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cluded unless a court, upon application, orders the sale of perishable substances and the deposit of the proceeds of the sale with the court. After a revocation order is final, all controlled substances held by the registrant are forfeited to the state.

(d) The board shall promptly notify the Drug Enforcement Administration of the United States Department of Justice of all orders denying, suspending, or revoking registrations and of all forfeitures of controlled substances.

Sec. 17.30.050. ORDER TO SHOW CAUSE. (a) Before denying, suspending, or revoking a registration, or refusing a renewal of a registration, the board shall serve upon the applicant or registrant an order to show cause why a registration should not be denied, revoked, or suspended, or why a renewal should not be refused. The order to show cause shall contain a statement of the basis for issuance of the order and shall require the applicant or registrant to appear before the board at a time and place not less than 30 days after the date of service of the order. For a refusal of renewal of registration the show cause order must be served not later than 30 days before the expiration of the registration. These proceedings must be conducted in accordance with procedures for administrative adjudication under AS 44.-62.330 - 44.62.630 without regard to criminal prosecution or other proceeding. Proceedings to refuse renewal of registration do not make the existing registration void. The existing registration remains in effect pending the outcome of the administrative hearing.

(b) The board may, without an order to show cause, suspend a registration simultaneously with the institution of proceedings under AS 17.30.040 if it finds that there is an imminent danger to the public health or safety which warrants this action. The suspension continues in effect until the conclusion of the proceedings, including judicial

review of the proceedings, unless withdrawn by the board or dissolved by a court of competent jurisdiction.

Sec. 17.30.060. RECORDS OF REGISTRANTS. A person registered to manufacture, distribute, dispense, or conduct research with controlled substances under this chapter shall keep records and maintain inventories in conformance with the record keeping and inventory requirements of federal law and in conformance with additional regulations adopted by the board.

Sec. 17.30.070. ORDER FORMS; PRESCRIPTIONS. (a) A controlled substance may be distributed by one registrant to another registrant only if the distribution is in accordance with federal requirements for order forms.

(b) A controlled substance may not be dispensed by a practitioner other than in accordance with federal requirements regarding prescriptions for controlled substances.

(c) If the classification of a controlled substance in a schedule set out in AS 11.71.140 - 11.71.190, or by a regulation adopted in accordance with AS 11.71.120(a), is different from its corresponding classification under federal law, the requirements of (a) and (b) of this section are determined by the classification of the substance under federal law.

Sec. 17.30.080. UNLAWFUL ADMINISTRATION, PRESCRIPTION AND DISPENSATION OF CONTROLLED SUBSTANCES. A controlled substance classified under federal law or in a schedule set out in AS 11.71.140 - 11.71.190 or by regulations adopted in accordance with AS 11.71.120(a) may not be administered, prescribed, dispensed, or distributed other than for a medical purpose.

ARTICLE 2. ENFORCEMENT AND ADMINISTRATIVE PROVISIONS.

Sec. 17.30.100. COOPERATIVE ARRANGEMENTS. (a) The commissioner

of public safety shall cooperate with other state and federal agencies in the discharge of their responsibilities pertaining to illicit traffic in controlled substances and in suppressing the abuse of controlled substances. Under this section, the powers of the commissioner of public safety include but are not limited to the following:

(1) arranging for the exchange of information among government officials concerning illicit traffic in and abuse of controlled substances;

(2) coordinating training programs pertaining to controlled substances at both local and state levels; and

(3) cooperating with the Drug Enforcement Administration of the United States Department of Justice by establishing a centralized unit to accept, catalog, file, and collect statistics, including records of persons who have violated the provisions of this chapter or AS 11.71 in the state and making the information available for federal, state, and local law enforcement purposes.

(b) The commissioner of public safety may not furnish the name or identity of a patient or research subject whose identity could not be obtained under AS 17.30.150(b).

Sec. 17.30.110. FORFEITURES. (a) The following may be forfeited to the state:

(1) a controlled substance which has been manufactured, distributed, dispensed, acquired, or possessed in violation of this chapter or AS 11.71;

(2) raw materials, products, and equipment which are used or intended for use in manufacturing, distributing, compounding, processing, delivering, importing, or exporting a controlled substance which is a felony under this chapter or AS 11.71;

(3) property which is used or intended for use as a container

for property described in (1) or (2) of this subsection;

(4) a conveyance, including but not limited to aircraft, vehicles or vessels, which has been used or is intended for use in transporting or in any manner in facilitating the transportation, sale, receipt, possession, or concealment of property described in (1) or (2) of this subsection in violation of a felony offense under this chapter or AS 11.71; however,

(A) a conveyance may not be forfeited under this section if the owner of the conveyance establishes, by a preponderance of the evidence, at a hearing before the court as the trier of fact, that use of the conveyance in violation of this chapter or AS 11.71 was committed by another person and that the owner was not a consenting party nor privy to the violation;

(B) a forfeiture of a conveyance encumbered by a valid security interest at the time of seizure is subject to the interest of the secured party if the secured party establishes, by a preponderance of the evidence, at a hearing before the court as the trier of fact, that use of the conveyance in violation of this chapter or AS 11.71 was committed by another person and that the secured party was not a consenting party nor privy to the violation;

(5) books, records, and research products and materials, including formulas, microfilm, tapes, and data which are used in violation of this chapter or AS 11.71;

(6) money, securities, negotiable instruments, or other things of value used in financial transactions derived from activity prohibited by this chapter or AS 11.71; and

(7) a firearm which is visible, carried during, or used in furtherance of a violation of this chapter or AS 11.71.

(b) Property listed in (a) of this section may be forfeited to the state either upon conviction of the defendant of a violation of this chapter or AS 11.71, or upon judgment of a court in a separate civil proceeding in rem. The court may order a forfeiture in the in rem proceeding if it finds that an item specified in (a) of this section was used during or in aid of a violation of this chapter or AS 11.71.

(c) It is not a defense in an in rem proceeding brought under this section that

(1) a criminal proceeding is pending or has resulted in a conviction, acquittal, or conviction of a lesser offense for a violation of this chapter or AS 11.71;

(2) a criminal proceeding has been dismissed;

(3) the item has not been forfeited in a criminal proceeding; or

(4) multiple actions are pending.

(d) Property listed in (a) of this section may be seized by a peace officer upon an order issued by a court having jurisdiction over the property upon a showing of probable cause that the property may be forfeited under (a) of this section. Seizure without a court order may be made if

(1) the seizure is incident to a valid arrest or a search under a valid search warrant;

(2) the property subject to seizure has been the subject of an earlier judgment in favor of the state in a criminal proceeding or civil proceeding in rem under this chapter or AS 11.71; or

(3) there is probable cause that the property was used, is being used, or is intended for use, in violation of this chapter or AS 11.71 and the property is easily movable; property seized under this paragraph may not be held for more than 48 hours without a court order

obtained to continue its detention.

(e) Property taken or detained under (d) of this section shall be held in the custody of either the commissioner of public safety or a municipal law enforcement agency authorized by the commissioner of public safety to retain custody of property listed in (a) of this section subject only to the orders and decrees of the court having jurisdiction over any forfeiture proceedings. If property is seized under this chapter, the commissioner of public safety or an authorized municipal law enforcement agency may

(1) place the property under seal;

(2) remove the property to a place designated by the court; or

(3) take custody of the property and remove it to an appropriate location for disposition in accordance with law.

(f) Within 10 days after a seizure under this section, the commissioner of public safety shall make an inventory of any property seized, including controlled substances, and shall appraise the value of any items seized other than controlled substances.

(g) Within 20 days after a seizure under this section, the commissioner of public safety shall, by certified mail, notify any person known to have an interest in an item with an appraised value of $500 or more, or who is ascertainable from official registration numbers, licenses, or other state, federal or municipal numbers on the item. Additionally, the commissioner of public safety shall publish notice of forfeiture action of an item valued at $500 or more in a newspaper of general circulation in the judicial district in which the seizure was made, or if no newspaper is published in that district, in a newspaper published in the state and distributed in that district. The notice shall be published once each week during four consecutive calendar

weeks. The requirements of this subsection do not apply to the forfeiture of controlled substances which have been manufactured, distributed, dispensed, or possessed in violation of this chapter or AS 11.71, regardless of their value.

(h) Upon service or publication of notice of commencement of an action under this section, a person claiming interest in the property shall file within 20 days after the service or publication, a notice of claim setting out the nature of his interest, the date it was acquired, the consideration paid, and an answer to the state's allegations. If a claim and answer is not filed within the time specified, the property described in the state's allegation must be ordered forfeited to the state without further proceedings or showings.

(i) Questions of fact or law raised by a notice of claim and answer of a claimant in an action commenced under this section must be determined by the court sitting without a jury. This proceeding may be held in abeyance until conclusion of any pending criminal charges against the claimant under this chapter or AS 11.71.

(j) A claimant under (h) of this section may at any time petition for release of a seized item as follows:

(1) to a court in which a warrant for seizure has been issued;

(2) to a court in which a criminal or civil action alleging forfeiture of the item has been filed; or

(3) before an action is filed, or if no seizure warrant was issued, to a court in the judicial district in which the violation took place.

(k) An item may not be released by the court under (j) of this section unless the claimant gives adequate assurance that the item will remain subject to the court's jurisdiction and

(1) the court finds that the release is in the best interests of the state; or

(2) the claimant provides a bond or other valid and equivalent security equal to twice the assessed value of the item.

(l) A claimant may petition the court for sale of an item before final disposition of court proceedings. The court shall grant a petition for sale upon a finding that the sale is in the best interests of the state and the preservation and maintenance of the item seized. Proceeds from the sale plus interest to the date of final disposition of the court proceedings become the subject of the forfeiture action.

(m) Property forfeited under this section other than controlled substances shall be disposed of by the commissioner of administration in accordance with applicable law. The commissioner of administration may

(1) destroy property harmful to the public;

(2) sell the property and use the proceeds for payment of all proper expenses of the proceedings for forfeiture and sale, including expenses of seizure, custody, and court costs;

(3) take custody of the property and authorize its use in the enforcement of this chapter or AS 11.71, or transfer it to another agency of the state or a political subdivision of the state for a use in furtherance of the administration of justice;

(4) take custody of the property and remove it for disposition in accordance with law; or

(5) forward it to the Drug Enforcement Administration of the United States Department of Justice for disposition.

(n) Upon a showing that a claimant is entitled to remittance in accordance with this section, the court shall order that

(1) if the item may be used for a valid state purpose, it

shall be delivered to the commissioner of administration and the commissioner shall remit to the claimant the value of the claimant's interest at the time of seizure; or

(2) the item may be sold at public auction to the highest bidder under the following conditions:

(A) the claimant has a right of first refusal;

(B) the sale proceeds shall be used to satisfy the claimant's interest at the time of seizure; and

(C) the balance remaining after (B) of this paragraph is complied with shall be deposited in the general fund.

(o) An offender who used an item subject to remission in violation of this chapter or AS 11.71 shall be assessed a fine which may not be less than the cost of any lien payment or remittance made by the state plus the reasonable costs of the seizure.

(p) A controlled substance manufactured, possessed, transferred, sold, or offered for sale in violation of this chapter or AS 11.71 is contraband and must be seized and summarily forfeited to the state. The commissioner of public safety or his designee, including a municipal law enforcement agency authorized under (e) of this section to retain custody of controlled substances, is responsible for the disposal of controlled substances which have been forfeited. The controlled substances shall be disposed of in accordance with procedures and requirements prescribed by the commissioner.

(q) Plants from which controlled substances may be derived and which have been planted or cultivated in violation of this chapter or AS 11.71, or which are grown in the wild, may be seized and summarily forfeited to the state.

Sec. 17.30.130. JUDICIAL REVIEW. A final determination, finding, or conclusion of the board under this chapter or a regulation adopted

under it is a final decision of the matter involved. A person aggrieved by a decision may obtain review of the decision in the superior court in accordance with AS 44.62.560 - 44.62.570. However, a person is not entitled to a hearing de novo in the superior court.

Sec. 17.30.140. EDUCATION AND RESEARCH. (a) The commissioner of health and social services shall provide for educational programs designed to prevent and deter the abuse of controlled substances. In connection with these programs, the commissioner may

(1) assist the regulated industry and interested groups and organizations in contributing to the reduction of abuse of controlled substances;

(2) promote better recognition of the problems surrounding abuse of controlled substances within the regulated industry and among interested groups and organizations;

(3) consult with interested groups and organizations to aid them in solving administrative and organizational problems;

(4) evaluate procedures, projects and techniques conducted or proposed as part of educational programs on abuse of controlled substances;

(5) disseminate the results of research on abuse of controlled substances to promote a better public understanding of the problems which exist and their solutions; and

(6) with the cooperation of the Department of Law, assist in the education and training of state and local law enforcement officials in their efforts to prevent illicit traffic in and abuse of controlled substances.

(b) The commissioner of health and social services shall encourage research on controlled substances and may

(1) establish methods to assess the effects of controlled

substances and identify and characterize those with potential for abuse;

(2) make studies and undertake research to

(A) develop new or improved approaches, techniques, systems, equipment, and devices to strengthen the enforcement of this chapter;

(B) determine patterns of abuse of controlled substances and their social effects; and

(C) improve methods for preventing, predicting, and understanding the abuse of controlled substances;

(3) enter into contracts with public agencies, institutions of higher education, and private organizations or individuals for conducting research, demonstrations, or special projects which bear directly on abuse of controlled substances and for related research and educational activities.

Sec. 17.30.150. CONFIDENTIALITY. (a) Results, information, and evidence received from the Drug Enforcement Administration of the United States Department of Justice relating to the regulatory functions of this chapter, including results of inspections conducted by it may be relied on and acted on by the board in the exercise of its regulatory functions under this chapter.

