangement. Courts, under this type of legislation, would be mandated to state their reasons in writing when they do not order joint custody. Additionally, this type of legislation typically includes a declaration that joint custody is presumptively "in the best interests of children," in spite of the fact that there have been very few studies of joint custody arrangements, and almost all of these studies involved cases where both parents desired the arrangement.

Joint custody presumption/preference legislation is, instead, a refusal to place any value on or give any credit to the past assumption of the daily care and responsibility for the children. Thus, a joint custody presumption in effect gives the non-caretaking parent equal power when he or she has not contributed equally to the day-to-day care and support of the children, either pre-divorce or post-divorce.

(Con't. on p. 4)

NEEDED: 5 NEW BOARD MEMBERS

NCOWFL is seeking 5 new members to serve on its Board of Directors, each for a 3 year term. NCOWFL is funded by the Legal Services Corporation to provide support on women's issues in family law. The Board of Directors sets policy for NCOWFL. Three of these vacancies must be filled by attorneys and two by clients. The term of these new board members will begin on October 1, 1981. The 13-member Board is of widely diverse experience and backgrounds and it is important to us to maintain this diversity in our selection of new members.

Those interested in serving should send a letter describing their background and interest, together with the names and addresses of two references to:

Jane Shaw-Jackson, Chair
National Center on Women and Family Law, Inc.
799 Broadway, Room 402
New York, New York 10003

These letters of interest must be received by April 15, 1980.

SECOND THOUGHTS ON JOINT CUSTODY

(Con't. from p. 3)

The following is a digest of an in-depth article on this subject by Valerie Pitt, a law student at NCOWFL, which will be available for distribution in March, 1981.

JOINT CUSTODY AND WELFARE:

There are many unresolved issues when joint custody is ordered and one of the parents is receiving AFDC. For example: Which parent is entitled to the grant? Will it be split? Can both receive a grant? Will eligibility depend on which parent arrives first at the welfare office?

JOINT CUSTODY AND CHILD SUPPORT:

Joint custody may become a means of alleviating a non-custodial parent's support obligation. If, as some legislation has provided, support responsibility is to be shared equally between parents, courts could refuse to make any support order when joint custody is awarded on the grounds that both parents are equally responsible in the child's support. Consequently, women will be seriously disadvantaged by having to maintain a full time home/household while at the same time working at an outside job. Further inequity arises from the fact that while being expected to contribute equally to the support of the child, women do not command wages equal to men's on the job market.

JOINT CUSTODY AND UCCJA/CHILD-SNATCHING:

Joint custody may undermine the UCCJA (Uniform Child Custody Jurisdiction Act) since both parents would have the legal right to determine the residence of the children, absent a non-removal provision in the court order.

JOINT CUSTODY PROVIDES NON-CARETAKING PARENTS WITH AN UNFAIR BARGAINING TOOL:

Almost all joint custody legislation includes a provision that, if the court decides not to award joint custody, priority for sole custody shall be given to the parent who is most willing to provide continuing access to the other parent. Thus, a woman opposing joint custody will either agree to joint custody by settlement agreement (feeling that this is the best she could get in court), or will "bargain away" her alimony, child support and/or property rights in order to obtain sole custody.

JOINT CUSTODY AND BATTERED WOMEN:

In cases involving wife battering, joint custody guarantees continued access by the batterer to his victim, and gives him continued control over the battered woman's life through their children. In order to avoid such an order, the battered woman will have to testify to the abuse of which she has been a victim, which for many is very difficult. Furthermore courts rarely consider wife-beating an indication of poor parenting ability, especially when the father has never physically abused the child. In cases where wife beating is raised as an argument against joint custody, courts traditionally do not believe the accusations of the battered woman, refuse to take her plight seriously, and fail to consider psychological abuse and terrorization as battering.

CONCLUSION

While joint custody should be an option in appropriate cases where parents are in agreement and

(Con't. on p. 6)

NEW HANDBOOK FOR HOUSING FOR BATTERED WOMEN

We wish to call our readers' attention to a valuable new handbook on emergency and long-term housing for battered women prepared by the National Coalition Against Domestic Violence with the cooperation of HUD.

The book is a practical and detailed How-To manual which will equip persons working in this field to understand the workings of the Community Development Block Grant Program and how to use it to get dollars for shelters and service programs.

The title of the book is THE NCADV Handbook on Emergency and Long Term Housing and can be secured free from HUD, Housing Office of Public Policy Development and Research, 451 7th Street, S.W., Room 4212, Washington, D.C. 20410.

SECOND THOUGHTS ON JOINT CUSTODY

(Con't. from p. 4)

desire this arrangement, legislation is not necessary for these cases. Rather, the current joint custody trend serves only to reduce the custody rights of those women who have been and are the primary caretakers of their children and who do not feel that joint custody is in their children's best interests.

FOOTNOTE:

1. Joint custody gives both parents equal legal rights with regard to decision making and control of their children, regardless of where or with whom the children reside. While joint custody should imply equal responsibility for the day-to-day care of children, this is not required under most joint custody orders and all joint custody legislation. Thus, joint custody orders are, in effect, the same as traditional sole custody/visitation orders.

NEW PARENTAL KIDNAPPING ACT

(con't. from p. 1)

-ental kidnappings and interstate or international flight to avoid prosecution or giving testimony under state felony statutes. Section 1073 has been consistently interpreted by the Justice Department not to apply to domestic disputes, even when state felony statutes were involved. Adding parental kidnapping to the statute means that the Federal Bureau of Investigation can now be called into these cases pursuant to the provisions of 18 U.S.C. 3052.

For a discussion of the Parental Kidnapping Act see NCOWFL's March 1981 Clearinghouse Review column.

SHELTER BILL DIES

S. 1843, the bill to provide federal funding for shelters, died in the recent Congressional lame-duck session when opponents pledged to filibuster the Conference Report. Senator Alan Cranston (D-CA), the bill's sponsor, withdrew the legislation from the floor when it became clear that the Conference Report could not be approved. Thus any further domestic violence legislation will have to be brought anew in another session of Congress.

Resource packet on Joint Custody Legislation:

A Summary of Joint Custody Statutes and pending Legislation.

"Joint Custody and Battered Women" by Joanne Schulman.

Testimony by battered women's advocates before the New Jersey Committee on Judiciary Law, July 24, 1980, regarding pending legislation (AB 1471).

