1725 SJ HB 210

An inadequate standard risks destruction of the family

"The Court's theory assumes that termination of the natural parent rights invariably will benefit the child. Yet we have noted above that the parents and the child share an interest in avoiding erroneous termination. Even accepting the Court's assumption, we cannot agree with its conclusion that a preponderance standard fairly distributes the risk of error between parent and child."

"For the natural parents, however, the consequences of an erroneous termination is the unnecessary destruction of their natural family. A standard that allocates the risk of error nearly equally between those two outcomes does not reflect properly their relative severity."

Separation of children is counter to promoting the child's welfare

(One of) "Two state interests...at stake in parental rights termination proceedings (is) -- a parens patriae interest in preserving and promoting the welfare of the child..."

...while there is still reason to believe that positive, nurturing parent-child relationships exist, the parens patriae favors preservation, not severance, of natural familial bonds." "(T)he State registers no gain towards its declared goals when it separates children from the custody of fit parents."

Constitutionally mandating "beyond a reasonable doubt" & "clear & convincing" standards

"The next question, then, is whether a "beyond a reasonable doubt" or a "clear and convincing" standard is constitutionally mandated."

"Congress requires "evidence beyond a reasonable doubt" for termination of Indian parental rights, reasoning that "the removal of a child from the parents is a penalty as great, if not greater, than a criminal penalty."

Constitutional violations by states requires federal intervention

"The dissent's claim that today's decision "will inevitably lead to the federalization of family law"...is, of course, vastly overstated. As the dissent properly notes, the Court's duty is to "refrain from interfering with state answers to domestic relations questions" has never required "that the Court should blink at clear constitutional violations in state statutes."

The Court Speaks for Parents

The Sacramento Bee

There are no clean formulas for determining when and under what circumstances the state should deprive parents of custody over their children. Such determinations are always difficult in the emotionally charged atmosphere invcivng the relations between parents and children and in face of the terribly painful consequences, physical and psychological, of abuse and neglect.

What makes them particularly difficult, however, is that many children appear to fare better — and with less guilt and fewer conflicts — even under negligent and abusive natural parents than they do in foster homes or in public facilities. In light of the fact that the nation's foster care system is itself so confused and so prone to neglect and mistreat the children in its care, that's not surprising. Yet it's a fact often forgotten in the well-intentioned effort to save children from the battery of abusive parents.

Given all that, the Supreme Court's recent decision requiring high standards of proof to deprive parents of permanent custody of their children was both fair and reasonable. A state, said the court, must prove unfitness by "clear and convincing evidence" when it moves to permanently deprive parents of custody, and not merely by a "preponderance of the evidence." The court's new standard, already in use in many states, including California, honors the presumption that, absent compelling reasons, the state has no right to abrogate the parent-child relationship.

It is hardly a perfect decision, particularly since it will leave many more children in the no man's land between a temporary removal from the natural parents (for which less stringent standards prevail) and a permanent break that makes them eligible for adoption. Yet there is probably no other course that makes more sense, either in law or as reasonable policy regarding the relations of parents and children. As the court said, "The fundamental liberty of natural parents in the care, custody and management of their child does not evaporate simply because they have not been model parents or have lost temporary custody of their children to the state."

Abstract of the Dissertation

EMOTIONAL ADJUSTMENT OF BOYS IN SOLE CUSTODY AND JOINT CUSTODY DIVORCES COMPARED WITH ADJUSTMENT OF BOYS IN HAPPY AND UNHAPPY MARRIAGES

Presented to the Faculty of the
CALIFORNIA GRADUATE INSTITUTE
In Partial Fulfillment
of the Requirements for the Degree
Doctor of Philosophy in Psychology

by

Everett Quentin Pojman
July 1981
Leo Weisbender, PhD, Dissertation Chairman

Introduction

Recently, joint custody of children has been tried by some divorcing parents as an alternative to the traditional sole custody. Theorists have conflicting opinions in terms of sharing custody. Some theorists believe that sole custody is the only healthy approach to child rearing following a divorce, whereas other theorists believe that joint custody is preferred. This research was an attempt to compare the emotional adjustment of boys in these two groups. Two other groups were used as controls to determine how these boys of divorce differed from boys living in families where marriages remained intact. These groups were happily married and unhappily married. The questions explored were: Is joint custody fostering a healthier post-divorce adjustment for children than sole custody? Is joint custody fostering a healthier adjustment for children than marriages where parents report an unhappy marital situation?