(b) A practitioner engaged in medical practice or research may not furnish the name or identity of a patient or research subject to the board. The practitioner may not otherwise disclose the name or identity of an individual that he is required to keep confidential unless ordered by a court to disclose it within the context of a criminal investigation or proceeding.

Sec. 17.30.160. DEFINITIONS. (a) Unless the context clearly requires otherwise, the definitions set out in AS 11.71.900 apply to

this chapter.

(b) In this chapter, "board" means the Board of Pharmacy provided for in AS 08.80.010.

* Sec. 4. AS 17 is amended by adding a new chapter to read:

CHAPTER 35. ALASKA THERAPEUTIC RESEARCH ACT.

Sec. 17.35.010. LEGISLATIVE PURPOSE. The legislature finds that recent research has shown that the use of marijuana may alleviate the nausea and ill effects of cancer chemotherapy and radiology, and, additionally, may alleviate the ill effects of glaucoma. The legislature further finds that there is a need for further research and experimentation regarding the use of marijuana under strictly controlled circumstances.

Sec. 17.35.020. THERAPEUTIC RESEARCH PROGRAM. (a) A therapeutic research program is established in the Board of Pharmacy. The program shall be administered by the board. The board shall adopt regulations necessary for the proper administration of this chapter. Before adopting regulations, the board shall take into consideration pertinent regulations adopted by the Drug Enforcement Administration of the United States Department of Justice, the federal Food and Drug Administration, and the National Institute on Drug Abuse.

(b) Except as provided in AS 17.35.030(e), the therapeutic research program is limited to cancer chemotherapy and radiology patients and glaucoma patients, who are certified to the Patient Qualification Review Committee by a practitioner. A patient may not be admitted to the therapeutic research program without full disclosure by the practitioner of the experimental nature of this program and of the possible risks and side effects of the proposed treatment.

(c) The board shall provide by regulation for a program of registration of therapeutic research projects.

Sec. 17.35.030. PATIENT QUALIFICATION REVIEW COMMITTEE. (a) The board shall appoint a Patient Qualification Review Committee to serve at its pleasure. The committee shall consist of four members with the following qualifications:

(1) two physicians licensed to practice medicine in the state, one of whom specializes in the practice of ophthalmology;

(2) a physician licensed to practice medicine in the state and specializing in the practice of psychiatry; and

(3) a physician licensed to practice medicine in the state who specializes in the practice of radiology.

(b) Members of the Patient Qualification Review Committee receive no salary but are entitled to per diem for travel and expenses authorized by law for boards and commissions.

(c) The Patient Qualification Review Committee shall review all applicants for the therapeutic research program and their licensed practitioners and certify their participation in the program.

(d) The Patient Qualification Review Committee and the board shall protect the privacy of individuals who participate in the therapeutic research program by withholding the names and other identifying characteristics of those individuals from all persons who are not connected with the research. Persons authorized to engage in research under the therapeutic research program may not be compelled in any civil, criminal, administrative, legislative, or other proceeding to identify the individuals who are the subjects of research for which the authorization was granted unless necessary to permit the board to determine whether the research is being conducted in accordance with the authorization.

(e) The Patient Qualification Review Committee may include other disease groups for participation in the therapeutic research program.

However, a practitioner must present pertinent medical data to both the committee and the board before a disease group may be added. The participation of a disease group must be approved by the board consistent with applicable regulations adopted by the Drug Enforcement Administration of the United States Department of Justice, the federal Food and Drug Administration, and the National Institute on Drug Abuse.

Sec. 17.35.040. SOURCES AND DISTRIBUTION OF MARIJUANA. The board shall ensure that marijuana is made available through whatever means it considers appropriate consistent with applicable regulations adopted by the Drug Enforcement Administration of the United States Department of Justice, the federal Food and Drug Administration, and the National Institute on Drug Abuse, and under this chapter.

Sec. 17.35.050. REPORT TO THE GOVERNOR AND LEGISLATURE. The board, in conjunction with the Patient Qualification Review Committee, shall report its findings and recommendations to the governor and the legislature regarding the effectiveness of the therapeutic research program by March 1, 1984.

Sec. 17.35.060. DEFINITIONS. In this chapter

(1) "board" means the Board of Pharmacy;

(2) "marijuana" has the meaning set out in AS 11.71.900(14);

(3) "practitioner" means a physician authorized to practice medicine in the state under AS 08.64.

* Sec. 5. AS 08.64.380(3)(B) is amended to read:

(B) habitual overuse of alcoholic beverages or <u>controlled substances</u> [DEPRESSANT, HALLUCINOGENIC OR STIMULANT DRUGS,] as defined in <u>AS 11.71.900(4)</u> [AS 17.12.150(3), OR ADDICTION TO THE USE OF NARCOTIC DRUGS AS DEFINED IN AS 17.10.230(13)];

* Sec. 6. AS 08.80.040 is amended by adding a new paragraph to read:

(10) provide for the regulation of controlled substances

under AS 17.30.

* Sec. 7. AS 08.80.470 is amended to read:

Sec. 08.80.470. CONSTRUCTION. Nothing in this chapter amends, modifies, repeals or otherwise changes any provision of AS 11.71, AS 17.30, [THE UNIFORM NARCOTIC DRUG ACT (AS 17.10)] or the Alaska Food, Drug and Cosmetic Act (AS 17.20).

* Sec. 8. AS 08.80.480(20) is repealed and reenacted to read:

(20) "controlled substance" has the same meaning set out in AS 11.71.900(4).

* Sec. 9. AS 11.31.100(d)(1) is amended to read:

(1) class A felony if the crime attempted is an unclassified felony [MURDER IN ANY DEGREE OR KIDNAPPING];

* Sec. 10. AS 11.31.110(c)(1) is amended to read:

(1) class A felony if the crime solicited is an unclassified felony [MURDER IN ANY DEGREE OR KIDNAPPING];

* Sec. 11. AS 11.81.900(b)(4) is amended to read:

(4) "cannabis" has the meaning ascribed to it in AS 11.71.-900(10), (11), and (14) [AS 17.12.150];

* Sec. 12. AS 11.81.900(b)(6) is repealed and reenacted to read:

(6) "controlled substance" has the meaning ascribed to it in AS 11.71.900(4);

* Sec. 13. AS 11.81.900(b)(16) is repealed and reenacted to read:

(16) "drug" has the meaning ascribed to it in AS 11.71.-900(9);

* Sec. 14. AS 12.30.040(b) is repealed and reenacted to read:

(b) Notwithstanding the provisions of (a) of this section, if a person has been convicted of an offense which is an unclassified felony or a class A felony, he may not be released on bail either before sentencing or pending appeal.

* Sec. 15. AS 12.45 is amended by adding a new section to read:

Sec. 12.45.155. LABORATORY REPORT OF CONTROLLED SUBSTANCES. (a) In a prosecution under AS 11.71.010 - 11.71.070, a complete copy of an official laboratory report from the Department of Public Safety or a laboratory operated by another law enforcement agency is prima facie evidence of the content, identity, and weight of a controlled substance. The report must be signed by the person performing the analysis and must state that the substance which is the basis of the alleged offense has been weighed and analyzed. In the report, the author shall state with specificity his findings of the content, weight, and identity of the substance.

(b) A sworn statement prepared by the author of the report provided for in (a) of this section must be attached to the report. The statement must set out the identity of the author and include a statement that he is an employee of the laboratory issuing the report and that performing the analysis is a part of his regular duties. The statement must also include an outline of his education, training, and experience for performing an analysis. The author shall state that scientifically accepted tests were performed with due caution, and whether to his knowledge the evidence was handled in accordance with established and accepted procedures while in the custody of the laboratory.

(c) The prosecuting attorney shall serve a copy of the report on the attorney of record for the accused, or on the defendant if he has no attorney, not later than 20 days before a proceeding in which the report is to be used against the accused. However, at a preliminary hearing or grand jury proceeding, the report may be used without having previously been served upon the accused.

(d) The accused or his attorney may demand the testimony of the

person signing the report, by serving a written demand showing cause upon the prosecuting attorney within seven days from receipt of the report.

(e) A report issued for use under this section must contain notice of the right of the accused to demand the testimony of the person signing the report.

* Sec. 16. AS 12.55.035(b)(1) is amended to read:

(1) $75,000 for murder in the first or second degree, [OR] kidnapping, or misconduct involving a controlled substance in the first degree;

* Sec. 17. AS 12.55.125(b) is amended to read:

(b) A defendant convicted of murder in the second degree, [OR] kidnapping, or misconduct involving a controlled substance in the first degree shall be sentenced to a definite term of imprisonment of at least five years but not more than 99 years.

* Sec. 18. AS 12.55.155(c) is amended by adding new paragraphs to read:

(19) the defendant is convicted of an offense specified in AS 11.71 and the offense involved the delivery of a controlled substance under circumstances manifesting an intent to distribute the substance as part of a commercial enterprise;

(20) the defendant is convicted of an offense specified in AS 11.71 and the offense involved the transportation of controlled substances into the state;

(21) the defendant is convicted of an offense specified in AS 11.71 and the offense involved large quantities of a controlled substance;

(22) the defendant is convicted of an offense specified in AS 11.71 and the offense involved the distribution of a controlled substance that had been adulterated with a toxic substance.

* Sec. 19. AS 12.55.155(d) is amended by adding new paragraphs to read:

(14) the defendant is convicted of an offense specified in AS 11.71 and the offense involved small quantities of a controlled substance;

(15) the defendant is convicted of an offense specified in AS 11.71 and the offense involved the distribution of a controlled substance, other than a schedule IA controlled substance, to a personal acquaintance who is 19 years of age or older for no profit;

(16) the defendant is convicted of an offense specified in AS 11.71 and the offense involved the possession of a small amount of a controlled substance for personal use in the defendant's home.

* Sec. 20. AS 28.35.030(a)(1) is amended to read:

(1) while under the influence of intoxicating liquor, or any controlled substance listed [DEPRESSANT, HALLUCINOGENIC, STIMULANT OR NARCOTIC DRUGS AS DEFINED] in AS 11.71.140 - 11.71.190 [AS 17.10.230-(13) AND AS 17.12.150(3)];

* Sec. 21. AS 28.35.030 is amended by adding a new subsection to read:

(e) In a prosecution under this section alleging that the accused operated a motor vehicle while under the influence of a controlled substance, as defined in AS 11.71.140 - 11.71.190, or under the influence of alcohol and a controlled substance and the controlled substance is available by prescription, it is prima facie evidence of the accused's knowledge of the effects of the controlled substance that he was warned by a doctor, pharmacist, or other licensed practitioner of those effects. A label placed on the prescription bottle recommending or warning that the person should not operate a motor vehicle or other equipment after ingesting the controlled substance is a warning which satisfies the requirements of this subsection.

* Sec. ~~22.~~ (21) (a) Prosecution for a violation of law occurring before

January 1, 1983, is not affected or abated by this Act. Violation of any law repealed by this Act may still be prosecuted and brought to a final determination in accordance with the laws and regulations in effect at the time of the violation.

(b) This Act does not apply to a civil seizure, forfeiture, or injunctive proceeding commenced before January 1, 1983.

(c) Administrative proceedings pending under a law repealed or amended by this Act shall be continued and brought to a final determination in accordance with the laws and regulations in effect before January 1, 1983.

(d) The Board of Pharmacy shall permit persons who own or operate an establishment engaged in the manufacture, distribution, or dispensing of a controlled substance to register before January 1, 1983.

(e) This Act applies to violations of law, seizures, forfeitures, injunctive proceedings, administrative proceedings, and investigations which occur after December 31, 1982.

* Sec. 22. Orders issued and regulations adopted under a law amended or repealed by this Act and in effect on January 1, 1983, and not in conflict with this Act continue until amended or repealed.

* Sec. 23. The members of the Controlled Substance Advisory Committee first appointed under AS 11.71.100(a)(5) - (8) shall serve terms as follows:

(1) one member for two years;

(2) two members for three years; and

(3) two members for four years.

* Sec. 24. AS 17.10, AS 17.12, and AS 17.15 are repealed.

* Sec. 25. This Act takes effect on January 1, 1983.

John R. NeedHam - Anch. Police Dept. useful tool to law enforcement comm.
preference that mari. would be re. [illegible]

act adequate - controlled substance schedule adequate
Standards of schedule good - committee might twice a yr. / 11-71-120 -
Scheduling going to require work on [illegible] parts probably a chemist -
11-71-180 schedule 5 complex which outlines narcotics -

Rhonda will answer pg - 80 line 6 - and line 8

pg 33 - line 26 - (20) does it include purchase

pg 31 line 26 - through line 3 pg 32

Pg 49 through Chapter 35 -

therapeutic research act - Marijuana in vegetable form - simply put means smoking Marijuana
17.35.060 change or ~~remove~~ Mari. - 17.51.040
creating a problem that could escalate in to a lot of cancer patients in state -

pg 7 line 2 - immediate control - ~~is~~ change definition
clarify immediate control -

fiscal note pg - 53 fix burden on dept of public safety - understaffed - will have an impact - due to lack of manpower

Should be complied with

Lynda Adams - parent -

sex assault. Alcohol

Jan. 19-83
HB 180

Officer Sterling Supports HJ 22

Our bill - [illegible] bail

H.B 576 - Supports bill - one or 2 items - young
Victim - old

H.B. 473 - Supports -

HB 573 - Supports

HB 575 - Supports

H.B 577 - Supports

H.B 578 - Supports a bill of that nature

Subsection AS.11.41.230(a) new subsection 4 new class C. felony -

AS 11.56.700(a) subsection 4 Class A Misdem - elude a police officer

H.B. 344 fingerprint bill 4.2 Million still a good price - 100% supports

H.B. 572 - does not support -

HB

184

Original sponsor: Martin

IN THE HOUSE BY THE JUDICIARY COMMITTEE

CS FOR HOUSE BILL NO. 184 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWELFTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act authorizing convening special sessions of the legislature at any location in the state."