National Center on Women & Family Law

799 Broadway, Room 402 • New York, New York 10003 • (212) 674-8200

A SUMMARY OF JOINT CUSTODY STATUTES AND PENDING LEGISLATION

As of July 1980, eleven (11) states have joint child custody provisions:

California	Civ. Code §§4600, 4600.5 (effective 1/1/80) [includes joint custody "presumption"]
Connecticut	Gen. Stats. §46b-56(a) (Public Act No. 80-29, effective 10/1/80)
Hawaii	Rev. Stat. §§571.46, 571-46.1 (effective 4/25/80)
Iowa	Codes Ann. §598.21 (joint custody provisions added in 1977)
Kansas	Stat. Ann. §60-1610(b) (Supp. 1979)
Kentucky	Rev. Stat. §403.270(3) (effective 7/15/80)
Nevada	Rev. Stat. §125.140 (1979)
North Carolina	Gen. Stat. §50-13.2(b)
Oregon	Rev. Stat. §107.105 (1977)
Texas	V.T.C.A., Family Code §14.06(a) (effective 8/27/79) [parties may enter into written agreement providing for joint custody]
Wisconsin	Stat. Ann. §247.24(1)(b) (effective 5/19/78)

Since November, 1979, joint custody legislation has been introduced in the following states:

Florida	HB 1440 (Gordon, Dunbar); failed
Kansas	SB 295 (Parrish) HB 2790 (Brewster)

State	Bill(s)	Notes
*Illinois	HB 3405 (Younge)	
Louisiana	HB 1691 (Byrnes), bill deferred	
Massachusetts	HB 2631 (DeNucci) HB 1877 (Vigneau) HB 4201 (McNeil) SB 1962 (Sisitsky)	(All Failed)
*Michigan	HB 5218 (Brown *SB 1976 (Zeigler)	
*New Jersey	*AB 1471 *AB 407	
*New York	*S7964 (Barclay) *A9369 (Lasher)	(Companion bills; passed Assembly;died in Senate)
Ohio	HB 1076	
*Oregon	*HB 2538 (Richards) to amend O.R.S. §107.137 to create a presumption of joint custody (tabled in committee)	
*Pennsylvania	HB 2394 (McKelvey) *SB 1411 (Fumo) *SB 1282 (Gekas)	
*S. Carolina	*HB 3248 (died in House Judiciary Committee)	

*Bills include a joint custody "presumption" or "preference" provision.

JOINT CUSTODY and BATTERED WOMEN*

Excerpted From

POOR WOMEN AND FAMILY LAW**

(June 1980)

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** This article was written by Joanne Schulman, Staff Attorney with the National Center on Women and Family Law. This article is one section of an article entitled Women and Poverty: Women's Issues in a Legal Services Practice, to be published in Clearinghouse Review, a publication of the National Clearinghouse for Legal Services, 500 North Michigan Avenue, Chicago, Illinois.

JOINT CUSTODY & BATTERED WOMEN

Finally, legislation which is being enacted in other substantive areas needs to be examined from the perspective of the battered woman. For example, United State Senate Bill 105[65] seeks to prevent child-snatching by parents. While the intent of this bill may be laudable, at least one of its provisions would prove dangerous for battered women.[66] Specifically, the bill would allow an abusive parent access to the Parent Locator System, thereby enabling an abusive husband (or father) to track down a fleeing battered woman under the pretext of locating their children.[67]

Legislation regarding joint child custody[68] presents another potential danger to battered women. Joint custody guarantees continued access by the abuser to his victim. It also gives him continued control[69] over the battered woman's life through their children.

Joint custody legislation has been viewed as necessary because courts have traditionally disfavored such arrangements, seeing only disruption and instability to children.[70] Thus, many courts have refused to order joint custody when it is the

arrangement desired and requested by both parents.[71]

Some legislators, prompted by fathers' rights groups[72] among others, are now swinging to the other extreme by seeking to make joint custody a statutory preference, which would apply even when one parent opposes the arrangement.[73] Courts, under this type of legislation, would be mandated to state their reasons in writing when they do not order joint custody.[74] Additionally this type of legislation typically includes a declaration that joint custody is presumptively "in the best interests of the children,"[75] in spite of the fact that there have been very few studies of joint custody arrangements, and almost all of these studies involved cases where both parents desired the arrangement.[76] The intent behind joint custody "preference" legislation is directed at increasing fathers' custody rights.[77]

Many battered women will now find themselves facing a joint custody order under this "preference" legislation. In order to avoid an order of joint custody, the battered woman will have to testify to the abuse of which she has been a victim, which for many women is very difficult (as it is for rape victims). Further, as with a rape victim, courts traditionally do not believe the battered woman ("she's hysterical"), refuse to take battering seriously ("a few slaps never hurt anyone"), fail to consider psychological abuse and terrorization as battering, and, finally, believe that divorce will end the battering.[78] Nor do courts view wife-beating as detrimental to children. Custody attorneys are all too familiar with the "but did he ever hit

the children?" judicial response to wife-beating.[79]

Joint custody should be a choice open to parents when that is what they desire and believe to be in their children's best interests. However, making joint custody a statutory preference serves only to further harass and victimize battered women -- and indeed all women who do not feel that such an arrangement is in their children's interests.[80]

73. As of June 1, 1980 five states have enacted joint custody provisions: Connecticut, Public Act 80-29, (effective October 1, 1980); Iowa, I.C.A. §598.21 (Supp. 1978); Oregon Rev. Stat. Ch. 107 §105 (Supp. 1977)*; Wisc. Stat. Ann. §247.24 (West Supp. 1978); California Civ. Code §§46000, 4500.5 (West Supp. 1980). Only California's statute includes a joint custody "preference" or "presumption". Since November, 1979, joint custody legislation has been introduced in the following states: Hawaii - SB 2419, passed; Kansas - SB 295 (Parrish), HB 2790 (Brewster); Kentucky - HB 356 (DeFalaise); Illinois - HB 3405 (Younge); Maryland - HB 352 (Shapiro), Massachusetts - HB 2531 (DeNucci), HB 1877 (Vigneau), HB 4201 (McNeil), SB 1962 (Sisitsky); Michigan - HB 5218 (Brown), SB 1975 (Zeigler); New Jersey - AB 1471, AB 407; New York - S7964 (Barclay), A9369 (Lasher); Ohio - HB 5066; Oregon - HB 2538 (Richards) to amend O.R.S. §107.137 to create a presumption of joint custody; Pennsylvania - HB 10776 (Boyle), HB 2394 (McKelvey), SB 1411 (Fumo), SB 1282 (Gekas). Bills introduced in Illinois, Michigan, New Jersey, New York, Oregon and Pennsylvania include a joint custody "presumption or "preference".

[68] Definitions of joint custody vary. Most definitions include some form of shared physical custody (e.g., 6 months - 6 months; 9 months - 3 months; 3 days - 4 days per week). However, all definitions include joint parental "control of its [child's] care, upbringing, and education, and equal voice in decisions pertaining to its [child's] health, religious training, vacationing, schooling, and the like" regardless of the amount of time the child spends with each parent. Fain, Custody of Children, 1 California Family Lawyer 539, 564 (1962); see, M. Ramey, F. Stender, D. Smaller, Joint Custody: Are Two Homes Better Than One?, Women's Law Forum, 8 Gol. Gate Univ. L.R. 559, 559-561 (1971) [hereinafter RAMEY].

[69] Joint Custody msut be distinguished from visitation rights. The parent with visitation rights generally does not have the right to make decisions affecting the child.

[70] Id. at 559, 561-567.

[71] Id.

[72] Foster, H. and Freed, D., "Joint Custody: A Viable Alternative," 15 Trial Magazine 26, 31 (May, 1979); Foster, H. and Freed, D., "Joint Custody: Legislative Reform," 16 Trial Magazine, 22, 23 (June 1980).