The hypotheses were:

1. Boys of happy marriages will have significantly better emotional adjustments than boys of joint custody.
2. Boys of happy marriages will have significantly better emotional adjustments than boys of sole custody.
3. Boys of unhappy marriages will have significantly better emotional adjustments than boys of joint custody.
4. Boys of joint custody will have significantly better emotional adjustments than boys of sole custody.

Review of the literature

The literature revealed that after parents divorce, their children generally go through a period of stress and adaptation which may continue long after the divorce. This stress may result in a trauma that often interrupts a child's emotional growth through developmental stages. Studies also support the importance of the involvement of the fathers with their children in order to facilitate healthy adjustment. Both joint custodial and sole custodial care have been reported with support from a theoretical and case study viewpoint, but no experimental research has been accomplished to compare the two types of living arrangements on the emotional effects for children.

Research design

A quasi-experimental study compared four groups of 20 boys between the ages of 5 and 13. Three of these groups were matched on demographic variables. Three

different measurement tools were used to assess the boys: the Louisville Behavior Checklist (parents' rating), the Inferred Self-Concept Scale (teachers' rating), and the California Test of Personality (child's rating). The results of the rating scales were computed and each group was compared by a one-way analysis of variance.

Findings

Results supported the hypothesis that boys of happily married parents were significantly better adjusted on the California Test of Personality and the Louisville Behavior Checklist, respectively, than were boys of sole custody ($p < .01$)($p < .01$), and boys of unhappily married parents ($p < .01$)($p < .01$). However, no significant difference was reported for the Inferred Self-Concept Scale. Boys of happily married parents also demonstrated significantly better adjustment on the Social Adjustment part of the California Test of Personality ($p < .01$), and on 4 of 12 subtests within the same test when compared to boys of joint custody. No significant differences were reported on the other two instruments. It was demonstrated that boys of joint custody were significantly better emotionally adjusted than boys of sole custody and the unhappily married group on both the Louisville Behavior Checklist (p .01). There were no significant differences on any total test or subtest between boys of sole custody and boys of unhappily married parents.

Conclusions

Hypothesis 1 was partially accepted while Hypotheses 2, 3, and 4, were fully confirmed. The results of this study indicate that boys of joint custody are better adjusted than boys of sole custody and boys of parents who are unhappily married. The research also demonstrated that sole custody divorce has no more adverse emotional effects on a child than living in a home where the parents are unhappily married. Conversely, the results support the possibility that a situation could improve with a change from an unhappy marital situation to a joint custodial divorce situation.

Recommendations

While the findings confirm the advantages of joint custody, thereby supporting the theorists who believe that joint custody is a preferred approach to child rearing following a divorce, more research is needed on similar subjects in other geographic areas to see if these results can be generalized to other parts of the country. A randomized sample would be beneficial. Longitudinal studies following the course of various custodial arrangements would also be helpful. What would happen to these boys as adults? In this study, the majority of the inventories were filled out by mothers. What would happen if fathers filled out the rating scales and marital inventories? Might this change the results? Would the marital groups still have similar characteristics? Only through replication and more research will these questions be answered.

CAUTION

January 22, 1981

'Presumption' & 'Preference': the reasons why.

Protecting, & shifting the litigation burden away from the cooperative parent to the childrens' advantage.

BEWARE

Beware of an attempt to convert an altruistic stimulus to seek joint custody into preparations for an acrimonious and litigiously-expensive (lucrative) battle for sole custody through reordering the priority of joint physical custody into merely an option.

REMEMBER:

Merely an 'option' for joint custody triggers a different set of reaction intuitions and intentions. *

Ranking joint custody as co-equal with sole custody converts an admirable goal into anguish, apprehension and a defensive resort to self-protection. *

Permitting joint legal custody to be substituted in place of joint physical custody deprives a child of equitable physical contact with both parents and burdens the vanquished parent with legal obligations but no equitable physical access to ameliorate those legal problems. *

The reasons for 'presumption' & 'preference' for joint custody:

pitfalls of the spectre of litigation.