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

* Section 1. AS 24.05.100 is amended by adding a new subsection to read:

(b) A special session may be held at any location in the state. If a special session called under (a)(1) of this section is to be convened at a location other than at the capital, the governor shall designate the location in his proclamation. If a special session called under (a)(2) of this section is to be convened at a location other than at the capital, the presiding officers shall agree to and designate the location in the poll conducted of the members of both houses.

Legislative committee report. — For report on ch. 53, SLA 1973 (CSHB 382), see 1973 House Journal, pp. 792, 885.

Sec. 24.05.087. Termination of interim committee membership. When a member of the legislature who serves on a committee created during a between session interim by either house or its presiding officers, the Legislative Council or the Legislative Budget and Audit Committee, files a declaration of candidacy for an elective office other than that of member of either house of the legislature, and he has not resigned from membership on the interim committee, his interim committee membership terminates on the date of filing. (§ 5 ch 11 SLA 1975)

Article 2. Meeting and Organization.

Sec. 24.05.090. Regular sessions. The legislature shall convene at the capital each year on the second Monday in January at 10:00 a.m. Pacific Standard Time; however, following a gubernatorial election year the legislature shall convene on the third Monday in January at 10:00 a.m. Pacific Standard Time. Except as provided in this section, each legislature shall have a duration of two years and shall consist of a "First Regular Session" which shall meet in the odd-numbered years and a "Second Regular Session" which shall meet in the even-numbered years and any special session or sessions which the governor or legislature may find necessary to call. (§ 9 ch 157 SLA 1959; am § 2 ch 91 SLA 1969; am § 1 ch 8 SLA 1973; am § 2 ch 143 SLA 1975)

Effect of amendment. — The 1975 amendment substituted "second Monday" for "third Monday" in the first sentence, added the language beginning "however, following a gubernatorial election year" to the end of that sentence, and added "Except as provided in this section" to the beginning of the second sentence.

Am. Jur. and ALR references. — 49 Am. Jur., States, Territories and Dependencies, §§ 29, 49, 50; 50 Am. Jur., Statutes, §§ 46 to 48.

Power of legislature or branch thereof as to time of assembly and length of session, 56 ALR 721.

Sec. 24.05.100. Special sessions. The legislature may hold a special session not exceeding 30 calendar days in length. The special session shall be called in either of the following ways.

(1) The governor may call the legislature into special session by issuing a proclamation at least 15 days in advance of the convening date stated in the proclamation. At a special session called by the governor,

legislation is limited to the subjects designated by the governor in his proclamation or to the subjects presented by him, and to reconsideration of legislation, if any, vetoed following a regular session of that legislature.

(2) The legislature may call itself into special session if two-thirds of the membership responds in the affirmative to a poll conducted by the presiding officer of each house. Each presiding officer may initiate a poll by their joint agreement, and each shall initiate a poll upon the request of 25 per cent of the membership of each house, expressed in writing and signed by those members. When two-thirds of the membership to which the legislature is entitled responds in the affirmative, the president of the senate and speaker of the house shall jointly announce the result of the poll and a date for the convening of the special session. If one of the presiding officers is deceased, has resigned or is incapacitated, the presiding officer of the other house may conduct the poll of the members of both houses. (§ 10 ch 157 SLA 1959; am § 1 ch 67 SLA 1975)

Effect of amendment. — The 1975 amendment added the language beginning "and to reconsideration of legislation" to the end of the second sentence of paragraph (1).

Am. Jur. references. — 49 Am. Jur., States, Territories and Dependencies, §§ 49, 50; 50 Am. Jur., Statutes, §§ 46 to 48.

Sec. 24.05.110. Joint sessions. The houses of the legislature shall convene in joint session when required or authorized by the constitution and the rules of the legislature. (§ 11 ch 157 SLA 1959)

Sec. 24.05.120. Rules. At the beginning of the first regular session of each legislature, both houses shall adopt uniform rules of procedure for enacting bills into law and adopting resolutions. The rules in effect at the last regular session of the immediately preceding legislature serve as the temporary rules of the legislature until the adoption of permanent rules. (§ 12 ch 157 SLA 1959; am § 6 ch 100 SLA 1963)

Sec. 24.05.130. Journal. Each house shall keep and publish a daily journal of its proceedings. The journal shall reflect the essential elements of the business transacted and the messages and communications received from the governor and the other house. (§ 13 ch 157 SLA 1959)

Am. Jur. reference. — 49 Am. Jur., States, Territories and Dependencies, § 37.

Sec. 24.05.135. Record of proceedings. (a) All floor sessions of each house shall be electronically recorded. However, each house may suspend this recording requirement by concurrence of two-thirds of its members when there is an equipment failure or when no recording equipment is available as a result of a natural disaster or other exigency.

TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. HOUSE BILL NO. 184

Title An Act authorizing an advisory vote re convening special sessions of the ~~legislature~~ legislature at any location in the State Date 3/24/82

Requested by: House State Affairs Committee

II. FISCAL DETAIL

Agency Affected Legislative Affairs Agency

Program Category Affected General Government

BRU, Program, Or Subprogram(s) Affected Session

(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-					

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS -0-

FULL TIME						
PART TIME						
TEMPORARY						

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

Funding for all special sessions is provided by a special appropriation made by the legislature specifically for that special session or is paid with monies from regular legislative budget for that year and replaced later by appropriation by the legislature. Legislative Affairs Agency has never anticipated or budgeted in advance for special sessions.

IV. DATE 3/24/82

PREPARED BY Wally Harrison, Director

AGENCY Legislative Affairs Agency

PHONE 465-3860

Original: Legislative Finance

cc: Budget and Management

Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/81)

March 6, 1982

HB67 - Phillips doesn't like it

- Legislature can do it

May use a portion of Heritage Fund for Capital projects in Alberta

184 — O'Connell — amend statute

CS HB184 → amend statutes

Holsten & Clarkson's bills → a couple of yrs

Meeting

May look
revenue generating →
good intention

investment scheme — 4 yrs for pension fund.

Language → can it be phrased to
specify paybacks.

Special Session Outside Juneau May Be Illegal

JUNEAU (AP) — The state attorney general's office says there could be "a legal question" if this summer's special legislative session is conducted anywhere other than Juneau.

Assistant Attorney General Wil Condon said Gov. Jay Hammond was told the special session should take place in Juneau.

"We told them that if you don't, there's going to be a legal question," Condon said.

Condon said state statutes require regular sessions to be in the capital city but do not specify where special sessions are to be conducted.

Laws enacted during territorial days specified any legislative session must be in the capital, he said.

Hammond said Friday he would call a special session for Aug. 6 to deal with state employee pay raise issues.

He told a group of Alaska editors and publishers meeting in Girdwood last weekend he was considering a request by some legislators to have the special session in Anchorage.

Hammond's press secretary Gladys Reckley said the governor's office had checked on available hotel space in Juneau beginning Aug. 6.

A survey of Juneau's three big hotels indicated there would be space available at two of the businesses, but commitments would be needed soon to reserve space.

The special session is scheduled to begin the day after Juneau's Golden North Salmon Derby.

Special session

IF THE GOVERNOR won't call a special session of the Alaska Legislature to repeal state income taxes, cleanly and simply, the legislators should convene on their own. They have the constitutional authority to call themselves into special session.

At stake is a decision on whether Alaskans are going to get a full tax repeal or be stuck with something less.

Unfortunately, it's beginning to look as though Gov. Jay Hammond is willing to settle for relief — rather than repeal — in the wake of Judge Ralph Moody's decision that the tax repeal plan enacted by the 1980 Legislature is unconstitutional.

That law, as everybody knows, provided that any Alaska resident who filed state tax returns in the last three years was exempt from Alaska's personal income tax, beginning with this calendar year. As far as most Alaskans are concerned, their taxes were repealed — period.

The law also provided that those who filed returns for the past two years had to pay only one-third of the normal tax assessment, while those who filed one year were to pay only two-thirds. Newcomers, obviously, had to pay the full rate during their first year of residency.

The court said that is unequal treatment and constitutionally flawed. The matter is on appeal, and the outcome is uncertain.

MR. HAMMOND, however, says nobody should worry.

After all, 1980 tax returns don't have to be filed until 1981 and meanwhile, absent a court order to the contrary, he says he has directed the commissioner of revenue to allow employers to continue withholding taxes on a scale called for in the 1980 act.

He says the 1981 legislature can deal with the matter before people have to file their 1980 returns. Ergo, no problem.

Besides, he says, there will be a tax relief initiative on the November ballot and the people will have an opportunity to pass that if they want it. And if that passes, presumably, there won't be a need for the '81 legislature to act at all. The trouble is that the initiative doesn't repeal the state income tax or give total relief.

Originally, Mr. Hammond's attorney general declared the initiative sponsored by Rep. Dick Randolph, the Fairbanks Libertarian, ineligible for the ballot because the tax repeal law substantially carried out its provisions. Now, it's back on the ballot, even though it doesn't provide what people want and expect.

Mr. Randolph's initiative — backed at a time when it appeared the legislature and the governor were going to do nothing about cutting taxes — provides that an individual's state income tax shall be 1 percent of his or her federal taxes. A sharp cut, to be sure, but less than repeal.

MR. RANDOLPH, in fact, isn't backing the initiative any more. He now wants to go all the way and simply repeal the income tax.

That's precisely what should be done. No waiting for a November ballot. No worrying about how the Supreme Court will rule. No argument about whether Gov. Hammond wants tax relief instead of tax repeal. And certainly without fiddling around waiting for the 1981 Legislature to take action — which could means months of foolishness.

A special session of half a day is all that's required. Clean and neat and simple.

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. House Bill No. 184 - "An act authorizing an advisory vote by
Title the qualified voters of the State on convening special sessions of the
legislature at any location in the State; and providing for an effective date"
Requested by House Judiciary Date 2/2/82

II. FISCAL DETAIL
Agency Affected Office of the Governor
Program Category Affected Division of Elections
BRU, Program, Or Subprogram(s) Affected Division of Elections
(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-		

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

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

No additional fiscal impact would occur with the passage of House Bill No. 184

IV. DATE 2/3/82 PREPARED BY Danith D. Arnoldt Danith D. Arnoldt
AGENCY Office of the Governor/Division of Elections
PHONE 586-6181

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

HB

199

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. CSHB 199 (2d Resources)
Title An Act relating to guiding; and providing for an effective date.
Requested by Governor Date 3-1-82

II. FISCAL DETAIL
Agency Affected Department of Commerce & Economic Development
Program Category Affected Public Protection
BRU,, Program, Or Subprogram(s) Affected Regulation & licensing of professions; board & admin.
(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		6.8	7.5	8.2	9.0	9.9
300 CONTRACTUAL		3.0	.0	.0	.0	.0
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS,CLAIMS,ETC.						
TOTAL		9.8	7.5	8.2	9.0	9.9

FUNDING (Thousands of Dollars)

GENERAL FUND		9.8	7.5	8.2	9.0	9.9
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

FULL TIME		0	0	0	0	0
PART TIME						
TEMPORARY						

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

TRAVEL - 10% inflation factor projected.

Annual meeting in Nome area, to address concerns of guides in Northwestern region of the state; 7 members and 1 department staff, travel costs plus 5 days per diem @ $80/day:

Travel	$ 3,590
Per diem	3,200
	$ 6,790

CONTRACTUAL -
Reprinting and distibution costs of new guide board statute and regulation booklets, applications and renewal forms. (one time cost FY'83) - $2,000.00
In anticipation of special guide license regulations for guiding of marine mammals, additional costs of regulation public notices and teleconference public hearings estimated in FY'83: $1,000.00

IV. DATE March 3, 1982 PREPARED BY Marjorie Odland
AGENCY Division of Occupational Licensing
PHONE 465-2535

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

Phone (907) 688-2484

Box 71
Chugiak, Alaska
99567

Alaska Trophy Safaris

WITH

Dennis Harms

March 18, 1981

Mr. Fred F. Zharoff, Alaska State House of Representatives
Pouch V, Juneau, Ak. 99811
Mail Stop Number 3100

Dear Mr. Zharoff,

The purpose of this letter is House Bill 199, the Governor's Guide Bill.

It is extremely important that the guiding industry have a good sound framework for ethical guides to work in. The Governor's Guide Bill would provide this.

Some changes should be made to make this bill a bill that will stand the test of time and the courts.

No. 1 Our legal system is based on hundreds of years of precedents and safeguards. I believe in a strong system, and that if a guide breaks a law he should be punished, but this can never be a function of the Board. That is the function of the Courts, and we will never have a satisfactory system in Alaska until this is understood.

No. 2 The transporter loophole must be closed. There are many "fly-by-night" outfits operating that have all the advantages of a guide, plus can hunt anywhere, but have none of the responsibilities of the guide when operating under the transporter law. I am not referring to legitimate air taxi businesses.

No. 3 There is extremely strong prejudice among the people of the industry against one or two past Guide Board Members for cause, and it would be good to force removal of those members or appoint an entirely new Board.

I hope you can put a good Guide Bill together that will be here two decades from now.

Best of luck!

Sincerely,

Dennis Harms

Dennis Harms
Alaska Master Guide

Alaska
Professional Hunters Association, Inc.

P. O. BOX 4-1932
ANCHORAGE, ALASKA 99509

Phone (907) 276-6914

To: House Resources Committee

Ref: APHA Testimony on H.B. 199, submitted March 16, 1981 by Lynn Castle

I should like to correct a portion of my testimony which involved my answer to Representative Barnes's question about the APHA membership.

I was asked if Ron Hayes had been, or is a member or on the board of directors of the association. I replied that he had been, but had resigned his membership upon indictment of certain charges pending at this time. This information is incorrect. Ron Hayes did not renew his membership in either 1979, nor in 1980 or 1981. He was a member for several years prior to 1977. During the period that he was a member in good standing his guiding record showed no arrests, convicitons or other pending legal problems associated with guiding activity insofar as the association could determine.