New York's pending joint custody bill, S-7964/A-9369 [hereinafter N.Y. JOINT CUSTODY BILL], introduced on February 27, 1980, by New York's Senator H. Douglas Barclay and Assemblymember Howard L. Lasher, was proposed (and is strongly being lobbied for) by Equal Rights for Fathers of New York State, Inc.; see their April, 1980 Newsletter, p.7. Among the reasons given by this group for a change from "'the historical experiment of sole maternal custody that isn't working'" are:

> ...Evidence of disturbance in cognitive performance. 'Paternal availability seems especially important in I.Q. performance of boys of all ages'...Sex-role identification problems. 'The preponderance of data to date indicates boys in single parent (mother-headed) families are especially vulnerable to problems of sex role identity and pre-school boys and boys in early school years from mother-headed families have been described as more dependent and less masculine. ... Problems of social and emotional development with girls. 'Over-all the findings suggest that father-absent girls have not had the opportunity to acquire the social skills necessary for appropriate heterosexual interactions...' and 'findings of delinquent girls also suggest that paternal absence has its greatest impact on disruption of heterosexual behavior....' April, 1980 Newsletter, Equal Rights for Fathers of New York State, pp. 8-9.

[74]See, e.g., Cal. Civ. Code §4600.5(a) and (b); N.Y. JOINT CUSTODY BILL §3 (amending DRL §240). Additionally, New York courts could only make a sole custody award "if clear and convincing evidence establishes that it is in the best interests of the child that custody be awarded to one parent." (emphasis added) N.Y. JOINT CUSTODY BILL, §3 (proposed DRL §240(2)).

[75]Note 73, supra.

[76]See, RAMEY, supra, at 569-581. Additionally, there is considerable controversy and a wide range of opinions among mental health professionals regarding the effect of joint custody on children. J. Goldstein, A. Freud and A. Solnit, authors of Beyond the Best Interests of the Child, rejected joint custody, asserting that a child can freely relate to more than one adult only if the adults are not in conflict with each other. Beyond the Best Interests of the Child (1973) at 38.

In contrast, Melvin Roman, Ph.D., and William Haddad, authors of The Disposable Parent, advocate a joint custody "preference" as a result of their studies of divorced fathers as well as their own bias. "The authors forthrightly admit in the preface that they are two disgruntled fathers who had originally intended to write a father-advocacy book." Foster and Freed, "Joint Custody: A Viable Alternative", 15 Trial 26 (1979).

[77]For example:

> JUSTIFICATION: ...traditional custody arrangements in cases of marital divorce and separation often results in the non-custodial parent being denied a meaningful parental relationship with the child....[D]espite the fact that neither parent was given a prima facie right to custody of the child, such biases as the 'tender years doctrine' create a situation where in nine out of ten cases courts award custody of the child to its mother..." Memorandum in Support of Bill, N.Y. JOINT CUSTODY BILL, note 72, supra.

This "justification" fails to acknowledge that in those "nine out of ten cases" the mother is "awarded" custody solely because the father is absent or is not seeking custody, as in default decrees.

A further rationale for joint custody is that it will encourage non-supporting fathers to meet their court-ordered obligations, e.g.,:

> The new law [Cal. Civ. Code §§4600(b)(1) and 4600.5] should help avoid two problems... 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...
> James A. Cook, "California Retires A Formula For Injustice in Child Custody Rights", Los Angeles Times, Jan. 6, 1980.

In fact, joint custody will lower, if not eliminate, a father's support obligation since he will become a custodial parent. There is no mechanism to force a father exercise his joint custody responsibilities, just as there has been no means of forcing a non-custodial parent to exercise his visitation "rights" under a sole custody order. It is important to note that Equal Rights for Fathers, note 72, supra, defines joint custody "as a term that assumes continuing meaningful contact that should attempt to equalize time spent with both parents but not make it a prerequisite." March 1980 Newsletter, p. 6. (emphasis added). Thus, mothers will still, under joint custody orders, end up in "nine out of ten cases" with the full responsibilities of custody although only half the "rights" and half (or less) the support.

Finally, and perhaps most telling, is the fact that joint custody "preference" statutes place parental custody rights over the best interests of children. As Foster and Freed point out:

> ...some of the agitation for joint custody really involves status-seeking as legal custody (or co-custodian); or 'one-upmanship', since meaningful association with both parents is common under the traditional sole custody, subject to visitation formula.
> Foster and Freed, 15 Trial 26, 31 (1979).

[78] See generally MARTIN and FIELDS, note 16, supra.

[79] Interviews with Marj[illegible]y Fields, Managing Attorney, Matrimonial Unit, Brooklyn Legal Services, and Adele Hendrickson, Directing Attorney, Domestic Relations Unit, Legal Aid Society of Alameda County.

[80] Just as women are blamed for fathers' failure to support or establish a meaningful relationship with their children, any woman who opposes joint custody is said to be using her children as a bargaining tool "'to exact money, retribution of vengeance.'" E. Retzlaff, "'Equal Rights for Fathers'Unit Stresses Joint Custody Need", Schenectady Gazette, 2/1/80.

Overlooked is the fact that women are still the primary caretakers of their children, and, as such, might know and have their children's best interests at heart when opposing joint custody. One wonders if the same can be said for fathers who, rationalizing their failure to support, their child-stealing, or their lack of meaningful relationships with their children on their "feelings of frustration" or the other parent, have the best interests of their children at heart. See, e.g., note 77, *supra*.

SHARED CUSTODY BILL

I have underlined possible amendments.

dear Rep. Rodgers,

I recieved the working draft of the shared custody bill today. It is quite good and covers everything just about. There are a few notable things that are missing though that I would like to tackle immediately before discussing the bill section by section.

Page 2 Line 29

1. It should be specified that shared custody includes shared legal AND phisical custody. Sec. 4. Sec. 25.20.070 should perhaps include a definition of "shared custody". In the words of the Clif. statuate "providing that phisical custody shall be shared by the parents in such a way so to assure the children of frequent and continuing contact with both parents."

Page 3 Line 9

2. There is no provision that an old sole custody decree may be modified to a shared custody decree. Sec. 4 Sec. 25.20.080 might be amended in subsec (c) so the first sentance reads; "" An award of shared or sole custody may be modified or terminated if the court determines.........."

Page 3 14-29
Page 4 1-11
delete ?

3. FACTORS FOR CONSIDERATION BY COURT:(Sec. 4.Sec. 25.20.100) lends itself to serious problems in that it creates a long list of excuses for a judge to deny shared custody or create a shared custody on paper but not in reality. I would delete this whole section since I believe it leaves a wide open field for judicial and parental abuse. I would at the least read the first paragraph like this:
" Sec. 25.20.100. FACTORS FOR CONSIDERATION BY COURT. In an award of shared custody under AS 25.20.060-25.20.150 the court shall consider in implementing a child care agreement "

Also I think the judge should consider "the recommendations and or findings of a neutral mediator where such is available."

Further discussion of this section will follow in the Section by Section discussion which follows.

COPY

Section 1. LEGISLATIVE INTENT

PAGE 1
LINE 12

EXCELLENT. It also might be added that "it is in the best interests of the child to encourage parents to implement their own child care agreements outside of the court setting."

It is hoped that one of the main effects of this bill would be to diffuse parental wars which are detrimental to their children. This amendment would lend wieght to taking this sort of direction and quite clearly state that the State of Alaska desires parents to solve their own problems....