* The theory behind making joint physical custody a presumption (when both parents agree) and a preference (when one parent requests it):

Heretofore, a knowledge by parents heading into trial that a court can, or has, or will, decree sole custody requires that both parents prepare to fight each other; it requires they think negatively, it requires that they both defend and attack...a gladiator fight by formerly loving spous for the sadistic amusement and financial income of every courtroom participant whose employment and income rely on family court battles. (Adversary litigation in family/domestic cases usually elicits shame, anger, damaged pride and permanent memo ry-scars. Although adversary litigation may have some merit in other civil and criminal cases as a mechanism for eliciting 'truth', family law cases have less bearing on 'truth' than with expectations, hopes, moral judgments, and person security in family relations.

Now, if joint physical custody is known to be a firm requirement of the court as a first preference and a first presumption, then an accepting, forgiving, and cooperative parent proposing joint custody need not be required to assassinate the other parent.

Acceptance, forgiveness and cooperation are far better social-policy goals for a state to protect and encourage (by favoring such a parent) than inspiring the alternative of spousal character assassination.

IN PRACTICE

The modern joint physical custody statute implants a presumption (for agreeing parents) and a preference (when one parent applies) and protects the concept:

- By permitting either parent to apply,
- By allowing previous decrees to be modified,
- By requiring judges to itemize their reasons for declining joint physical custody if either parent applies,
- By transferring custody to the most cooperative and accepting parent (as demonstrated by that parent's custody plan, and other submissions),
- And by requiring the burden of proof be on the parent pursuing sole parent custody.

BURDEN OF PROOF

If you are confronted by legislative attempts to downgrade joint custody, then do this:

Insist on the requirement of 'burden of proof' upon the parent who seeks sole parent custody and who declines joint custody cooperation with the other parent.

WHY DID GUARANTEED PRIORITIZING OCCUR?

- Parents agreeing in advance to joint custory were flabbergasted and chagrined when, in court, they encountered a judge who would not decree joint custody nevertheless, and annointed one parent with the status of custodian and relegated the other to subservient visitation. Therefore, the protection of 'presumption' became necessary.

- Preference became necessary, as a ranking for joint custody, when courts placed more value on vesting control with one parent than in encouraging a child's equitable access to both parents. Typical comment in such decrees: 'One parent acted more like they wanted the child than the other parent.'

Blessed are the peacemakers:

Customarily, an individual so ideologically inclined as to propose and desire participation in joint custody is less likely to aggressively generate and conduct the attack necessary to destroy the opposite parent, as sole custody requires.

A parent proposing joint custody and proposing acceptance of the alternate parent for parttime parenting, cannot logically and vigorously contend that alternate parent is unfit for fulltime parenting.

Yet, a legal system that has merely options rather than goals and that pronounces decrees predicated on aggressive adversary litigation perpetuates destructive battles unless that system is instructed with 'presumptions' 'preferences', and the burden of proof upon the most destructive party.

Evaluating the 'success' of joint custody decrees

Repeat court appearances as an indicator of custody stability

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

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

November 14, 1980

Two years of custody decrees evaluated in California analysis

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

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

Joint custody awards compared with sole custody decrees

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

Joint custody relitigation one-half as frequent as sole custody

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

Results when one parent doesn't agree to joint custody

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

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

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

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

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

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

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

- -

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

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

Table 1 : Summary of Results

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

- -

Table 2 : Unconsented joint custody awards follow-up

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

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

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

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. CSHB 210
Title An Act Relating to Child Custody
Requested by House Judiciary Committee Date 3/3/82

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

EXPENDITURES (Thousands of Dollars)

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

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

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

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

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

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. CSHB 210 (HESS)
Title "An act relating to child custody."
Requested by Repr. Barnes, House Judiciary Date March 9, 1982

II. FISCAL DETAIL
Agency Affected Department of Law
Program Category Affected General Government
BRU, Program, Or Subprogram(s) Affected Legal Services
(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	Ø	Ø	Ø	Ø	Ø	Ø

FUNDING (Thousands of Dollars)

GENERAL FUND	Ø	Ø	Ø	Ø	Ø	Ø
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

FULL TIME	Ø	Ø	Ø	Ø	Ø	Ø
PART TIME						
TEMPORARY						

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

This bill involves child custody upon the separation of parents or the dissolution of a marriage which is a matter between private parties and it will therefore not have a fiscal impact on any of the department's activities.

Richard R. Pegues

IV. DATE March 9, 1982 PREPARED BY Richard I. Pegues, Director, Admin. Svcs.
AGENCY Department of Law
PHONE 465-3672

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

POSITION PAPER/Department of Health & Social Services

Original position paper also supported the bill.