It should be noted perhaps, that at the annual meetings of APHA in December, 1980 the APHA Board of Directors unanimously adopted a resolution, which subsequently received widespread approval from the membership that, "in the event one of the association members is indicted for one of the following major game or guiding violoations: 1 - Hunting same day airborne, 2 - Waste of a wild food animal (waton waste), 3 - Hunting in an area closed by State law or regulations, 4 - Hunting during a closed hunting season, and 5 - Hunting in another guide's exclusive assigned area; that his membership be automatically suspended pending adjudication of the alledged violation by the courts."

Thank you,

Lynn M. Castle
President, APHA

Alaska
Professional Hunters Association, Inc.

P. O. BOX 4-1932
ANCHORAGE, ALASKA 99509
Phone (907) 276-6914

To: House Resources Sub-Committee on House Bill 199 (Guide Bill)

Ref: Recommended ammendments from the Alaska Professional Hunters Association

page 1, lines 19 &20 -- Delete (Not more than), and require that Three members of the board shall be..... etc.

page 2, line 4 -- Add after license, or assignment and/or modification of an exclusive guide area.

page 2, line 25 -- Delete (limit), change word to determine.

page 2, line 28 -- Delete (limiting), and change word to determining

page 3, lines 21 & 22 -- Delete words (shall), and change word to may

page 5, line 23 -- Change to read, (3) a licensee has been convicted of any two of the following violations within

(remark: this is one of the changes we are MOST interested in seeing made. The bill is tight enough already without mandatory revocation upon conviction of only one violation. We would concur with language which provided a 'may' option for one violation, and a 'shall' option for two of the major violations as listed under sub-section (3) of this section.)

page 7, lines 19 & 20 -- Delete entirely
(remark: this requirement is no longer necessary now that Guide Board has successfully eliminated sub-contracting of areas, only works as a hardship on many guides, particularly those involved in boat crew operations such as walrus hunting, and/or lodge ownership. An alternative to this deletion would be adoption of the Advisory Committee's recommendation for changing the qualifications for a Class A Assistant Guide license. APHA would support either approach, but we do NEED one or the other.)

page 8, lines 21, 22, & 23 -- Delete sub-section (B) as written, and insert, includes the providing and/or contracting to provide for packers, camp helpers, temporary camps, hunting equipment or other services in the hunting area to non-resident hunters for monetary or material remuneration. Nothing in this definition shall preclude rental of permanent overnight cabins existing prior to July 1, 1981.

(remark: this definition would appear an equitable solution to the

problems identified during the House Resources Committee Hearing of H.B.199, March 16th, and APHA endorses such language.)

Remark: APHA has no conflict with any of the other proposed ammendments submitted by the Guide Board Advisory Committee, however the association has taken no official stand on each of those ammendments. We would like to see the deletion of requirements to possess a fishing license, as well as deletion to referral to violations of sport fishing regulations in the bill for fishing really has nothing to do with the guide bill. But we can certainly accept these items without hardship. I've tried to limit our recommended ammendments to those items of particular concern to association and industry members.

Thank you for your consideration of our industry.

Respectfully submitted,

Lynn M. Castle, President APHA

Alaska
Professional Hunters Association, Inc.

P. O. BOX 4-1932
ANCHORAGE, ALASKA 99509

Phone (907) 276-6914

ALASKA GUIDING INDUSTRY FACTS

(Summary of data obtained from a sample of 133 returned questionnaires which were mailed to a total of 433 master and registered guides licensed during the 1977 and 1978 calendar years. Creditability of these figures is good as evidenced by comparing protions of sample data to Department of Revenue and Department of Commerce figures for this period. Data was originally obtained as part of an Alaska Professional Hunter's Association project to determine the dollar value of the guiding industry to the State of Alaska. Licensing figures were obtained from the Alaska Department of Commerce and Alaska Guide License and Control Board.

Since 1977-78 we have observed an increase in the number of guiding contracts (up 15 - 20%), however the average number of animals taken as result of each of these contracts has dropped markedly subsequent to increasingly restrictive and non-over lapping game seasons. For instance, August hunts for sheep have traditionally included caribou and/or moose; this is no longer possible as moose and caribou seasons do not open until September in most areas of the state today. The following figures have been projected from the 1977-78 data, conservatively assuming that guiding revenues within the overall state have remained relatively constant other than an inflation factor which appears to average between 40 and 60 percent. I've conservatively used a 40% factor to relate relative values for 1981.)

Number of Registered and Master Guides licensed in 1980 -- 366

Number of Class-A Guides licensed in 1980 -- 109

Number of Assistant Guides licensed in 1980 -- 575

Number of Registered/Master guides expected to file one or more guiding contracts (that is expected to be active) in 1981 year -- 220 to 260

Approximately 55% of active Registered/Master guides list guiding as full-time or major profession

Approximately 45% of active Registered/Master guides list guiding as part-time or secondary profession

Approximately 19% of guiding operations gross less than $14,000 in 1980

Approximately 28% of guiding operations gross $14,000 to $35,000 in 1980

Approximately 28% of guiding operations gross $14,000 to $35,000 in 1980

Approximately 38% of guiding operations gooss $35,000 to $105,000 in 1980

Approximately 15% of guiding operations gross more than $105,000 in 1980

Average gross of all operations in 1981 -- $65,261

Industry reports clients spend additional monies within state for travel, hotel, souvenirs, taxidermy preparation, etc. equal to approximately 28-30% of guiding fees (exclusive of license fees and travel to and from Alaska)

Each Master/Registered guide operation supports an average of 7.5 employees

Each Master/Registered guide operation supports therefor a total average of 31.6 Alaskans directly dependent upon guiding income for all or a portion of their livelihood (i.e. family members and dependents). Thus some 8,216 Alaskans receive direct benefit from the guiding dollar from within the guiding industry annually; questionnairs reflected comments which would place this figure some what higher than this figure, or approximately 12,000, however if we take into account that in any given year not all 'active' guides are active owing to the provisions of the guide law which allow a guide to be listed as 'active' if he hunts only every other year., Thus, the 8,216 figure more accurately represents an annual figure.

Estimated (conservative for we have used the lower inflation factor) dollars guiding industry brings into Alaska exceeds 22.8 million dollars (250 active guides in any given year times average gross income plus related expenditures reported at 28% of guiding gross)

License revenue dollars guiding industry brings into Alaska exceeds 1.5 million dollars. These figures are somewhat lower than the total non-resident license and tag revenues reported by the Department of Revenue figures owing to involvement by non-guiding, primarily air-taxi-guiding operations operating within the State.

(figures prepared by Lynn Castle and the board of directors of the APHA, with the help of the Anchorage office of the Guide License and Control Board, and Department of Commerce figures)

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE - AMENDED

I. REQUEST
Bill/Resolution No. CSHB 199 (Res)
Title An Act relating to guiding; and providing for an effective date
Requested by Resources Committee Date 4-23-81

II. FISCAL DETAIL
Agency Affected Department of Commerce & Economic Development
Program Category Affected Public Protection
BRU, Program, Or Subprogram(s) Affected Regulation & licensing of professions; admi boards, and inves igatio
(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	14.4	15.8	17.4	19.2	21.0	23.1
300 CONTRACTUAL	29.9	32.6	35.5	38.7	42.2	45.9
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS,CLAIMS,ETC.						
TOTAL	44.3	48.4	52.9	57.9	63.2	69.0

FUNDING (Thousands of Dollars)

GENERAL FUND	44.3	48.4	52.9	57.9	63.2	69.0
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

FULL TIME	0	0	0	0	0	0
PART TIME						
TEMPORARY						

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

TRAVEL - 10% inflation factor projected.

Travel and per diem for guide board members (7) and department staff (1) to hold meetings, regulation hearings on marine mammals, and administer special guide license examinations: 1 in Nome, and 1 in Hope, AK; 5 days each @ $80/day per diem plus travel costs

		Travel	Per diem
Total - $14,380	Nome	3,590	3,200
	Hope	4,390	3,200
		$ 7,980	$ 6,400

CONTRACTUAL - 9% inflation factor projected.

Reprinting and distribution of amended guide board statute booklet and application forms for special guide license (marine mammals) $ 2,000 (cont...

IV. DATE January 28, 1982 PREPARED BY Marjorie Odland, Regulations Specialist
AGENCY Division of Occupational Licensing
PHONE 465-2535

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

CSHB 199 contractual services continued. . .

Professional Services Contract - contract for one person to travel to Arctic villages for purpose of holding seminars for special guide license applicants (marine mammals), explaining examination process, licensing procedures and the guiding laws. Estimate a 30 day contract to include salary, travel costs, per diem and limited expenses:

Salary, 30 days @ $150/day	4,500
Per diem, 30 days @ $80/day	2,400
Travel, 4 trips between Nome and Juneau @ approx. $591/trip	2,364
Total	$ 9,264

Violation Hearings - Costs estimated from past guide violation hearings held in December 1981. Anticipate 10 marine mammal guide violations per year. In estimating one day hearings, the following costs are considered:

*Average (6) hour days.

Hearing Officer @ $75/hour	$ 450.00
Court Reporter @ $25/hour	150.00
10 exhibits, .45 ea.	4.50
3 witnesses, 1/2 day ea., @$12.50	37.50
1 expert witness, 2 hrs, @ $150/hr	300.00
Transcript, avg. 210 pages @ $4.50/page	945.00
	$1,887.00
	X 10
	$ 18,870.00

** Other costs such as transportation and per diem for witnesses, depositions, and other special handling can occur and increase the daily cost.

March 2

cs HB 199 (2nd Reg.)

Ed Klein:

p. 6, line 23 –

loop holes →

p. 5, line 12-15

cap. H →

Liza McCracken –

Loesche case – early 1970's – distinction between criminal & remedial sanctions –

John Graybill – early 70's – distinction betw. criminal agency purposes & civil sanctions –

Introduced: 2/20/81
Referred: Labor & Commerce and Judiciary

IN THE HOUSE

BY ABOOD, BARNES, BYLSMA, MARTIN, METCALFE AND SUTCLIFFE

HOUSE BILL NO. 206

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWELFTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the termination of rental agreements of mobile home park dwellers and tenants."

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

* Section 1. AS 34.03.225(3) is amended to read:

(3) the mobile home dweller or tenant has violated a provision of the rental agreement or lease signed by both parties and not prohibited by law including rent, terms of agreement, [or other provisions covering the rights and obligations of the party] [A REASONABLE RULE OR REGULATION PROPERLY ESTABLISHED BY THE OPERATOR]; and

Ira Walker - Mayflower Mobile Home.
Anita Thompson - Top Ten Trailer Court
Paul Fry - Tenant & Mobile Hom

Article 6. Landlord Remedies.

Section
225. Limitations on mobile home park operator's right to terminate

Sec. 34.03.225. Limitations on mobile home park operator's right to terminate. A mobile home park operator may evict a mobile home or a mobile home park dweller or tenant only for one of the following reasons:

(1) the mobile home dweller or tenant has defaulted in the payment of rent owed;

(2) the mobile home dweller or tenant has been convicted of violating a federal or state law or local ordinance, and that violation is continuing and is detrimental to the health, safety or welfare of other dwellers or tenants in the mobile home park;

(3) the mobile home dweller or tenant has violated a reasonable rule or regulation properly established by the operator; and

(4) a change in the use of the land comprising the mobile home park or the portion of it on which the mobile home to be evicted is located; however, all dwellers or tenants so affected by a change in land use shall be given at least 90 days notice, or longer if a longer notice period is provided in a valid lease. (§ 5 ch 138 SLA 1976)

Legislative committee report. — For report on ch. 138, SLA 1976 (SCS CSHB 829 am S [re-engrossed]), see 1976 Senate Journal, p. 1368.

Sec. 34.03.240. Waiver of landlord's right to terminate.

Section is limitation on remedies of landlord. — Rather than giving a right or remedy to the tenant, this section acts as a limitation upon the remedies of the landlord. McCall v. Fickes, Sup. Ct. Op. No. 1335 (File No. 2611), 556 P.2d 535 (1976).

Rights which may be waived. — This section should be so interpreted that waiver of the "right to terminate" a rental agreement refers to rights which arise as a consequence of a breach, and does not concern rights of termination which exist regardless of whether or not a tenant breached a condition of the agreement. McCall v. Fickes, Sup. Ct. Op. No. 1335 (File No. 2611), 556 P.2d 535 (1976).

Right to terminate month-to-month agreement not waived. — Since a landlord always has the right to terminate the month-to-month rental agreement with the tenant, even without cause, by giving a month's notice, he does not waive this right by accepting the late rental payment. McCall v. Fickes, Sup. Ct. Op. No. 1335 (File No. 2611), 556 P.2d 535 (1976).

Sec. 34.03.270. Remedy after termination.

Landlord could bring action for forcible entry and detainer seeking restitution of trailer space from tenants. — See McCall v. Fickes, Sup. Ct. Op. No. 1335 (File No. 2611), 556 P.2d 535 (1976).

Quoted in McDowell v. Lenarduzzi, Sup. Ct. Op. No. 1242 (File No. 2413), 546 P.2d 1315 (1976).

HB

210

HOUSE RESEARCH AGENCY
Pouch Y
Juneau, Alaska 99811
465-3991

KEY WORD: Child Custody

Research Request No: 82-78

RESEARCH EVALUATION

TO: Representative Mike Davies

FROM: Duncan L. Read, Director

RE: Evaluation of Research Products

To assist us in improving the quality of our research services, we would appreciate your response to the following questions:

- Was the information unbiased?

- Did it provide answers to (or, at least, useful information on) all the questions you posed?

- Was the research completed and delivered to you in a timely manner?

- Was it clearly written?

- May we release this information to the public?

  |___| Now

  |___| Three months from the date of transmittal

  |___| At the end of the current legislative session

Please be assured that we will take your comments seriously in performing future research for you.

Please return to House Research Agency, Mail Stop 3100.