The term "child care agreement" is a very good one and avoids the negative connotations of custody" Wherever possible this term ought to be used instead of "custody".

Section II. JUDGEMENTS FOR CUSTODY

a) Fine

PAGE 1
LINE 26

b) The term "shall be appointed" might be better if it read "may be appointed "

It is not necessary or desirable to have a gaurdian ad litem in all cases and it ends up costing the state money to pay these people.

PAGE 1
LINE 27

This is just an idea but one could add here that " The gaurdian ad litem may be involved in any mediation process." This idea needs further research but it does seem that the childs representative could make a valuable contribution here. I hate to complicate things though.

c) This whole list really lends itself to abuse. Especially as noted belowe.

PAGE 2
LINE 12

1). "the phisical, emotional, mental, religious and social needs of the child." in Alaska this should be amended to read, " the phisical, emotional, mental, religious and social needs of the child. (Values inherent in lifestyles shall not be considered unless clearly detrimental to the child.")

There is in Alaska a very strong bias against native and rural parents when confronted by an urban parent. The Supreme Court has ruled againgst using lifestyle differances in deciding custody but the practise goes on. 1/a rural or native parent who lives in a smaller , less "clean" house loses to an urban parent who lives in an apartment with a hot shower 2/ a parent living in the bush may work only seasonally and is therefore considered "unstable" The court does not consider subsistance pursuits to be employement 3/ a native parent who leaves their children with other extended family members in a bush village or allows their child to play unattended or attended by other children (very comman in the safe environment of a village) is likely to lose to a parent who uses an established day care center in an urban area. 4/ Judges consider, from lack of experiance, many everyday pursuits and ways of filling needs in the bush to be dangerous " to children.

5/Lack of a telephone and a car are considered negative factors by judges who completely forget that the on'y phone available might be the vi'lage center phone and that the use of a car is not really very sensible in roadless areas.

It is possible that a seperate subsection (7) which takes care of these inequities might be the best way to amend this.

2) "the capability" 'ends itself to the same abuse as above

PAGE 2
LINE 7

3) OK. Except this lends wieght to brainwashing young children, which is one of the most abusive practises towards children which some sick parents use. It should perhaps read, " preferance of the child if he or she is of sufficient age and capacity to form an intelligent preferance." Thus we might remove small children from the horrid brainwashing process.

4) Very important

PAGE 2
LINE 11

5) "the lentgh of time the child has lived in a stable, satisfactory environment and the desiribility of maintaining continuity." This is biased against 1/ the parent who agrees to move out of the family home, 2/ parents who have suffered under previously made sole custody decrees 3/ military personnel and loving parents who move for employment purposes. It could be amended to read: " The length of time the child has lived in a stable, satisfactory environment and the desiribility of maintaing continuity and/or the desiribility of maintaining a varied life experiance for the child." This amendment would essentially force the judge to point out why a varied life experiance might be detremental. It might also make parents think twice about returning to court every time there is a change of residance emplo ment or marital status

6) very important

Sec. 3 CUSTODY OF THE CHILD

This keeps the best interests criteria

Sec. 4 SHARED CUSTODY

Sec. 25.20.070
The real meat of the matter. REMEMBER THE WIEGHT OF EVIDANCE SUPPORTS THIS.

Sec. 25.20.080 AWARD OF CUSTODY
Absolutely essential.

c)see comments on cover page

Sec. 25.20.090 PREFERANCE OF THE CHILD
Fine

Sec. 25.20.100 FACTORS FOR CONSIDERATION BY COURT

PAGE 3 LINE 19-29
PAGE 4 LINE 1-11

In my opinion this almost defeats the purpose of the bill. It will be difficult for a judge to consider all this at all fairly and it lends itself to denying joint custody unless all these factors

a

are perfect. It gives a broad battlefield for warring exspouses to fight on and lots of ammunition. The whole emphasis should be on getting parents to agree on these things not to try and convince a judge that this or that is more stable. that the child needs what one parent has to offer than the other. that staying in a community is more benefical than moving to another community etc etc. The predjudice is for a judge to decide that for one factor or anotherthe child should have shared custody only if all these things are in perfect synch, the bias is going to be towards a paper shared custody with the same old short term visitations. We must leave this field as open as possible for creative solutions to unique situations. A COUNSELOR OR MEDIATOR IS IN A MUCH BETTER TO HELP PARENTS REACH A CHILDCARE AGREEMENT BOTH BEFORE AND AFTER A SHARED CUSTODY AWARD.

In addition there is a strong bias here agai~st one year/one year arrangements or other such long time span arrangements which can be creative solut ons to living far apart. We must protect each parent's right to maintain a relationship with his or her child, and the childs right to a relationship with both parents first and foremost. The fact that I travel a lot in the summer for example doesn't make me less stable , less loving or less anything as a parent.

I predict if this subsection is allowed to stand that there will continue to be violent battles in court and lopsided decrees.

(SEE COVER PAGE)

Sec. 25.20.110 <u>PREFERANCESON AWARD</u>
This is a better provision than the California law.

Sec. 25.20.120 <u>AWARD OF CUSTODY TO NON PARENT</u>
No comment

Sec. 25.20.130 <u>PLEADINGS</u>
I don't understand this one. It sounds like this is a way to keep all sorts of garbage off of court papers. When the court awards temporary custody they often do so on the strentgh of unproven, fictional allegations. This sort of thing shouldn't be on any record.

Sec. 25.20.150 <u>MEDIATION</u>
This should be beefed up somehow. Somehow there ought to be even more negative reinforcement of adults acting like spoiled children and not being able to come to terms to the benefit of their children. Every enforcement of the idea of out of court shared phisical and legal child care custody agreements should be used

<u>FORGOTTEN SECTION</u>

<u>TEMPORARY CUSTODY</u>

" Unless it is shown to be detrimental to the welfare of the child, the child may have equal access to both parents/ during litigation."

PAGE 5
LINE 18-22

Something along these lines is sorely needed. Temporary custody almost alaways lwads to the temporary custodian being awarded sole custody. <u>During this traumatic time especially a child needs the love, care and phisical presence of both parents</u>. If it is almost automatically assumed that equal time is the norm during litigation

it will right awa defuse the fight, seinforce the idea that both parents are considered equal and greatly encourage an agreement. It will negatvely effect selfishness, power games, and refusal to be agreeable to the detriment of the children. It will at the very outset say in effect: the State of Alaska thinks you both have a responsibilty to care for your kids and consider both of you equals.

JOINT CUSTODY

Charlie,

I have been thinking long and hard on this subject, talked to lots of people and reviewed testimony at last year's hearings on HB 210. What I keep coming back to is that the first consideration in custody is the best interests of the child which has always been foremost in the court's mind, and I think that any blanket statement of what is good for anyone is bad, and cases should be considered on their individual merit. Giving joint custody to everyone could create lots of problems for the parent the child lives with(which will probably remain the same, the child spending most of the time in one home), and what happens in the area of child support? Will this presume that both parents will contribute equally which has not happened in the past. Are considerations of the parents rights more important than what is best for the child? These are all difficult problems, but the way HB 210 is worded makes it seem that the court will have to justify why custody is given to one parent rather than jointly, and this would cast dispersions on the parent not getting custody.