POSITION PAPER

CS FOR HOUSE BILL NO. 210 (HESS)

"An Act relating to child custody."

CS for House Bill No. 210 (HESS) provides a statutory basis for shared custody in judgements for custody. The Department feels the Committee Substitute improves on the original Bill. However, we would still question the language in Section 09.55.205(c) due to the deletion of the phrase, "all relevant factors include." This deletion seems to imply that the court's considerations are limited to those factors delineated in the section. It is felt that in the best interests of the child "all relevant factors" should be considered.

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

RECOMMENDED BY: John R. Pugh

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

DATE: 1/29/82

APPROVED BY: Helen D. Beirne

Helen D. Beirne
Commissioner

DATE: 3-10-82

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. CS for House Bill No. 210 (HESS)
Title "An Act relating to child custody."
Requested by _____ Date _____

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

EXPENDITURES (Thousands of Dollars)

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

FUNDING (Thousands of Dollars)

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

POSITIONS

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

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

CS for House Bill No. 210 (HESS) has no fiscal impact on the Department of Health and Social Services.

IV. DATE 1/28/82 PREPARED BY John R. Pugh, Director
AGENCY Division of Family and Youth Services
PHONE 465-3170

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

fcc

Trial Courts
State of Alaska
THIRD JUDICIAL DISTRICT
303 K STREET
ANCHORAGE, ALASKA 99501

RALPH E. MOODY
Presiding Judge

April 9, 1981

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

Re: Presumptive Joint Custody

Dear Mr. Callow:

I wish to convey to you my concurrence in the opinions expressed by the Honorable J. Justin Ripley on April 7, 1981, with regard to presumptive joint custody.

Sincerely,

Ralph E. Moody
Presiding Judge

REM:dpd

cc: A. H. Snowden, II
Judge J. Justin Ripley
Judge Victor D. Carlson
Master William Hitchcock
Master Andrew Brown
Francis Stevens

Memorandum

Alaska Court System

RECEIVED
Office of the Presiding Judge
3rd Judicial District

TO: The Honorable Ralph E. Moody
Presiding Judge

DATE : March 19, 1981

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 seen 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 source 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 parent 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 unsetting of the child.

As one analyzes HB 210, one is struck with the wisdom 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.

Memorandum

Alaska Court System

TO: Grant Callow
Staff Counsel

DATE : March 9, 1981

FROM: William D. Hitchcock
Master, Trial Courts

SUBJECT: HB 210

At this stage, I have only a few brief remarks and observations about this bill which I want to pass on to you. The concept of shared or joint custody is an appealing one from a philosophical standpoint but in practicality it has many pitfalls. Even where all of the objective criteria of close geographic proximity of the parents and ease of travel are met, the fact remains that the adults involved have been unable to reconcile their various differences and may be equally as incapable of agreeing on the ongoing decisions in the life of their child or children. Joint custody has been a very popular "cause" around the country. In my contacts with other judges from around the nation at the National Judicial College family law course in Reno last year, I have found that there is an overall skepticism as to how well joint custody is working in fact. I would venture to say that a general sampling of opinion among judges, domestic relations practitioners and professional counsellors in this state would yield a similar result.

Assuming however that the bill may already be a fait accompli, there are certain considerations which the court needs to deal with. One of these is to assess possible fiscal impacts this bill would have. If courts are going to be routinely presented with shared custody agreements by parties in consensual petitions, e.g. dissolutions, I submit that the court is going to have to rely heavily on professional evaluations of the wisdom of those plans. While it may be philosophically appealing to view such services as coming from the private sector, the hard economic realities are that most parents in dissolution proceedings are not going to be in a position to pay for these. Therefore, the court is either going to have to field these proposals from the bench or have the investigative resources at its disposal to review them. My recommendation is therefore that the court, if it is going to support this bill at all, give serious consideration to mandating and providing statewide custody investigation services within the system.