Thank you.

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

January 29, 1981

MEMORANDUM

TO: Representative Mike Beirne
Attention: Jody Sutherland

FROM: Christine Johnson and Carol Biggs, Research Staff

SUBJECT: Research Request 82-18
Child Custody and Visitation Enforcement

This memorandum is in response to your request for information regarding joint custody and enforcement of parental visitation rights in California, Oregon, and Washington. The relevent statutes from each state are attached, and the major provisions summarized below.

Joint Custody

In California, Oregon, and Washington, as in many other states, the courts have the authority to award custody of children to both parents jointly. In California and Oregon, state statutes expressly give the court this power. In Washington, the court is empowered to award custody as it sees fit, based on a determination of the best interests of the child.

At present, California is the only one of these three states which has enacted legislation pertaining to presumptive joint custody. Legislation regarding presumptive joint custody was introduced in the Oregon Legislature in 1979, and a bill is currently under consideration in the Washington House of Representatives.

California. California is unique among states with joint custody laws in that its statutes establish specific procedural guidelines for the court; in other states, the tendency has been to simply grant the courts the power to award joint custody or to imply the availability of joint custody by defining it.

California law states that custody shall be awarded in the following order of preference, depending on the best interest of the child: first, to both parents jointly; and second, to one of the parents. It is important to note that this provision does not create a presumption of joint custody; rather, it states the public's preference for joint custody awards.

California law presumes that joint custody is in the best interest of the child only when both parents have agreed to this award. The court has the right to deny joint custody even under these circumstances; however, it is required by law to state the reasons for the denial.

Where only one parent desires joint custody, California law requires that the court consider it equally with sole custody. If joint custody is not awarded, the court must again explain its rationale.

Legislation is currently pending in the California State Legislature which would make joint custody the presumption in all cases unless:

(a) the parents have agreed that custody should be awarded to only one of them; or

(b) the court finds one parent unfit.

Oregon. Currently, under Oregon law, the courts may award custody of children to "one party or jointly."

Oregon House Bill 2538, which was not enacted, would have created a disputable presumption that joint custody is in the best interests and welfare of the child. In contrast to the current California law, this proposal would have made joint custody the presumption in all custody cases, not just cases where the parents had agreed upon a joint custody arrangement. A copy of the legislation is attached for your reference.

Washington. As noted above, legislation regarding joint custody is currently under consideration in Washington. The proposed legislation is similar to California's in that joint custody would be a disputable presumption when both parents were in agreement, and would be considered equally with sole custody at the request of either parent. Unlike California's current law, however, the legislation would establish a stream-lined procedure for modifying existing orders to stipulate joint instead of sole custody. The bill is expected to be revised in committee within the next two days, and we will forward a revised version to you as soon as it arrives.

Enforcement of Parental Visitation Rights

Neither the National Council of State Legislatures nor the National Association of Commissioners for Uniform State Laws were familiar

with any model legislation on visitation enforcement. A staff person for the latter felt that there was a general trend among the states towards provisions for mediation or arbitration of visitation disputes.

The procedures for enforcement of visitation in California, Oregon, and Washington are briefly outlined below.

California. An individual who willfully denies visitation can be prosecuted under California Penal Code section 278.5. An individual convicted under this code may be punished by imprisonment for not more than one year and one day, a fine of not more than $1,000, or both.

According to Jack Trier, who is in charge of visitation enforcement for the Sacramento area, very few people are criminally prosecuted in California for failure to grant visitation. Typically, non-custodial parents who have been denied visitation file a complaint with Trier's office. The custodial parent is then notified by letter that a complaint has been filed; he or she is warned of the possible consequences, and advised to contact the other parent, a private attorney, or Trier's office. Trier estimates that 75% of the cases are resolved by him or his staff, acting, in his words, as "social workers", and persuading the parties to compromise. The remaining cases are referred to the Family Court system for resolution.

Since January of 1981, California law has required that visitation disputes be subject to mediation before being referred to court. The law states that:

> The purpose of such mediation proceeding shall be to reduce acrimony which may exist between the parties and to develop an agreement assuring the child or children's close and continuing contact with both parents after the marriage is dissolved. The mediator shall use his or her best efforts to effect a settlement of the custody or visitation dispute.

Cases which are mediated result in a legal court order; however, attorneys are not necessary, and the procedures are less formal than in an actual courtroom.

Trier noted that in the majority of the cases handled by his office, there are conflicts regarding visitation because the original custody order did not specify precisely when and under what circumstances the non-custodial parent may see the child. Trier said that orders typically state that the non-custodial parent has the right to "rea-

sonable visitation". Problems arise because the two parents cannot agree about what this constitutes. According to Trier, generally what is necessary in these cases is negotiation of a formal visitation schedule.

Oregon. In Oregon, a non-custodial parent must return to court in order to enforce his or her visitation rights. According to Judge Nachtigal, of the Circuit Court for the Portland area, an individual who is willfully denying visitation may be held in civil contempt of court, and sentenced to up to six months in jail. Often, however, the court will refer the parents to the Family Concilation Service which attempts to resolve their disputes out of court.

Under Oregon law, there are no criminal penalties for withholding visitation. Oregon law does permit the court to eliminate or reduce child support payments if visitation is being denied; however, according to Judge Nachtigal, very few judges, if any, exercise this power. The court also has statuatory authority to award attorneys fees to parents who are in violation of a visitation order.

Washington. The procedure for enforcement of visitation in Washington is very similar to Oregon's. An individual who is being denied visitation must file a motion with the court in order to have his or her visitation order enforced. The court may charge the custodial parent with contempt. Parents are frequently referred to Family Court for mediation.

By law, the court may order a party to pay a reasonable amount for the cost to the other party of maintaining and defending a visitation enforcement proceeding.

We hope this information is of use to you. Please don't hesitate to call us if you require anything further.

CJ/cj

Attachments:

California Statutes
Oregon Statutes
Washington

Superior Court
State of Alaska

FIRST JUDICIAL DISTRICT
415 MAIN STREET, ROOM 402
KETCHIKAN, ALASKA 99901

Chambers of
THOMAS E. SCHULZ, Judge

Jody Sutherland
House HESS Committee
Pouch V
Juneau, Alaska 99811

Re: Work draft paper - domestic violence
Committee Substitute for HB 210

Dear Mr. Sutherland:

I have finally had an opportunity to review the work draft paper concerning domestic violence and the change in the definition. I cannot support those amendments that change the definition of domestic violence to include endangering the welfare of a minor, criminal nonsupport, failure to permit visitation or contributing to the delinquency of a minor. Those are matters that are particularly not suited to being handled in the expedited procedures available under the domestic violence legislation and, even if they were, that legislation provides only a short term method of dealing with the situation which is already equally available under existing statutes.

The main failure, however, is that the domestic violence procedure does not provide a suitable climate to actually work toward solutions in situations involving danger to the welfare of a minor, failure to permit visitation or even contributing to the delinquency of a minor.

The domestic violence legislation has been quite effective, so far as I can tell, in providing a readily accessible vehicle to deal with immediate threats to the physical welfare of both adults and children living in the same household, but it is successful only in that it gives the parties breathing time relatively free from the threat of further violence in order to work toward more permanent solutions for their problems. I do not believe it is a

particularly effective vehicle for dealing with other types of domestic problems such as are contemplated in the work draft.

I had an opportunity to review HB No. 210 last year, and I have also had an opportunity to review the work draft paper which is titled "a committee substitute for HB 210."

I do not know why it is necessary to transfer the custody considerations from Title 9 to Title 20. It seems to me, however, that if it is advisable to change these custody considerations from Title 9 to Title 20, it would be advisable to transfer the whole divorce code from Title 9 to Title 20 so that it is together in one section of the code.

I do not have any particular concern with the factors set out in the bill on which the court is to base a custody decision except for Subparagraph (d), and the fact that the language "all relevant factors including" is apparently being stricken from the current legislation. The seven factors listed are, I believe, probably the more important of the factors considered by the court in a custody dispute, but I believe it is impossible to list all of the factors that are relevant in a particular case in a statute and I think the court should retain the jurisdiction to consider other factors that may be relevant in a particular case. My concern with Subparagraph (d) is that the conduct, marital status, social or cultural environment, and lifestyle of a parent almost always have a bearing on the well-being of the children involved. In short, I can conceive of only a few cases where those factors would not be of some importance to anybody trying to make a child custody award. In other words, I do not see the necessity for Subparagraph (d) at all.

I am a strong supporter of mediation in child custody disputes and I tend to support on the concept of shared custody between divorcing parents. I do not read this bill as mandating shared custody, at least as far as the draft of the committee substitute is concerned. Section 4 of HB 210 does say that there is a rebuttable presumption that shared custody is in the best interest of the child, and that language causes me some concern. First of all, I think it is simply inaccurate in many cases to say that there is any kind of a presumption that shared custody is in the best interest of the child. I think the proposed committee substitute handles the situation much better in Section 4 when it says that if there is a request for shared custody, the reasons for the denial must be stated on the record.

If I can be of further assistance, please let me know.

Thomas E. Schulz
Superior Court Judge

TES:me

Memorandum

Alaska Court System

RECEIVED
Office of the Presiding Judge
3rd Judicial District

TO: The Honorable Ralph E. Moody
Presiding Judge

DATE : March 19, 1931

FROM: Honorable J. Justin Ripley
Superior Court Judge

SUBJECT: HB 210

At the request of Mr. Szal, my comments as to HB 210. Although it is difficult to quarrel with the stated intent of the legislation - to involve both divorcing parents in a continuous process of child rearing - I have grave concerns over the wisdom of HB 210.

In my 5-1/2 years on the bench, of which 18 months were devoted nearly full time to domestic relations matters, I have been nothing to suggest that in the usual divorce/custody situations joint custody is appropriate or beneficial. I have approved joint custody on only a few occasions - approximately six times if memory serves - and in only two cases does it appear to have worked smoothly. Those two sets of parents were highly unusual for divorcing couples. The men were professionals, one a doctor. The women were exceptionally intelligent, very stable, well educated, highly insightful and probably in the 99th percentile in parenting skills. The divorcing spouses had retained or developed a high level of effective communication. In both situations the new and old households were permanently located in Anchorage, physically close together, and the children, by all reports, visited very congenially back and forth. I have no doubt but that even if legal and physical custody had been vested in one exceptional parent or the other, the contact and consultation with the non-custodial parent would have been just as free and wholesome. In short, I believe that those situations worked out well in spite of or aside from the joint custody Order, and not because of it.

By contrast, the majority of such arrangements simply create a continuing line of issues to litigate. If the custodial parent wishes to relocate, or if major changes are contemplated in choice of religious or academic training, to mention only a few problem areas, the joint custodial parent sees it as his or her right, not merely to advise and persuade, but to insist, even to litigate to enforce his views. Since at these hearings the central issue is the best interest of the child, they can seldom be limited merely to consideration of the move, the

copy to: Wm Hitchcock
3/23/81 /tpf

Adm. F-1
Rev. 2-73

religion or the school. The current contested issue must be litigated in the context of general parental fitness and effectiveness, and the hearing becomes, in effect, an attempt to change custody. If there is anything more damaging to a child than the breakup of its home, it is the continuing legal battle coupled with the possible shift in custodial authority. Any statutory scheme which increases the potential for continual contest and instability in the child's life should be viewed with distrust.

Failure to communicate is viewed as a principal cause of divorce. I am incredulous that anyone would believe that two former non-communicators might become able to jointly resolve issues of significance after divorce. In my judgment, HB 210, by reposing equal decisional authority in each parent, will foster litigation and work to the detriment of the child.

I suggest that the author of Section 1.(b) of HB 210, a legislative finding that the best interests of the child are served by parental implementation of child care agreements "outside of the court setting", is more hopeful than practical. Certainly it is desireable that divorcing parents confer and intelligently agree upon a plan truly for the child's benefit. Unfortunately, the reality of nearly all divorces is that the parties are motivated by other factors such as disappointment, bitter vengefulness, and considerations of property division and child support payments. A classic, extreme, but not unique example of this type of motivation I once observed was the parties' agreement to give custody of the four year old to mother and the five year old to father. Since this result was contrary to common sense, case law and all literature on the subject, I inquired after any unusual factors in support of it. There were none. Further, it became apparent that the mother wished to remarry, therefore wanting the Dissolution to be swiftly concluded, and the father wished to minimize his support obligation, threatening an extended custody battle if his demands were not met. Hence, the trade-off. Any legislation which increases the possibility that children's interests may become the subject of tactical negotiation aught to be viewed with great caution.

The legislative creation of a presumption favoring joint custody will tend to make child custody a point of tactical negotiation. It is unfortunately true that by the time a separation reaches the litigation phase the parties have at least one issue upon which agreement appears impossible. In the majority of cases, it is my experience that custody is not the issue. It is either property division or the amount

of child support, or both. From this I conclude the parties recognize that the Court will attempt to determine custody objectively, applying the best interest of child criteria as established by case law and statute. It further signifies that in the majority of cases one party is clearly more suitable than the other, and the parties recognize this as a matter of common sense, with the assistance of counsel. It should be remembered the present A.S. 9.55.205 provides that neither parent is entitled to a preference.

If a presumption favoring joint custody is created, the presumption is something which must be overcome by the party desiring sole custody, and who, even applying the standards of HB 210, should be entitled to sole custody in the best interest of the child. The threat to aggressively assert the presumption, to the Supreme Court if necessary, thus creates a bargaining chip, a point of tactical negotiation, out of the critical issue of child custody. I see a real danger that, in the often highly charged atmosphere of a divorce litigation, such a threat could be used to coerce inappropriate concessions from a parent who should properly receive sole custody but who felt unwilling or unable to bear the expense, stress and delay involved in the litigation necessary to overcome the presumption.