What I have considered as important are:

1. The first preference should be an agreement worked out by the parents, with the court's approval. Since joint custody can obviously work best with people who can maintain a cooperative relationship in the interest of the child, this will leave that option open.
2. Anyone who files for a custody hearing be required to have counseling, if available in the community, to work out the problems and perhaps find some area of agreement. This is done in California and has eliminated over 90% of the court cases for custody.
3. More emphasis in the statute on exposure of the children to both parents unless there are other circumstances that would make this unacceptable.

As you know, Charlie, I have had joint custody with Vanessa for 2 and a half

years and the only good thing I can say about it is that her father has spent time with her for the first time in her life and they have developed some kind of a relationship. Other than that, I think it has been difficult for her, because we parent in two different ways and I question the motives of my ex-spouse. I offered to sign a permanent joint custody agreement rather than go to court. The pain of that event and all the things surrounding the situation were harmful to me, to Bob and though Vanessa did not understand, she is a perceptive child and was affected by the energy of all involved. I am happy that she will remain with me, having her go back and forth between houses is unsettling without a relationship between mom and dad. Some people can remain friends following divorce, but I cannot agree that this is the best interest of the child in presuming that joint custody is the best for all - but this option SHOULD be available. I guess what I'm trying to illustrate is that a child can be used as a hammer for a destructive parent to get at another, that each case is different, that each child's personality is different and therefore each case should be decided on its own merits and circumstances.

Of course, you know that I will write any bill that you want, regardless of my personal feelings.

NOTE: Other questions that I have come across in this situation are:
What will the effect be on child snatching? If both parents have co-custody what prevents parents from stealing their child back and forth, and who suffers from this?
In the case of impoverished people, who claims AFDC, will it depend on who gets to the welfare office first?

1850 Roberts Road
Fairbanks, Alaska 99701
May 21, 1981

Representative Brian Rogers
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Ref: House Bill 210, Joint Custody for Children

Dear Representative Rogers:

The enclosed sheets are an analysis of letters and memorandums from the legal arena which are presently on file in your office. Some of these letters are lengthy and present insightful information.

One interesting pattern emerges however. If a marriage has to be dissolved, and if there are children involved the judicial districts that the parties would want to live in, from most beneficial to least beneficial with respect to obtaining a mutually agreeable solution to a difficult problem are as follows:

First, the first judicial district. Three judges (Schulz, Stewart, Taylor) are, at least, not opposed to joint custody for children;

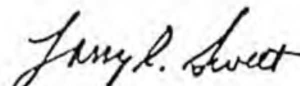
Second, the third judicial district. While all testimony from the legal arena is in opposition to HB 210, Anchorage has had for some dozen years or so a domestic relations system that at least attempts to reach an agreeable solution. Private communication from Mr. Francis Stevens, Custody Investigator in Anchorage, states that this has resulted in 96% settlement of contested cases, i.e. only 4% of contested situations went on into litigation;

Third, the fourth judicial district. While only one judge has gone on record (opposed to HB 210) there does not exist any mechanism in Fairbanks for mediation within the legal system. There are a dozen or so joint custody parents in Fairbanks who can state that their own experiences in attempting to obtain a joint custody resolution from the court system was difficult, trying, or, in some cases, unsuccessful, even though both parents were in agreement.

There is insufficient information, and, perhaps, population density, from the second judicial district to make a statement.

It may be coincidental, but the attitudes, practices, and services regarding joint custody for children follow a direct line from south to north.

Sincerely,



Larry R. Sweet

JOINT CUSTODY FOR CHILDREN

LEGAL ARENA POSITION

NAME	TITLE	JUDICIAL DISTRICT	POSITION			COMMENTS
			IN FAVOR	OPPOSE	NO POSITION	
THOMAS E. SCHULZ	SUPERIOR COURT JUDGE	1	X			REF: MAY 9, 1991 LETTER TO CLOCKSIN, ROGERS, GARDINER
THOMAS B STEWART	SUPERIOR C[illegible]T JUDGE	1	X ?			REF: MAY 9, 1981 LETTER FROM JUDGE SCHULZ, TO CLOCKSIN, ROGERS, GARDINER; PG 3
ROBIN L. TAYLOR	JUDGE	1	X ?			REF: APRIL 7, 1981 LETTER FROM JUDGE JUSTIN RIPLEY TO WILLIAM GRANT CALLOW, II, ESQ, GENERAL COUNSEL TO ADMINISTRATIVE DIRECTOR

JOINT CUSTODY FOR CHILDREN

LEGAL ARENA POSITION

NAME	TITLE	JUDICIAL DISTRICT	POSITION			COMMENTS
			IN FAVOR	OPPOSE	NO POSITION	
CHARLES TURLEY	SUPERIOR COURT JUDGE	2		X		REF: APRIL 28, 1981, LETTER FROM FRANCIS STEVENS TO CLOCKSIN

JOINT CUSTODY FOR CHILDREN

LEGAL ARENA POSITION

NAME	TITLE	JUDICIAL DISTRICT	POSITION			COMMENTS
			IN FAVOR	OPPOSE	NO POSITION	
RALPH E. MOODY	PRESIDING JUDGE	3		X		REF: APRIL 28, 1981 LETTER FROM FRANCIS STEVENS TO CLOCKSIN. APRIL 9, 1981 LETTER TO WILLIAM CALLOW
VICTOR D. CARLSON	SUPERIOR COURT JUDGE	3		X		REF: APRIL 28, 1981 LETTER FROM FRANCIS STEVENS TO CLOCKSIN; MARCH 19, 1981 TO CLOCKSIN
BUCKELEW	SUPERIOR COURT JUDGE	3		X		REF: APRIL 28, 1981 LETTER FROM FRANCIS STEVENS TO CLOCKSIN
J. JUSTIN RIPLEY	SUPERIOR COURT JUDGE	3		X		REF: APRIL 28, 1981 LETTER FROM FRANCIS STEVENS TO CLOCKSIN; MARCH 19, 1981 LETTER TO JUDGE RALPH E. MOODY
WILLIAM D. HITCHCOCK	MASTER, TRIAL COURTS	3		X		REF: MARCH 9, 1981, LETTER TO GRANT CALLOW, STAFF COUNSEL. MARCH 25, 1981 LETTER TO CLOCKSIN

JOINT CUSTODY FOR CHILDREN

LEGAL ARENA POSITION

NAME	TITLE	JUDICIAL DISTRICT	POSITION			COMMENTS
			IN FAVOR	OPPOSE	NO POSITION	
JAMES R BLAIR	SUPERIOR COURT JUDGE	4		X		REF: APRIL 28, 1981 LETTER FROM FRANCIS M. STEVENS TO REPRESENTATIVE CLUCKSIN

JOINT CUSTODY FOR CHILDREN

LEGAL ARENA POSITION

NAME	TITLE	JUDICIAL DISTRICT	POSITION: IN FAVOR	POSITION: OPPOSE	POSITION: NO POSITION	COMMENTS
WILSON L. CONDON by LINDA SCOCCIA ASST. ATTORNEY GENERAL	ATTORNEY GENERAL	—		X		REF: MARCH 26, 1981 LETTER TO CLOCKSIN
FRANCIS M. STEVENS	CUSTODY INVESTIGATOR	3		X		REF: APRIL 28, 1981 LETTER TO REPRESENTATIVE CLOCKSIN MARCH 10, 1981 LETTER TO WILLIAM HITCHCOCK, STANDING MASTER

1850 Roberts Road
Fairbanks, Alaska 99701
September 30, 1981

Mr. Mac Gibson
Court Administrator
Fourth Judicial District
State Office Building
Fairbanks, Alaska 99701

Dear Mr. Gibson:

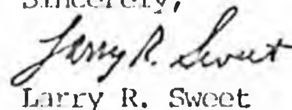
I am impressed to learn that as a result of my visit with you September 7, and your subsequent discussions with your counterpart Mr. Szal and Judge Moody, both of the Third Judicial District, that you have entered into your FY83 budget request the position of Custody Investigator for the Fourth Judicial District. By copy of this letter to local legislators I am registering my support for your actions.