I am also concerned as to the meaning of the mediation provision, A.S 25.20.030. Does that cover child custody investigation as well or is it solely traditional mediation? I believe I have clarified the section regarding guardian ad litem appointments. That appears to be nothing more than a restatement of existing language which is already within A.S.9.55.205 rather than any new requirement mandating GAL appointments in all cases.

cc: Victor D. Carlson
Andrew M. Brown

Adm. F-1
Rev. 2-73

Marko Lewis - Mom's House- Dad's House- Box 136- Hyder, Ak. 99923
Feb. 4, 1982

To HESS

The committee substitute for HB 210 does not serve the legislative intent for which it was designed. It in no statuatory way encourages frequent and continuing and meaningful relationships between both parents and children after divorce, and instead of decreasing points for litigation, actually encourages litigation. It is no surprise that it encourages litigation- it was rewritten to please the legal community. The problem is that the legal community knows very little about child development or child psychology.

A recent California study by Everett Q. Pojman, Ph. D. "Emotional Adjustment of Boys in Sole Custody and Joint Custody Divorces Compared With Adjustment of Boys in Happy & Unhappy Marriages." shows that there is much better adjustment and psychological health in joint custody children than sole custody children. This is just one recent study of many which show similar results. SHARED CUSTODY IS BETTER FOR CHILDREN.

Another study by Alexander and Ilfield in the American Journel of Psychiatry " Does Joint Custody Work? A First Look at Outcome Data of Reconciliation " shows that when joint custody is decreed by the court over the objection of one parent there are FEWER RELITIGATIONS RETURNING TO COURT THAN SOLE CUSTODY DECREES.

If HB 210 is to serve its intent it must SHOW A STAUATORY PREFERANCE FOR SHARED CUSTODY. IT MUST PLACE THE BURDEN OF PROOF ON A PARENT WHO WISHES TO DENY A CHILD EQUITABLE CONTACT WITH THE OTHER PARENT.

Marko Lewis- Mom's House-Dad's House- Box 136
Ryder, Alaska 99923 Feb. 5, 1982

I have reowrked the draft copy of the committee substitute to reflect these needs, by making a ~~xxxxxxxxx~~ preferance for shared custody instead of a ~~xxxxxxxx~~ presumption. I have also further clarified the definition of shared custody. I have added the 'Factors for consideration by the court' the words 'in its implementation'. If all these factors must be considered BEFORE an award of shared custody there will be more than ample factors for disagreement and litigation. The proper time to consider these factors is AFTER THE AWARD. I have also added a new section on parents leaving the state, more or less copied from a Wisconsin stauate. This is necessary to keep a parent from circumventing a court order simply by leaving the state...and certainly such a big change should be cause for reconsideration of the mechanics of sharing or custody/visitation arrangements.

In conclusion, the committee substitute is a bad bill. It doesnot serve the legislative intent, it doesnot reflect the need of children to have a relationship with both parents, it doesnot do anything to lessen the liklihood of litigation. It does not presume that parents are equal before the law. It continues to assure lengthy and recurring litigation and the ultimate destruction of at least one parent-child bond. I oppose the subcommittee substitute as it now reads.

TO HESS

PROPOSED AMENDMENTS TO THE COMMITTEE SUBSTITUTE BY MARKO LEWIS.

IN THE HOUSE Proposed COMMITTEE SUBSTITUTE

HOUSE BILL NO. 210
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to child custody."

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

* Section 1. LEGISLATIVE INTENT. (a) The legislature finds that it is generally desirable to assure a minor child frequent and continuing contact with both parents after the parents have separated or dissolved their marriage and that it is in the public interest to encourage parents to share the rights and responsibilities of child rearing. ~~While actual physical custody may not be practical or appropriate in all cases~~, it is the intent of the legislature that when appropriate both parents have the opportunity to guide and nurture their child and to meet the needs of the child on an equal footing beyond the considerations of support or actual custody.

delete ← add.

(b) The legislature also finds that it is in the best interests of a child to encourage parents to implement their own ~~child care~~ parenting agreements outside of the court setting.

change ← word

* Sec. 2. AS 09.55.205 is repealed and reenacted to read:

Sec. 09.55.205. JUDGMENTS FOR CUSTODY. (a) In an action for divorce or for legal separation the court may, if it has jurisdiction under AS 25.30.020 and is an appropriate forum under AS 25.30.050 and 25.30.060, during the pendency of the action, at the final hearing, and at any time thereafter during the minority of a child of the marriage, make an order for the custody of or visitation with the minor child which may seem necessary or proper and may at any time modify or vacate the order.

(b) Any appointment of a guardian ad litem for a child shall be made under AS 09.65.130.