I recognize while raising the foregoing concern that proposed A.S. 25.20.090 can be read so as to require the formal agreement of both parents on the record before the Court can award joint custody, and arguably, the coercion could never occur. I disagree. A close reading of proposed A.S. 25.20.060 and 25.20.070 in conjunction with proposed 9.55.205(c) clearly indicates that the presumption can be placed at issue in all custody proceedings by petition of "either parent". Thus, even though no .090 mutuality exists, the issue keeps the law suit alive until a court eliminates it, perhaps on Motion for Summary Judgment, with the expenditure of additional time, energy and money. Again, this works two potential harms. First, aggressive counsel can increase the nuisance value of his unfit parent's settlement posture by the threat of unnecessary litigation. Second, in a divorce or dissolution in which the parties are not represented by counsel the unfit but dominant parent has an even greater coercive lever.

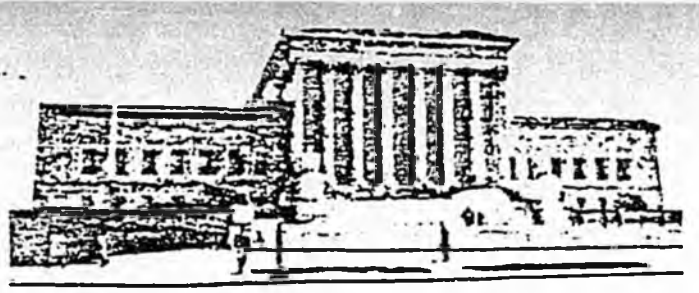
Because of the press of time I conclude without treating all possible deficiencies of the bill, such as its compliance with Art. IV §15 Constitution of the State of Alaska, the additional hatred and strife level that proposed 9.55.205(d) will

produce by making the child's "emotional or physical injury" the sole vehicle by which relevent background information as to a paren may be introduced, the absolute necessity of Courts to inquire fully for possible coercion, greatly extending divorce proceedings, the confusion proposed A.S. 25.20.150 may inject into existing statutes controlling termination of parental rights, and the enforcibility of proposed A.S. 25.20.170 as it cuts across federal and state privacy and confidentiality laws.

House Bill 210 is not necessary and it is potentially very harmful to children of separating parents. It is unnecessary because our existing system of laws already allows for an award of joint custody, which is seldom requested, seldom granted, and even less often functional. The potential harms to children are manifold, but particularly so because experience tells us that, by encouraging contentiousness and not compromise and adjustment between parents, the turmoil surrounding the divorce may continue, even to requiring a change of custody to one party or the other, with obvious unsettling of the child.

As one analyzes HB 210, one is struck with the wisdo of our present scheme of custody statutes and case law. There is a mechanism, through the courts continuing jurisdiction, to modify the custodial arranaments if the child is in danger of harm, or if a change in circumstances warrants it, but by requiring a high threshold for modification of custody decrees the temptation to contest disfavored parenting decisions simply out of preference is greatly diminished. Not so with joint custody.

Members of the family law section of the Anchorage Bar Association request that the Court's spokesman join with them in requesting that hearings be conducted on HB 210 in Anchorage. I concur. Moreover, if it is thought to be appropriate, I would be willing to appear to testify in Juneau, in an annual leave status and at my own expense if necessary.



FAMILY LAW REFORM AND JUSTICE COUNCIL OF ALASKA, INC.

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

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

FAIRBANKS - BOX 73256
KETCHIKAN - BOX 7176
SITKA - BOX

March 21, 1981

Representative Don Clocksin
Chairman HESS Committee
Pouch U
Juneau, Alaska

Dear Mr. Chairman and Members of the Committee:

I am writing this letter to recommend a DO PASS recommendation from this committee concerning HB 210 a joint custody bill before you.

I had planned on testifing in person before you but we only learned of the hearings last Friday. With more time I would share the technical research I have from professionals involved in this area that includes numberous reports and studies, all in favor of the concepts reflected in the bill you are considering. Assuming you will have a sample of technical data from Representative Rogers, I will offer this more personal input based upon my own experience as an addvocate of divorce reform organizations and from the perspective of someone who have been there.

I litigated my own children's custody for almost six years in the existing advesary atmosphere of the Alaska Superior Court. That battle has taken me to the Alaska Supreme Court 5 Times and to the United States Supreme Court once. In the process of all this my ex-wife and I each spent in excess of 50,000 dollars. What was the end result?

In the interim my family was destroyed as every sacred detail of the eight and one half years my wife and I spent together was slowly and cruely presented to the court in the form of pleadings, reports and testimony. Before the dispute began, the one thing we agreed on was that we were both very good parents and loved our children. By the time we were done, one reading the pleadings would have thought the court was dealing with a couple psycopathic, child abusing parents that should bave been locked away from society and their children years before. Of course that is all part of the game necessary when playing child custody dispute in the advesary system. Regardless of the fact Alaska is a no fault state, the decision in the courtroom will get down to who does the judge think is the better person based upon his own morality. All attorneys know this and proceed accordingly.

The attorneys involved were nice people with children of their own and were simply doing their job.

But the sad part is the parents involved take the allegations and pleadings seriously and very personally. By the time it is all over they will be alienated from each other to the point it will be impossible to discuss any issue about their children constructively or objectively for years.

At the end of the initial round of legal games, the hearing that occupied about three weeks in total, the findings of fact of both the Superior Court and the Supreme Court were as they should be and are in most cases; we were both very fit parents and in fact, exceptional parents, and either of us would be a good choice to raise the children. The children were shuffled back and forth to my custody and then hers serveral times by court order, through our legal manuvers. Each time one of us won or lost custody the other was forced to lauch a new legal campaign with new strategy.

Everything we did or said had to be evaluated in terms of how it would affect our case. Every achievement or failure of our children was a weapon to use in the next hearing, one way or another.

How did all this affect our children? As the years went by they learned more about the supreme courts of this country than most adults ever know. They played Supreme Court like most children play dolls and trucks. They became intensley aware of the loyalty battle that was going on and the legal need both of their parents had for them to tell all the strangers who had become involved in their childhood that they wanted to live with Mom or Dad. Although the preference of the child is not determative in itself, all attorneys know it is a big, big, plus that he and his client need.

So as the battle went on both my ex wife and I tormented our children and robbed them of most of their childhood. They are now 11 and 13. We did this out of love and a sincere belief held by both of us that the children would be better off with us.

After each legal victory or loss, the attorneys, social workers and the judge went home to their routine life and for most of them to their families. They had dinner just as the night before and they all had a good nights sleep to begin another normal day. What about us? I still have few days go by that I do not reflect on one of the many hearings there were or the emotions that were involved. Six years later, here I am telling you about it rather than having forgotten it. My children are still affected by it as my ex wife and I continue to pay for it financially.

How would it have been different if HB 210 was law then and during the following years?

1. We would have been encouraged to communicate and solve our own differences istead of being instructed by our attorneys and the court not to discuss our case with each other.

2. We would have been told it was our responsibility to make sure our children had frequent access to the other parent instead

of being told how legally advantageous it would be to have enough time go by between hearings without the children seeing the other parent. (My own attorney definitely did not encourage me to withhold visitation but the other side did and it is common legal practice to do this as shown by the enclosed letter from Judge Robbin Taylor).

The games with withholding visitation would not have been tolerated by the court and if they were we would have had recourse for immediate orders from the Supreme Court using the legislative intent of HB 210.

4. Playing games with visitation would have been a legally destructive thing to do and we both would have been informed of this.

5. We would have been advised to seek mediation as an alternative to the court and would have been encouraged to make every effort possible to resolve our own differences.

6. Neither of us would have had to go through the indignity of being refused into a parent teachers conference because we never had the written permission of the parent with custody.

7. Neither of us would have had to suffer the indignity of having to say: I lost custody of my children. (When my ex wife lost custody at the initial hearing, her remark to me was; "you have made me the laughing talk of town.")

8. The dispute would not have dragged on for years after the initial decision was made.

It is now six years since the first pleadings were filed and although my ex wife and I are by no means friends, we are working together to raise our children and the children know we will have a united front when considering decisions affecting their lives. They know they can no longer manipulate us, as we taught them to do throughout the litigation by our example and they are feeling much more secure and know they are loved by us both.

We entered into an agreement, through mediation, that neither of us is totally satisfied with but that is dignified and we can both live with.

The brief description of the experience above could have been written about any of the hundreds of divorced families I have dealt with in the past few years in my organizational efforts. (see Judge Taylor's letter). Under the terms of HB 210 all of us would have felt better and because we felt better, we would have helped our children feel better and the State courts would have saved many millions of dollars in court related expenses.

What is more important is all the children involved would have been spared the enormous heartache they all endured because of their parent's divorce.

HB 210 will not guarantee children of divorce equal time with their parents, nor do I believe legislation should attempt to, but it will go a long way in guaranteeing shared time and shared parenting. Those children, there will be over 5000 of them in Alas this year, will have access to both parents. It will also provide the first link in the chain necessary

to break a trend that has devastated millions of families in America these past 50 years because of current attitudes and procedures used to resolve custody disputes.

SHARED PARENTING IS THE ONLY LOGICAL AND MORALLY ACCEPTABLE ALTERNATIVE TO A HAPPY, INTACT HOME FOR CHILDREN OF DIVORCE.

Respectively Submitted,

Rudy Johnson, President

FAMILY LAW REFORM AND JUSTICE COUNCIL OF ALASKA, INC.

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

JDY JOHNSON, PRESIDENT
07) 333-6693
\LASKANS FOR CHILDRENS RIGHTS"

FAIRBANKS - BOX 73256
KETCHIKAN - BOX 7176
SITKA - BOX

Representative Don Clocksin

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

Re: H. B. 210 - Joint Custody

Dear Mr. Clocksin,

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

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

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

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

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

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

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

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

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

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

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

Personal attach.

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

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

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

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

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

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

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

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

Sincerely

Rudy Johnson

This statement is hereby notified as I now understand the file a public record.

Rudy Johnson
9-24-81

Rudy Johnson

enc/1

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

/11

District Court

State of Alaska

FIRST JUDICIAL DISTRICT
P. O. BOX 869
WRANGELL, ALASKA
99929

ROBIN L. TAYLOR, Judge

June 24, 1981

Honorable J. Justin Ripley
Superior Court Judge
303 K Street
Anchorage, Alaska 99501

Dear Justin:

Your letter of April 7th left me hurt and dismayed. I have now written three letters in response, all of which I tore up because I didn't want you to feel as I did. Basically, I'll attempt to explain to you why I wrote the letter for Rudy Johnson and leave it up to you and others to weigh the validity of my previous and current comments.

I practiced law representing individual clients for over eight years. A significant portion of my practice involved domestic relations work. The real world of divorce work is quite different from the actual trial of a contested property or custody matter. The only people who can appreciate the significance of that statement are those members of the bar who have done a significant amount of domestic relations work in the private sector. I don't say this to be pompous; I say it from experience. Until you've had them crying in your office because they can't see their kids it's difficult to understand the torment this system of ours causes the people to whom we grant "reasonable rights of visitation."

Many times I have heard the following or something similar: "I've made all my payments. I sent presents on birthdays and holidays. The kids don't get the presents. I wrote to her a month in advance that I'd fly down to see the kids. When I got to the house her mother told me they had left the day before for a two week vacation."

Reasonable rights of visitation leaves the party who has physical custody with the option of acting totally unreasonable. The option left to the party without custody is to go back into court. Most attornies will charge well over $100.00 per hour and will normally want a retainer to take on such a case. There will likely be costs of travel to Alaska and a portion, if not all, of the other party's legal fees. It will take several months to resolve the matter as the civil docket is plugged. There also must be proof of the unreasonableness of the party with custody.

When it is all over the noncustodial parent has a paper that says the next time this happens he can go through the whole time consuming, expensive process again.

These are not isolated incidents where a kooky father wastes everyone's time to harass his ex-wife by dragging her through court. Far too often they are viewed that way. In fact, this problem of "reasonable visitation" is so prevalent and so poorly addressed by our adversary system that men have organized in almost every state to seek changes in the law so that they won't have to go through our expensive and time consuming process just to see their kids once in a while.

Love of one's children has nothing to do with sex. It is a matter of personality and individuality. There are parents of both sexes, and I'll suggest the percentages are equal, that don't really care about their children. Fortunately there are a greater number of mothers and fathers for whom their children are the most important people in the world.

Our society, which our system of justice reflects, believed that mothers were the sole possessors of parental love and this myth supported such antiquated concepts as the tender years doctrine. Most people today still find it difficult to believe that a father is capable of the loving, caring dedication necessary to raise young children as a single parent.

When each party is represented by counsel and the children have their own attorney, the courts of this state are probably some of the most liberal and forward thinking in the nation. It is the unusual case where visitation would be left to the vague terminology of reasonable rights. However, economic necessity forces the majority of people to utilize the uncontested method of a petition for dissolution. This often involves the appearance in court of only one party, the other having waived his or her right to appear. There is no contest regarding custody or visitation. I'm aware that the court gives "close scrutiny" to custody and visitation agreements as you indicate. But who and what is scrutinized? The one person who shows up in court? And what do they say? I also inquire in depth of these people when sitting as a master for Judge Schulz in Wrangell and Petersburg. The answers I receive are: "We'll work it out", "I guess he'll have to pay costs of transportation", "Yes, my husband agrees I should have custody", etc.

What happens when we have nothing else to go on but the bald assertions of that one person in court? Do we send them away to get counsel to make a custody fight out of it? Do we set specific dates of visitation? No, we allow it to go through and hope they can work it out.

From your letter (page 3, last paragraph) I assume that if only one person shows up for a dissolution hearing you won't proceed. Otherwise how can you be assured that there was no "coercion or other factor" involved and how else do you determine that it is a true agreement that is in the best interest of the children?

The courts of this district allow dissolutions involving children to proceed upon the written waiver of one party. Rather than have me recite the numbers of cases in this district which result in the visitation being left "reasonable rights of visitation", maybe you could have your masters in Anchorage tell you the number of decrees issued monthly where that's all that appears.