The office of Custody Investigator in Anchorage, which has existed for some years, currently indicates a 96% success rate for mediating contested cases so they reach some form of resolution and go into court uncontested. This is a dramatic statistic in favor of mediation and counseling and the positive approach toward the rights of children. Even if the success rate were only a mediocre 50% at least half the children involved in a difficult situation would stand a better chance at some form of open and loving relationship with both parents after a marriage is terminated.

As we discussed earlier, no such services exist in this Judicial District. Since we talked September 7, I have met with officials of the Alaska Child Support Enforcement Agency, with people in the counseling fields in Fairbanks, and the the Judicial system in Anchorage and it is fairly well acknowledged among them that there is a wide dichotomy of practice on how divorce cases are handled with Fairbanks having the least support services for the number of cases involved. Some even indicate that divorce in Fairbanks is often handled in an "archaic" fashion. This is discriminatory toward the children involved and parents, one or more of whom may be desperately trying to work out an equitable and positive solution.

I appreciate your concern in attempting to seek positive solutions to the problems that some people feel exist in Fairbanks today. I wish you luck in your budget request.

Sincerely,



Larry R. Sweet

cc: Senator Charlie Parr
Representative Brian Rogers
Representative Fred Brown
Representative Sally Smith
Representative Don Bennett

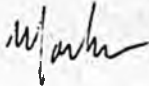
Marko Lewis
Botany Dept.
Field Museum of Natural History
Chicago, Ill. 60605

Hon. Senator Charles Parr

dear Senator Parr:

Here is my latest review, this time concerning the relationship between sole custody and non payment of child support. I haven't yet recieved a reply from your office and hope that my mail is getting through to you. If not, I will send copies of that which I have already sent. I do hope you can decide to sponser a bill similar to Brian Rodger's. It is very definately a logical extension of no fault divorce and I believe a much better way to deal with this problem.

Sincerely,



PS- I received Rocky's letter of February 9th. Frankly my main worry in sending so much material at the same time was that it wouldn't get read. Hopefully this information will eventually find its way into a committee hearing.... if it ever gets to a committee.

SOME REASONS FOR NON PAYMENT OF CHILD SUPPORT

In the United States 4-6,000,000 fathers are under court orders to pay child support. The majority don't pay. In some Counties in the lower 48, there are more men in jail for non-support than any other "crime".

David. L. Chambers completed a three year study of non-support in Michigan which was held under the auspices of the National Science Foundation Law and Soc. Serv. Division, the Univ. of Michigan Law School, Center for Study of Criminal Justice and other foundations and universities. The study was conducted during the years 1972-1975 before shared custody was considered an option. The research was published by the Univ. of Chicago Press 1979 as MAKING FATHERS PAY- THE ENFORCEMENT OF CHILD SUPPORT. by David Chambers. The study is weakened by not considering shared custody as an option altough, as we will see, he suggests this solution in his summary.

The reasons for non payment of support are interesting and lend weight to the arguement that a legal system which encourages equality and shared parenting after divorce will go a long way towards correcting many of the deep seated causes of non payment of support. These causes are summarized by Chambers:

1. cruel treatment given to fathers in divorce court.
2. being deprived of their children and homes and being shoved out into the street without any recourse, and in most cases, without any justification.
3. anger, remorse, depression
4."she is not taking good care of the children."
5."she is sleeping with him, let him support her."
6. weak attachments to the children
7. unemployment
8. If the mother, for good or bad reasons, makes visitation difficult or refuses to permit visits at all, the father may well respond by reducing payments to a trickle or cutting them off all togethor. The reneging behavior of one parent will reinforce the reneging behavior of the other.

While shared custody will certainly not increase child support payments by parents who just don't care, the opportunity to share parenting after divorce and to continue a meaningful relationship as an equal, should produce a better supprt situation by parents who have in the past been effectively cut out of their children's lives. Though apparently unaware of shared custody as an option David Chambers is on the right track when he states, " In many cases visitation may help induce continued payments by keeping the child's needs vivid in the father's mind. Policies encouraging visitation may help produce higher collections."

In his summary he states (and the solution is obvious): " .....at some indeterminate point in the period after divorce, many noncustodial parents probably lose a psychological sense that they have a moral obligation to contribute to the support of their children. This loss of feeling does not come from a crass or all-to-convenient disregard of obvious duties but is rather the inevitable product of the altered position of their lives and the lives of their children and their former wives. At some unconscious level they come to feel that child support is a form of taxation without representation. They would say that they "love" their children, but the quality of the feeling would not be the same as it had been before seperation. '

NON CUSTODIAL PARENTS ARE PRACTICALLY FORCED INTO A SITUATION WHERE THEY LOSE THE ATTACHMENT TO THEIR CHILD.

SHARED CUSTODY PARENTS REPORT A <u>GREATER</u> SENSE OF ATTACHMENT.

IT IS THE RESPONSIBILITY OF THE STATE TO ENCOURAGE ,NOT DISCOURAGE FAMILY TIES.

JOINT CUSTODY and BATTERED WOMEN*

Excerpted From

POOR WOMEN AND FAMILY LAW**

(June 1980)

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799 Broadway, Room 402, New York, New York 10003
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** This article was written by Joanne Schulman, Staff Attorney with the National Center on Women and Family Law. This article is one section of an article entitled Women and Poverty: Women's Issues in a Legal Services Practice, to be published in Clearinghouse Review, a publication of the National Clearinghouse for Legal Services, 500 North Michigan Avenue, Chicago, Illinois.

JOINT CUSTODY & BATTERED WOMEN

Finally, legislation which is being enacted in other substantive areas needs to be examined from the perspective of the battered woman. For example, United State Senate Bill 105[65] seeks to prevent child-snatching by parents. While the intent of this bill may be laudable, at least one of its provisions would prove dangerous for battered women.[66] Specifically, the bill would allow an abusive parent access to the Parent Locator System, thereby enabling an abusive husband (or father) to track down a fleeing battered woman under the pretext of locating their children.[67]

Legislation regarding joint child custody[68] presents another potential danger to battered women. Joint custody guarantees continued access by the abuser to his victim. It also gives him continued control[69] over the battered woman's life through their children.