(c) The court shall determine custody in accordance with the best interests of the child under AS 25.20.060 - 25.20.180. In determining the best interests of the child the court shall also consider

(1) the physical, emotional, mental, religious, and social needs of the child;

(2) the capability and desire of each parent to meet these needs;

(3) the child's preference if the child is of sufficient age and [illegible]

(4) the love and parental

(5) the length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity;

(6) the desire and ability of each parent to allow an open and loving relationship between the child and his other parent.

(7) the desirability of offering the child a variety of life experience

(d) In making an award of custody under AS 25.20.060 - 25.20.180 and this section, the court may not consider the conduct, marital status, income, social or cultural environment, or life style of either parent unless it is shown that the factor relates to the well being of the child.

This is now worse than the present law - leaves the door open to judges to consider cultural etc. from a predjudiced standpoint

change to original HB 210 wording

this is unconstitutional as it now reads.

Sec. 3. AS 25.20.060 is amended to read:

Sec. 25.20.060. CUSTODY OF THE CHILD. If there is a dispute over child custody, either parent may petition the superior court for resolution of the matter under AS 25.20.060 - 25.20.180. The court shall award custody on the basis of the best interests of the child. In determining the best interests of the child, the court shall consider all relevant factors including those factors enumerated in AS 09.55.205(c). Neither parent, regardless of the question of the child's legitimacy, is entitled to preference in the awarding of custody.

* Sec. 4 AS 25.20 is amended by adding new sections to read:

Sec. 25. 20.070 Custody should be awarded in the following order of preferance according to the best interests of the child:

(1) To both parents jointly. The court in its discretion may require the parents to submit a plan for implementation of the custody order. A parent may voluntarily submit a custody implementation plan to the court prior to issuance of a custody decree; a plan may be submitted individually or togethor with the other parent.

(2) To either parent. In making an order for custody to either parent the court shall consider, among other factors, which parent is more likely to allow the child or children frequent and continuing contact with the noncustodial parent. In the event that one parent requests joint custody and the other parent requests sole custody the burden of proof that joint custody would not be in the childs best interest shall be on the parent requesting sole custody.

(3) If to neither parent , to the person or persons in whose home the child has been living in a wholesome and stable environment.

(4) To any other person or persons deemed by the court to be suitable and able to provide adequate and proper care and guidance for the child.

(5) For the purpose of assisting the court in making a determination wheter an award of shardd custody is appropriate, the court may direct that an investigation be conducted.

(6) If the court declines to enter an award of shared custody the court shall state in its decision the reasons for a denial of shared custody.

Sec. 25.20.080. MEDIATION. The court considering a request for custody of a child may order the parties to participate in pre-trial mediation of the matters before the court pursuant to AS 09.55.115.

Sec. 25.20.090. MODIFICATION OF CUSTODY. An award of custody or visitation may be modified if the court determines that the best interests of the child require the modification of the award. If a parent opposes the modification of the award of custody or visitation, the court shall enter in the record its reason for modifying the award.

Sec. 25.20.100. PREFERENCE OF THE CHILD. If the child is of sufficient age and capacity to form an intelligent preference as to custody, the court shall give due weight to the preference of the child.

Sec. 25. 20. 110FACTORS FOR CONSIDERATION BY THE COURT. In an award of shared custody under AS 25.20.060- 25. 20. 120, the court shall consider in its implementation

(1) the needs of the child for frequent and continuing relationships with both parents

(2) the stability of the home environment likely to be offered by each parent

(3) the advantages of providing a varied life experiance for the child

(4) the quality and continuity of the education of the child

I changed order + wording to reflect a more logical saquance. a Plain old "needs of the child" is to broad + is redundant.

(5) the optimal time for the child to spend with each parent considering

(A) the actual time spent with each parent;

(B) the proximity of each parent to the other and to the school in which the child is enrolled;

(C) the feasibility of travel between the parents;

(D) special needs unique to the child that may be better met by one parent than the other;

put this as (A) ← ~~(E) which parent is more likely to encourage frequent and continuing contact with the other parent;~~ wrong place for this -

(6) the findings and recommendations of a neutral mediator where mediation is recommended by the court;

(7) other factors the court considers pertinent.

Sec. 25.20.130. TEMPORARY CUSTODY. Unless it is shown to be detrimental to the welfare of the child, the child shall have, to the greatest degree practical, equal access to both parents during the time that the court considers an award of custody under AS 25.20.060 - 25.20.180. good

Sec. 25.20.140. AWARD OF CUSTODY TO NONPARENT. The court may not award custody to a person who is not a parent of the child unless the court finds that an award of custody to a parent would be detrimental to the best interests of the child.