If you are requiring specific dates each year and minimum visitation and actual access to the noncustodial parent, then you and I have no disagreement. If, however, you are proceeding with only one parent in your courtroom, and most of those uncontested cases actually result in the reasonalbe right to try to see the kids, then you have overstated your case about "close scrutiny" and "best interest of the child".

The phrase "reasonable rights of visitation" is of course an enforceable right granted to the noncustodial party. But there is also a cost to such enforcement. If you truly believe it is as easy to enforce as your letter implies, call a few of the attornies presently litigating such matters in Anchorage and ask what the final cost was to the noncustodial party.

Knowing the humanitarian nature of your personality, I'm surprised that you would controvert the need for greater protection of children's rights to parental access. I'm also shocked that you would take phrases totally out of context from my letter and accuse me of approving of Mr. Johnson's illegal act or of disapproval of my fine colleagues who sat and ruled on his case. Though I don't even have a copy of my letter, I know that I strongly indicated my disapproval of his conduct and felt only sympathy and respect for the fine judges who sat on that difficult case. I'm sure I only mentioned his case to emphasize the illegal and rash actions that frustrated noncustodial parents often take. If his case was an isolated incident it would be different. You know it is not. You also know that child stealing became such a national tragedy that legislation was enacted during the last five years in almost every state. Thus people like Mr. Johnson can now be caught and punished by the long arm of the law. But we still haven't adequately addressed the problem that makes such people do these things and that is the issue.

Some people believe that HB 210 will help solve that problem. I'm not sure that it goes far enough. However, it at least raises the issue and requires the close scrutiny that both of us apparently feel is required. It is the children I am concerned about, Justin, and the knowledge that our system is not adequately protecting their rights to parental access in all cases.

I'll believe that we don't need further legislation and I'll join you in saying that the system is working as it should and we don't need any more changes when I see a guardian ad litum appointed for the kids in all divorce cases in this state; when I see a dissolution form which requires that a minimum number of days visitation be provided to noncustodial parents; and when I see the state actively enforcing the rights of noncustodial parents with at least the same degree of enthusiasm with which child support and URESA's are presently enforced. Until then let's work together to improve justice for children in Alaska and the next time you want to take a poke at your old friend, send me a copy. I'd appreciate the opportunity to respond.

I think you and I agree that the rights of children in a divorce case should be protected. Where we part company is that I believe the court has a duty to protect those rights in all cases and apparently you feel we should only be involved in contested cases. You see, I believe that the court, in all divorce actions where there are children involved, should receive a report and home study presented by an objective disinterested third party before we attempt to render a decree which establishes custody and visitation that is in the best interest of the unrepresented children.

I see that as an affirmative obligation implied by the statutes and case law of this state. The costs of such proceedings should be borne by the state and the parties where they have the ability to pay.

I received (from an unexpected source) a copy of your letter dated April 7th on June 11th. Since your letter was widely circulated, I have attempted to copy each of the people who it appears received your letter.

Justin, my door is always open and the coffee pot is always on. Furthermore, it has been too long since you've been in Wrangell. Ed and Delores Bradley send their regards and hope that you'll take us up on our invitation for Kaye and I would sure enjoy seeing you for a while this summer. The silvers should be here in early August and the river boat is running. We'd all love to see you.

Fraternally yours,

Robin L. Taylor

cc: Honorable Thomas B. Stewart
Honorable Thomas E. Schulz
Honorable Ralph E. Moody
Honorable Victor D. Carlson
Representative Don Clocksin
Representative Terry Gardiner
Representative Brian Rogers
Representative Bette Cato
Representative Jim Duncan
Representative Mike Beirne
Representative Terry Martin
Arthur H. Snowden, II
William Grant Callow, II
William Hitchcock
Rudy Johnson
James Bradley
Peter Page

HB210

Superior Court
State of Alaska
THIRD JUDICIAL DISTRICT
303 K STREET
ANCHORAGE, ALASKA 99501

CHAMBERS OF
J. JUSTIN RIPLEY, JUDGE

April 7, 1981

Mr. William Grant Callow, II, Esq.
General Counsel to Administrative Director
Alaska Court System
303 "K" Street
Anchorage, Alaska 99501

Re: Judge Robin L. Taylor's letter of May 3, 1979
re: presumptive joint custody

Dear Mr. Callow:

There are two things that can be said with absolute certainty about my great and good friend Judge Robin L. Taylor. First, he invests the philosophical positions that he espouses with his own immense personal sincerity. Second, he tends to express himself upon these issues with more eloquence than objectivity. Although his letter to Mrs. Miller and Mrs. Fisher of May 3, 1979 may represent a position which he would be willing to reevaluate in the light of his now two additional years of judicial service, insofar as it may be taken as representing current doctrine, I feel constrained to reply. This because I disagree with virtually all his assertions except that contained in the last sentence of paragraph number one.

Dealing first with our single source of agreement, I agree wholeheartedly with Judge Taylor that disputes over child custody have the potential for producing heart renching and tragic consequences. Where I begin my disagreement with Judge Taylor is that it appears to be his thesis in his letter that presumptions as to joint custody, and indeed joint custody decrees themselves, would reduce or discourage these disputes. I respectfully suggest in the strongest terms that the experience of the Bench generally and a careful analysis of the motivations

of the parties to divorce actions clearly indicate otherwise. As I repeatedly stated in my memorandum to Judge Moody of March 19, 1981, the principle evil of the joint custody presumption proposed in House Bill 210 is that it will encourage and to a certain degree even require continuing legal "disputes" over matters related to child custody, long after the divorce and custodial placement is finalized and the parties and children, in the interest of their emotional health, must be committed to going forward with the rebuilding of thier lives. Our existing statutes and decisional law provide this essential stability through a decree granting custody which would only be changed in the best interest of the child, and upon a showing of changed circumstances.

One of the factors the trial court must assess in the entry of such a decree is the custodial parent's willingness and ability to foster an open and loving relationship between the child and the noncustodial parent. The concept that the child needs and requires continuing contact with the noncustodial parent is as essential and central to present considerations of custody as it can possibly be. No joint custody presumption is required to make that concept more central to the judge's custody decision, and attempting to do so by inserting joint custody provisions which are likely to lead to further litigation is absolutely contrary to the conditions of stability which are at the heart of the "best interest of the child" analysis.

Strong issue must be taken with Judge Taylor's assertion in paragraph two that the Courts "blandly skip over" custody issues by the use of the phrase "reasonable rights of visitation". It might first be observed that "reasonable visitation" is not an unenforceable clause. A great body of decisional law exists to guide a reviewing court in the determination of whether a custodial party has been reasonable in complying with the visitation order. Further, such language has been found to be desirable since it encourages the parties to work toward agreement as to the amount and type of visitation which is desirable for the child and is possible for them. Finally, Judge Taylor's experience in this field does not appear to extend to the fact that the Court has the authority to be as specific in its visitation order as the parties request or as the conduct of the parties requires. I know of no situation in which I have refused nor can I envision a situation in which any judge would refuse to spell out rights of visitation with great specificity where visitation by the noncustodial parent was apparently consistent with the best interest of the child and such specificity appeared to be required. It is palpably false to suggest as Judge Taylor does in paragraph two that visitation is an issue

which is blandly skipped over.

Judge Taylor incorrectly suggests in paragraph three that the Courts have "only recently" and "very slowly" begun to meet their obligation to consider the necessity of appointment of guardians ad litem for children in contested divorces and in applying the best "interest of the child" standard. I don't know what Judge Taylor's experience has been, but since my appointment to the Anchorage Bench in 1975, guardians ad litem have been appointed routinely when requested by either party. Further, although it is not required, these guardians are often lawyers whose investigations and reports are given great weight by the Court deciding custody issues.

I feel compelled to further suggest that if, in his domestic relations practice as an attorney, Judge Taylor found that the Court was failing to adequately consider the concept of "best interest of the child" in awarding custody, he need only have appealed to the Alaska Supreme Court to have that oversight rectified. For the last nearly twenty years, since Rhodes v Rhodes 375 P2d 902 (Ak. 1962), the Alaska Supreme Court has been committed to the proposition that the welfare and the best interest of the children must be given paramount consideration. I suggest there is no basis in fact for Judge Taylor's suggestion that the Trial Courts of Alaska have given only grudging effect to the concept of "best interest of the child", even before that concept was made part of Alaska's statutory law more than thirteen years ago.

Although time does not permit me to continue with my sentence-by-sentence analysis, fairness and accuracy require me to dispute two theses stated by Judge Taylor in paragraphs four and seven. It cannot be said with accuracy that Courts "rubber stamp" the parties ignorance of the law by routinely and unquestioningly approving custody agreements between parties unrepresented by counsel or otherwise. I have spoken to a goodly number of Superior Court Judges who have primary responsibility for domestic relations matters as well as the two standing masters for domestic relations here in Anchorage. The concerns they express to me indicate that their attitude is the same as mine was when for more than a year and a half I was exclusively assigned to family and children's matters in 1976 and 1977. Agreed custody dispositions, particularly those between parties unrepresented by counsel, require close scrutiny by the Court to ensure that the agreement is in fact arrived at with the best interest of the child in view, and not some other motive, and further that the agreement is truly an agreement and not the result of coercion or some other factor. I call upon my friend Judge Taylor to substantiate this "rubber stamp" activity with any cases he wishes to put forward.

Judge Taylor's second thesis in paragraphs four and seven appears to be that in the usual and typical situation, the father, having consulted his trusted friends, advisors and even his attorney, becomes convinced that he has no opportunity to obtain custody, and further that he must be content with such visitation as his "ex-wife lets him" have. As I stated earlier in this letter, it is a false premise to assume that the phrase "reasonable and liberal rights of visitation" places the entire discretionary control with the ex-wife. Moreover, I challenge Judge Taylor or any other person to produce a single decree granted by the Courts of Alaska which vests total discretionary control over visitation in the custodial parent by its specific terms. (May I request, in order to save us all time, that if anyone is prepared to accept my challenge, he or she read the record which underlies that decree. I would venture an opinion that if such a decree is found, the record underlying it will be replete with evidence supporting the trial judge's decision that such control over the visitation was in fact in the best interest of the child based upon the continuing course of conduct of the noncustodial party.)

Judge Taylor's final paragraphs, eight through fourteen, appear to be a comment on the case of Mr. Rudy Jounson. I leave the record of that case in the various Courts of this jurisdiction to speak for itself, except to observe that it is difficult for me to understand how an allegedly loving and concerned noncustodial parent could attempt to justify, and a judicial officer appear to approve child hostage taking as "the only way left to strike back at a system that won't listen . . . ." Page 4, paragraph 13, line 6.

It has not been my intention in this letter to strongly critisize my brother Judge, although I personally believe that his letter of May 3, 1979 requires this type of comment. I would not be adverse however, if, before any of this letter is shared outside the Court System, you took counsel with the Administrator and the Chief Justice to determine the propriety of its release.

Very truly yours,

J. JUSTIN RIPLEY
Superior Court Judge

JJR:ail

CC: Arthur H. Snowden, II
Honorable Judge Ralph E. Moody
Honorable Victor D. Carlson
William Hitchcock
Andrew Brown
Francis Stevens

District Court

State of Alaska

FIRST JUDICIAL DISTRICT
P. O. BOX 869
WRANGELL, ALASKA
99929

ROBIN L. TAYLOR, Judge

May 3, 1979

Ms. Laura Miller and
Ms. Nancy Fischer

c/o:
Family Law Reform and
Justice Council of Alaska
Rudy Johnson, Coordinator
P.O. Box 4-1646
Anchorage, Alaska 99504

Dear Ms. Miller and Ms. Fischer:

I am a District Court Judge located in Wrangell, Alaska and have been on the bench for approximately 2½ years. Prior to my judicial duties I was actively involved in the private practice of law in Ketchikan, Alaska for 8½ years. During my years as a lawyer I dealt almost daily with divorce problems of one kind or another. Of all the problems faced in divorce work, none was so heart wrenching or had such tragic consequences as disputes over child custody.

In America we use 12 man juries and open the doors of our appellate process for a murderer who, if convicted, may receive a life sentence. In most states this means that with good behavior he will be out on the streets in 7½ years. Yet we daily allow judges, without the advice or assistance of juries, sentence innocent children to 18 years custody with one parent and blandly skip over the child's rights of access to the non-custodial parent with such non-enforceable clauses as "reasonable rights of visitation", etc.

Those children are often sentenced to a fate far worse than the murderer will receive and for a much longer term. The convict gets 3 meals a day, clothing and a roof over his head - to say nothing of medical, dental, optical and visitation. Only recently have we begun to appoint attorneys to represent the children in contested domestic matters. Only recently, and very slowly I might add, are the courts paying anything more than lip service to the term "best interest of the child".

The system usually works this way. Parents in mid-20's, and children under 5 years of age. Parents want divorce and each relies upon advice from friends, etc. If both husband and wife agree on the terms they file their own papers and the courts rubber stamp their ignorance of the law by granting the divorce because they have it all worked out. Only when they can't agree does the attorney get involved. Prior to this the husband has been told by his friends that he can't get the kids unless he can prove the wife unfit. The wife has been told that she would be a fool to give up the kids because of child support, tax deduction and society's suspicions of a divorced woman who "lost" her children.

The very phrases I've used above demonstrate the problem. The words always used by people discussing these matters are as follows: Wife=she lost her kids - the court took her children away from her - she had to give up her kids - etc. Husband=they just say "oh, he's divorced" and everyone assumes he didn't receive custody - if he did, the words are always spoken in exclamation or with the inuendo that his wife must have really been bad - why do you say that? "Well, they went to court and he got the kids!"