Joint custody legislation has been viewed as necessary because courts have traditionally disfavored such arrangements, seeing only disruption and instability to children.[70] Thus, many courts have refused to order joint custody when it is the

arrangement desired and requested by both parents.[71]

Some legislators, prompted by fathers' rights groups[72] among others, are now swinging to the other extreme by seeking to make joint custody a statutory preference, which would apply even when one parent opposes the arrangement.[73] Courts, under this type of legislation, would be mandated to state their reasons in writing when they do not order joint custody.[74] Additionally this type of legislation typically includes a declaration that joint custody is presumptively "in the best interests of the children,"[75] in spite of the fact that there have been very few studies of joint custody arrangements, and almost all of these studies involved cases where both parents desired the arrangement.[76] The intent behind joint custody "preference" legislation is directed at increasing fathers' custody rights.[77]

Many battered women will now find themselves facing a joint custody order under this "preference" legislation. In order to avoid an order of joint custody, the battered woman will have to testify to the abuse of which she has been a victim, which for many women is very difficult (as it is for rape victims). Further, as with a rape victim, courts traditionally do not believe the battered woman ("she's hysterical"), refuse to take battering seriously ("a few slaps never hurt anyone"), fail to consider psychological abuse and terrorization as battering, and, finally, believe that divorce will end the battering.[78] Nor do courts view wife-beating as detrimental to children. Custody attorneys are all too familiar with the "but did he ever hit

the children?" judicial response to wife-beating.[79]

Joint custody should be a choice open to parents when that is what they desire and believe to be in their children's best interests. However, making joint custody a statutory preference serves only to further harass and victimize battered women -- and indeed all women who do not feel that such an arrangement is in their children's interests.[80]

Overlooked is the fact that women are still the primary caretakers of their children, and, as such, might know and have their children's best interests at heart when opposing joint custody. One wonders if the same can be said for fathers who, rationalizing their failure to support, their child-stealing, or their lack of meaningful relationships with their children on their "feelings of frustration" or the other parent, have the best interests of their children at heart. See, e.g., note 77, supra.

[68]Definitions of joint custody vary. Most definitions include some form of shared physical custody (e.g., 6 months - 6 months; 9 months - 3 months; 3 days - 4 days per week). However, all definitions include joint parental "control of its [child's] care, upbringing, and education, and equal voice in decisions pertaining to its [child's] health, religious training, vacationing, schooling, and the like" regardless of the amount of time the child spends with each parent. Fain, Custody of Children, 1 California Family Lawyer 539, 564 (1962); see, M. Ramey, F. Stender, D. Smaller, Joint Custody: Are Two Homes Better Than One?, Women's Law Forum, 8 Gol. Gate Univ. L.R. 559, 559-561 (1971) [hereinafter RAMEY].

[69]Joint Custody msut be distinguished from visitation rights. The parent with visitation rights generally does not have the right to make decisions affecting the child.

[70]Id. at 559, 561-567.

[71]Id.

[72]Foster, H. and Freed, D., "Joint Custody: A Viable Alternative," 15 Trial Magazine 26, 31 (May, 1979); Foster, H. and Freed, D., "Joint Custody: Legislative Reform," 16 Trial Magazine, 22, 23 (June 1980).

New York's pending joint custody bill, S-7964/A-9369 [hereinafter N.Y. JOINT CUSTODY BILL], introduced on February 27, 1980, by New York's Senator H. Douglas Barclay and Assemblymember Howard L. Lasher, was proposed (and is strongly being lobbied for) by Equal Rights for Fathers of New York State, Inc.; see their April, 1980 Newsletter, p.7. Among the reasons given by this group for a change from "'the historical experiment of sole maternal custody that isn't working'" are:

> ...Evidence of disturbance in cognitive performance. 'Paternal availability seems especially important in I.Q. performance of boys of all ages'...Sex-role identification problems. 'The preponderance of data to date indicates boys in single parent (mother-headed) families are especially vulnerable to problems of sex role identity and pre-school boys and boys in early school years from mother-headed families have been described as more dependent and less masculine.'... Problems of social and emotional development with girls. 'Over-all the findings suggest that father-absent girls have not had the opportunity to acquire the social skills necessary for appropriate heterosexual interactions...' and 'findings of delinquent girls also suggest that paternal absence has its greatest impact on disruption of heterosexual behavior....' April, 1980 Newsletter, Equal Rights for Fathers of New York State, pp. 8-9.

73. As of June 1, 1980 five states have enacted joint custody provisions: Connecticut, Public Act 80-29, (effective October 1, 1980); Iowa, I.C.A. §598.21 (Supp. 1978); Oregon Rev. Stat. Ch. 107 §105 (Supp. 1977)*; Wisc. Stat. Ann. §247.24 (West Supp. 1978); California Civ. Code §§46000, 4500.5 (West Supp. 1980). Only California's statute includes a joint custody "preference" or "presumption". Since November, 1979, joint custody legislation has been introduced in the following states: Hawaii - SB 2419, passed; Kansas - SB 295 (Parrish), HB 2790 (Brewster); Kentucky - HB 356 (DeFalaise); Illinois - HB 3405 (Younge); Maryland - HB 352 (Shapiro), Massachusetts - HB 2531 (DeNucci), HB 1877 (Vigneau), HB 4201 (McNeil), SB 1962 (Lisitsky); Michigan - HB 5218 (Brown), SB 1975 (Zeigler); New Jersey - AB 1471, AB 407; New York - S7964 (Barclay), A9369 (Lasher); Ohio - HB 5066; Oregon - HB 2538 (Richards) to amend O.R.S. §107.137 to create a presumption of joint custody; Pennsylvania - HB 10776 (Boyle), HB 2394 (McKelvey), SB 1411 (Fumo), SB 1282 (Gekas). Bills introduced in Illinois, Michigan, New Jersey, New York, Oregon and Pennsylvania include a joint custody "presumption or "preference".

[74]See, e.g., Cal. Civ. Code §4600.5(a) and (b); N.Y. JOINT CUSTODY BILL §3 (amending DRL §240). Additionally, New York courts could only make a sole custody award "if clear and convincing evidence establishes that it is in the best interests of the child that custody be awarded to one parent." (emphasis added) N.Y. JOINT CUSTODY BILL, §3 (proposed DRL §240(2)).

[75]Note 73, supra.

[76]See, RAMEY, supra, at 569-581. Additionally, there is considerable controversy and a wide range of opinions among mental health professionals regarding the effect of joint custody on children. J. Goldstein, A. Freud and A. Solnit, authors of Beyond the Best Interests of the Child, rejected joint custody, asserting that a child can freely relate to more than one adult only if the adults are not in conflict with each other. Beyond the Best Interests of the Child (1973) at 38.

In contrast, Melvin Roman, Ph.D., and William Haddad, authors of The Disposable Parent, advocate a joint custody "preference" as a result of their studies of divorced fathers as well as their own bias. "The authors forthrightly admit in the preface that they are two disgruntled fathers who had originally intended to write a father-advocacy book." Foster and Freed, "Joint Custody: A Viable Alternative", 15 Trial 26 (1979).

[77]For example:

> JUSTIFICATION: ...traditional custody arrangements in cases of marital divorce and separation often results in the non-custodial parent being denied a meaningful parental relationship with the child....[D]espite the fact that neither parent was given a prima facie right to custody of the child, such biases as the 'tender years doctrine' create a situation where in nine out of ten cases courts award custody of the child to its mother..." Memorandum in Support of Bill, N.Y. JOINT CUSTODY BILL, note 72, supra.

This "justification" fails to acknowledge that in those "nine out of ten cases" the mother is "awarded" custody solely because the father is absent or is not seeking custody, as in default decrees.

A further rationale for joint custody is that it will encourage non-supporting fathers to meet their court-ordered obligations, e.g.,:

> The new law [Cal. Civ. Code §§4600(b)(1) and 4600.5] should help avoid two problems... 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...
> James A. Cook, "California Retires A Formula For Injustice in Child Custody Rights", Los Angeles Times, Jan. 6, 1980.

In fact, joint custody will lower, if not eliminate, a father's support obligation since he will become a custodial parent. There is no mechanism to force a father exercise his joint custody responsibilities, just as there has been no means of forcing a non-custodial parent to exercise his visitation "rights" under a sole custody order. It is important to note that Equal Rights for Fathers, note 72, supra, defines joint custody "as a term that assumes continuing meaningful contact that should attempt to equalize time spent with both parents but not make it a prerequisite." March 1980 Newsletter, p. 6. (emphasis added). Thus, mothers will still, under joint custody orders, end up in "nine out of ten cases" with the full responsibilities of custody although only half the "rights" and half (or less) the support.

Finally, and perhaps most telling, is the fact that joint custody "preference" statutes place parental custody rights over the best interests of children. As Foster and Freed point out:

> ...some of the agitation for joint custody really involves status-seeking as legal custody (or co-custodian); or 'one-upmanship', since meaningful association with both parents is common under the traditional sole custody, subject to visitation formula.
> Foster and Freed, 15 Trial 26, 31 (1979).

[78] See generally MARTIN and FIELDS, note 16, supra.

[79] Interviews with Marjory Fields, Managing Attorney, Matrimonial Unit, Brooklyn Legal Services, and Adele Hendrickson, Directing Attorney, Domestic Relations Unit, Legal Aid Society of Alameda County.

[80] Just as women are blamed for fathers' failure to support or establish a meaningful relationship with their children, any woman who opposes joint custody is said to be using her children as a bargaining tool "'to exact money, retribution of vengeance.'" E. Retzlaff, "'Equal Rights for Fathers'Unit Stresses Joint Custody Need", Schenectady Gazette, 2/1/80.

National Center on Women & Family Law

799 Broadway, Room 402 • New York, New York 10003 • (212) 674-8200

A SUMMARY OF JOINT CUSTODY STATUTES AND PENDING LEGISLATION

As of July 1980, eleven (11) states have joint child custody provisions:

California	Civ. Code §§4600, 4600.5 (effective 1/1/80) [includes joint custody "presumption"]
Connecticut	Gen. Stats. §46b-56(a) (Public Act No. 80-29, effective 10/1/80)
Hawaii	Rev. Stat. §§571-46, 571-46.1 (effective 4/25/80)
Iowa	Codes Ann. §598.21 (joint custody provisions added in 1977)
Kansas	Stat. Ann. §60-1610(b) (Supp. 1979)
Kentucky	Rev. Stat. §403.270(3) (effective 7/15/80)
Nevada	Rev. Stat. §125.140 (1979)
North Carolina	Gen. Stat. §50-13.2(b)
Oregon	Rev. Stat. §107.105 (1977)
Texas	V.T.C.A., Family Code §14.06(a) (effective 8/27/79) [parties may enter into written agreement providing for joint custody]
Wisconsin	Stat. Ann. §247.24(1)(b) (effective 5/10/78)

Since November, 1979, joint custody legislation has been introduced in the following states:

Florida	HB 1440 (Gordon, Dunbar); failed
Kansas	SB 295 (Parrish) HB 2790 (Brewster)

*Illinois	HB 3405 (Younge)	
Louisiana	HB 1691 (Byrnes), bill deferred	
Massachusetts	HB 2631 (DeNucci) HB 1877 (Vigneau) HB 4201 (McNeil) SB 1962 (Sisitsky)	(All Failed)
*Michigan	HB 5218 (Brown *SB 1976 (Zeigler)	
*New Jersey	*AB 1471 *AB 407	
*New York	*S7964 (Barclay) *A9369 (Lasher)	(Companion bills; passed Assembly; died in Senate)
Ohio	HB 1076	
*Oregon	*HB 2538 (Richards) to amend O.R.S. §107.137 to create a presumption of joint custody (tabled in committee)	
*Pennsylvania	HB 2394 (McKelvey) *SB 1411 (Fumo) *SB 1282 (Gekas)	
*S. Carolina	*HB 3248 (died in House Judiciary Committee)	

*Bills include a joint custody "presumption" or "preference" provision.

SECOND THOUGHTS ON JOINT CHILD CUSTODY

There is currently a disturbing and growing national trend toward awarding custody of children to both parents jointly, i.e. giving both parents the right to share equally in the decision making process regarding the child. (See Joint Custody chart available from NCOWFL.) While intended to equalize the responsibility of childrearing between the parents, joint custody, when parents are not able to agree or do not communicate well, only serves to interfere with the ability of the primary caretaker to make the decisions needed to carry out responsibilities to the child.[1]

Almost all experts concur that joint custody is only "appropriate" where both parents are basically in agreement and able to participate in joint decision-making. Such cases are in the minority, and those parents will have an informal joint custody arrangement regardless of court order. Thus the current new legislation would largely affect those parents who are not in agreement--the very cases which the experts agree are not suitable for joint custody and where, in fact, it would be detrimental to the child's best interests.

Legislators are seeking to make joint custody a statutory preference/presumption which would apply even when one parent opposes the arrangement. Courts, under this type of legislation, would be mandated to state their reasons in writing when they do not order joint custody. Additionally, this type of legislation typically includes a declaration that joint custody is presumptively "in the best interests of children," in spite of the fact that there have been very few studies of joint custody arrangements, and almost all of these studies involved cases where both parents desired the arrangement.

Joint custody presumption/preference legislation is, instead, a refusal to place any value on or give any credit to the past assumption of the daily care and responsibility for the children. Thus, a joint custody presumption in effect gives the non-caretaking parent equal power when he or she has not contributed equally to the day-to-day care and support of the children, either pre-divorce or post-divorce.

(Con't. on p. 4)

NEEDED: 5 NEW BOARD MEMBERS

NCOWFL is seeking 5 new members to serve on its Board of Directors, each for a 3 year term. NCOWFL is funded by the Legal Services Corporation to provide support on women's issues in family law. The Board of Directors sets policy for NCOWFL. Three of these vacancies must be filled by attorneys and two by clients. The term of these new board members will begin on October 1, 1981. The 13-member Board is of widely diverse experience and backgrounds and it is important to us to maintain this diversity in our selection of new members.

Those interested in serving should send a letter describing their background and interest, together with the names and addresses of two references to:

Jane Shaw-Jackson, Chair
National Center on Women
and Family Law, Inc.
799 Broadway, Room 402
New York, New York 10003

These letters of interest must be received by April 15, 1980.