The typical situation I mentioned above usually results in the husband being told he can't get the kids. If he tries he will lose and it will cost him a fortune. Furthermore, he knows from what he has seen or heard happen to so many other divorced fathers that any semblance of father-child relationship will be shattered by the capricious whim of a vindictive ex-wife who will do anything possible to frustrate his exercise of those reasonable rights of visitation. I have personally seen each of the following occur and they are but a sample of the 8½ years I spent working on domestic matters.

1) Wife leaves town with children or moves in with relatives to prevent father from seeing the kids for the one week per year he was allowed under the old decree. This is after the father has given one month's notice of the visit and flown over 1,000 miles to see them. Husband has paid child support faithfully and is current.

2) Wife destroys all letters to children, gifts, etc. She has an unlisted phone number. She refuses to disclose address of residen

3) Children are sick so doctor and dental appointments, etc., are scheduled to make visitation impossible or impractical at best.

4) Wife refuses to send children to father even though ordered to by the court and the father has paid their round trip fare. She demands $6,000.00 bond in cash before allowing visitation.

Knowing of these situations the young father who loves his children (and I haven't seen any evidence that indicates that the sex of the parent is in any way an indicator of parental love) bites the bullet and goes along with the advice of his friends and usually the advice and experience of his attorney which results in the same cours

of conduct. He watches the ex-wife walk from the court room with a piece of paper that says he may only see his kids if his ex-wife lets him.

Mr. Rudy Johnson is a living example of the result that this system of ours creates. His case is only unique in two respects. First, he had the entire weight of a religious organization hiding his wife and children from him and providing his wife with unlimited financial support for legal assistance. It is also unique in that Mr. Johnson loved his children enough to take on the whole system and fight in the only way left to him - he broke the law. However, before he resorted to the extreme action of physically taking his children, he had spent years in litigation and a small fortune in attorney fees. The end result is that she has custody and he has specific enforceable visitation with his children. This is after 4 or 5 years of fighting the system, being hunted by the law as a child stealing parent and exceptional personal sacrifices on his part. I personally admire his stamina and dedication to be willing at this point to go on with the fight so that the future will hopefully provide better alternatives for other men and women than he was forced to face.

Don't misinterpret my comments as approval of his rash act of taking the children in violation of a standing court order. Nor should you be led by these remarks to believe that I'm critical of the five judges who had to render the difficult decisions posed by the Johnson case. They were only doing what they believed society and the law said should be done.

How many people like Rudy Johnson will have to throw their bodies into the machinery before the system changes? Though I don't know what the make-up of your conference or panel is, I would hope that there are several Rudy Johnsons sitting on that board. If they are not included and listened to, you will only perpetuate a dogma that daily wreaks havoc all across this nation.

When you listen to Mr. Johnson - and I sincerely hope you will - please remember that he is not just speaking for himself. He is saying things that have and will happen to untold numbers of other people unless change occurs.

I don't see this conference as a mere sounding board for agrieved non-custodial parents and their rights. Though these are important issues, they are not the crux of the problem. The real issue before you is "what are the rights of the child and how will those rights be protected?" In this year of the child I hope that the panel will concentrate on their rights to free access to both parent and to maintaining the parent-child relationship of the non-custodial parent.

Most divorced fathers see less of their children than does the summer camp counselor or their babysitter. The child has a right to better treatment than that and so does the non-custodial parent. Small wonder that the non-custodial parent refuses to pay child support or resorts to "child stealing". It's the only way left to strike back at a system that won't listen to them. Such conduct will continue until we all stop and listen.

I hope you will listen to Rudy Johnson. He's been there.

Sincerely yours,

Robin L. Taylor

Robin L. Taylor

FAMILY LAW REFORM AND JUSTICE COUNCIL OF ALASKA, INC.

P.O. BOX 4-1646
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April 26, 1981

WRITTEN TESTIMONY
by
RUDY JOHNSON

IN SUPPORT
of
H. B. 210
JOINT CUSTODY

presented
April 22, 1981

via Teleconference Network
Anchorage

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Present and past methods of dealing with disputed child custody issues have been a disasterous failure. Historically we have allowed biases and not the best interest of the children to be the determining factors in the millions of cases that have filtered through our court systems. The results of over a century of abusive dispositions of these cases are measurable as will be mentioned later. To thoroughly appreciate the need for H.B. 210 we must understand the failures of the present system and be realistic enough to accept the fact it is failing!

In a 1860 opinion the New Hamshire Supreme Court ruled in upholding an award of custody to a father;

> "It is a well settled doctine of the common law, that the father is entitled to the custody of his minor children, as against the mother and everybody else: that he is bound for their maintenance and nurture and has the corresponding right to their obedience and their services."
>
> "It is one of the cardinal principles of nature and of law that, as against strangers, the father, however poor and humble, if able to support the child in his own lifestyle and of good moral character, cannot without the most shocking injustice, be deprived of the privilege by anyone whatever, however brilliant the advantage he may offer. It is not enough to consider the interests of the child alone." (American Journal of Psychistry 133:12107, 1976, page 1370)

From this 18th century mentality we went to the other extreme as espoused in the Minnesota Family Law Practice Manual.

"Except in very rare cases the father should not have custody of the minor children of the parties. He is usually unqualified psychologically and emotionally; nor does he have the time and care to supervise the children. A lawyer not only does an injustice to himself, but he is unfair to his client, to the state, and to society if he gives any encouragement to the father that he should have custody or his children. A lawyer who encourages his client to file for custody, unless it is one of the classic exceptions, has difficulty collecting his fees, has a most unreasonable client, has taken the time of the court and the welfare agencies involved, and has put a burden on his legal brethren." (Volume 50, pg 75)

Has the tender years doctine been eliminated in our system today? In theory yes, we have very good case law and Alaska has some of the most progressive statatory law in the nation. But the facts are the biases still exist and preconcluded decisions are being made before the facts are ever established in awarding custody of children, to the detriment of the children.

Since 1977, we have been associated with over 185 divorce reform organizations around the nation that have collectively gathered the results of over 350,000 disputed child custody cases. The results shockingly demonstrate the above statements. Out of these cases only 4.5% of them were decided in favor of fathers. It is not remotely the intent of this writer to suggest fathers should receive custody most of the time but common sense tells us that it is not in the best interest of children to be placed in a single parent home headed by a mother 95.5% of the time, the long term negative effects on the children would no doubt be just as disturbing with the figures reversed. This organization is currently doing a study of the Anchorage Court System where we are examining the records of each divorce case for the past two years and the initial results show that in this city the statistical conclusions will not even be as impartial as the national study, as appauling as those figures are.

What are the results of the abuses spoken of so far?

1. 90% of all homocides are a direct result of domestic relation problems.

2. 90% of the american prision population is from a broken home.

3. 90% of all women murdered between the ages of 20 and 30 are killed by their husbands or ex-husbands.

4. 9 out of 10 women on welfare are products of divorce.

5. 20% of the civil case load in the Alaska Court system is domestic relations.

The criminal activities related to these problems are the results of people, normal everyday Americans, being pushed too far by an apathetic system. By being denied the access to their children, by being forced to be financially obligated to their ex-spouse to the point of ridiculousness, by having gasoline poured onto the smoldering pile of emotions by attorneys and others involved with the case as these people are going through the most difficult emotional experience they will ever encounter next to losing a loved one in death. (H.B. 210) will elliviate a lot of the grief for these people and give them alternatives that are encouraged by the courts and the related legal establishment that are more comfortable and that they can live with.

As the law has developed some courts have recognized the failures of the present system and have provided direction to the lower courts in their written opinions.

> "Parenthood is a continuing bilateral responsibility and opportunity. It cannot be avoided or successfully divided. A decree of divorce offers no excuse or alibi for the abatement of parental interest or obligation. The dissolution of the marriage contract, leaving in its wake children who are the innocent victims of the resultant broken home, should be a challenge to the fathers and mothers of such children to make an even greater effort to minimize, as far as possible, the incidental and unavoidable losses of love, council and guidance."
> (McBetrick vs. McBetrick 284 P2d 352, Oregon)

> "Whoever may have custody, it is the duty of each parent and each family member to the children to set aside personal feelings and act in a manner which is supportive of the relationship of the children to the other parent."
> (Warren vs. Warren 528 P2d 1088, Oregon, 1974)

Attitudes are slowly being changed and direction is being provided by the Alaskan courts on an individual basis. In a 1975 opinion from the Ketchikan Superior Court, Judge Thomas Schultz emphasized the positions taken here in his remarks as he awarded custody of a 4 year old boy and a 7 year old girl to the father.

> "Certainly a factor in determing the fitness of the parent is the kind of learning which might be called fitness that either or both parents are able and willing to provide. In terms of fitness, to provide the care that these children require and in terms of the relationship that the parties bear to the children I find both are fit and both are in fact good parents, have taken good care of the children, love the children and both have a good relationship with them. I am left with the very narrow basis on which to resolve the question and that is the view that I can take from the testimony that I've heard up till now, of which parent is better able to maintain the status quo to facilitate the children and their desire at this point as its reflected in the testimony the relationship they have with the parents, and maintaining a meaningful relation-

ship with both. I am satisfied from what I've heard that the father is better able to do that at this point. And ultimately in this case, it's my considered opinion that the parent most fit will be that parent that demonstrates the best ability to maintain open communications between both. These children were, as all others are, brought into the world without being asked about it and they're being left now in a situation that they didn't particularly ask for and probably don't want but they are entitled to the guidance and assistance from both their parents." (Johnson vs. Johnson, Transcript 186 to 189, Ketchikan Superior Court, April 7, 1975)

In considering child custody matters we must recognize the fact that most parents that come before the court are not only fit, they are very fit parents and the state would never consider interfering in their lives so long as there was not a divorce petition filed. (H.B. 210) is a necessary vehicle to help change attitudes. It also recognizes the right of the parents to control their own families and it encourages them to do this. It paves the road to making decisions in disputed custody cases based upon what is right with this family and these parents rather than what is wrong with the parents and the children. It provides a means for settlement that feels better for the parents which in turn helps the children feel better. Recent studies such as the one from California reporting the results of families in transition after divorce over a period of 5 years. (Psychology Today, January 1980, Enclosed) show that when the parents deal with their divorce constructively and creatively then the children are not adversely affected on the long run whereas if the parents have a lot of turmoil and grief for extended periods of time these children will be affected adversely for years to come and even into their adulthood.

Mediation and joint custody works! The Association of Family Conciliation Courts is an organization made up of judges, social scientists, attorneys and a few lay people like myself and they have concluded with their studies that 60 to 80% of all disputed child custody cases are settled out of court with the existing mediation programs by the parents themselves. The Association has officially endorsed joint custody as the best first choice in resolution of disputed cases and has published hundreds of studies showing joint custody, joint parenting, does and is working. The concept has been being used for up to 3 years in various jurisdictions and is working even when mediation is required rather than voluntary. Of course, the success rate is lower under those circumstances but if we can settle on the average, 70% of all cases out of court the dollar value alone is astronomical in terms of judicial costs not to mention the emotional benefits to the parties themselves and the resultant decrease in the criminal activities that are related and the welfare costs. But the most important consideration is how all this benefits the children of divorce. The results of the study from California can not be given too much emphasis.

What I have stated here is based upon fact not my opinion. Some people have opposed H.B. 210 but I say anyone who opposes it simply does not know enough about it and the facts surrounding the concept. One attorney for instance testified that by encouraging mediation a man could and will intimidate a women into agreeing to something she really does not want. I am positive that is not the rule as my experience has shown me and when such a rare thing happens the checks and balances written into the existing law are designed to catch it. For instance in the do it yourself kits available from the efforts of Representative Bradner and Gardiner in 1977 it is a requirement that one of the spouses appear before the court before the divorce is granted. The legislative intent was to allow the judge to ascertain from that party that the agreement was indeed mutual and not coerced.

Other checks and balances exist in H.B. 210. If the court finds that joint custody is not in the best interest of the family he only needs to state his reasons for that conclusion and dismiss the concept. The bill specifically states the presumption for joint cusotdy is rebutable. It is a long way past due that we require the courts to justify their disposition of child custody decisions, that is all this bill requires and it still leaves them a lot of discreation, too much discreation in my opinion but I am willing to compromise on that to get the bill.

Joint custody is not for everyone but it works for most, with direction, and I think it would be inhuman to deny this wonderful alternative to the present system to parents and children because of those few that are too immature to make it work. The courts and the present system will always be available for those people who decide they want to go that way.

It was reported that under present law we do not need H.B. 210. This is theoretically correct but what is so important about the bill is it will help change attitudes and attitudes are the key to helping divorcing people experience a creative divorce that will strengthen the family instead of destroying it.

If I have appeared anxious in my oral testimony as well as this written testimony, it is because I know that in the time it takes you to read this:

> there will be over 1,000 divorces in the United states affecting over 3,000 children;
>
> there will be at least two homocides as a result of the activities surrounding these people;
>
> there will be four more prison inmates;
>
> and we have just gotten 150 more people on our welfare rolls;
>
> 40 Alaskans were divorced today!

JOINT CUSTODY IS THE ONLY LOGICAL AND MORALLY ACCEPTABLE ALTERNATIVE TO A HAPPY INTACT HOME FOR CHILDREN OF DIVORCE. PARENTS DIVORCE EACH OTHER, CHILDREN NEVER DIVORCE THEIR PARENTS.

Enclosure: California Report

Carbon Copies sent to the following:

Governor Jay Hammond
Representative Rogers
Representative Gardiner
Representative Meekins
Senator Parr
Mr. Mark Lewis, Chicago, Illinois
Mr. Vern Lee, Fairbanks, Alaska
Mr. Wayne Ross, Esquire, Anchorage, Alaska
Mr. Bill Riech, Sitka, Alaska
Mr. John Reese, Esquire, Anchorage, Alaska
United Fathers Organization, Santa Ana, California
M.E.N. International, Wilmington, Delaware
Mr. Max Gruenberg, Esquire, Anchorage, Alaska

Respectfully Submitted:

RUDY JOHNSON