Sec. 25.20.150. CONFIDENTIALITY OF PROCEEDINGS. At any stage of the proceedings, if the court finds it is in the best interests of the marital estate or the child, it may close the hearings or order the court records closed (except for statistical information required by law) or both, temporarily or permanently, and may modify or vacate the order at any time. good

Sec. 25.20.160. ACCESS TO RECORDS OF THE CHILD. A parent who is not the parent granted custody under AS 25.20.060 - 25.20.180 may have access to the medical, dental, school, and other records of the child notwithstanding any other provision of the law. good

Sec. 25.20.170 NOTIFICATION OF PARENT LEAVING THE STATE. A custodial parent leaving the state for the purposes of setting up residance in another state must notify the court and the other parent 90 days prior to the date of departure so that the court may consider any necessary modifications in custody orders.

Sec. 25.20.180 DEFINITIONS. In AS 25.20.060-25.20.180 shared custody means shared phisical and legal custody. Shared phisical custody means an order awarding each parent or party significent periods of phisical custody. Shared phisical custody shall be divided in such a way so as to assure a child of frequent and continuing contact with both parents. Shared legal custody means that the parents or parties share, in a manner determined between them or by the court, the decision making rights, responsibilities, and authority relating to the health, education and welfare of a child.

FAMILY LAW REFORM AND JUSTICE COUNCIL OF ALASKA, INC.

P.O. BOX 4-1646
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RUDY JOHNSON, PRESIDENT
(907) 333-6693
"ALASKANS FOR CHILDRENS RIGHTS"

FAIRBANKS - BOX 73256
KETCHIKAN - BOX 7176
SITKA - BOX 913

April 26, 1981

WRITTEN TESTIMONY
by
RUDY JOHNSON

IN SUPPORT
of
H. B. 210
JOINT CUSTODY

presented
April 22, 1981

via Teleconference Network
Anchorage

FAMILY LAW REFORM AND JUSTICE COUNCIL OF ALASKA, INC.

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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 <u>failing!</u>

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 of 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

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Peter R. Ellis
Drew H. Peterson
Bruce O. Davies
Christopher M. Keyes

February 4, 1982

Alaska State Legislature
House of Representatives
Health, Education and
Social Services Committee
Pouch V
Juneau, Alaska 99811

Re: House Bill 210

Dear Committee Member:

This is the written supplemental testimony which I promised I would provide during my brief oral testimony to your Committee by teleconference on January 29, 1982. You were running late that day and I promised to be brief but to follow up with this letter thereafter.

As was apparently true of many of the witnesses during the teleconference hearing, I first saw the Committee Substitute for House Bill 210 upon arriving at the teleconference hearing room. Thus my remarks were initially tailored to the earlier version of H. B. 210, although I have now obviously had a chance to review the Committee Substitute as well. I am an attorney in private practice in Anchorage and have been in the active practice of law for approximately nine and one half years. A substantial amount of my practice during that time has been in the area of family law. I have resided in and practiced law in Alaska since July of 1976. I am also married, and have two children, ages one and one half and seven.

My initial reaction after reading the original H.B. 210, and my intent in testifying, was that I was substantially in favor of the bill, and the concepts contained therein, but troubled by some of the language which I thought needed work. Upon now reviewing the Committee Substitute, I find that much of the language which previously troubled me has been cleaned up, but at the same time that much of the heart of the original bill has been removed from the Committee Substitute to its detriment.

The primary difference in the bills, of course, is the removal of the rebuttable presumption in favor of joint custody. I am in favor of such a rebuttable presumption, although I would like to see the concept better defined than was the case in the original H. B. 210.

I do not necessarily agree with some of the other witnesses who testified at the hearing that the Committee Substitute totally guts the bill and is worse than having no bill at all. The Committee Substitute if enacted would, in my opinion, be a step in the right direction. I believe that the crux of the matter is that joint custody is a very useful and helpful concept, of substantial benefit in a large number of cases in resolving bitterly acrimonious disputes, by means which are frequently mostly semantic and with little practical difference from traditional custodial awards except that joint custody is considered more satisfactory to a parent who does not have primary custody of children after a divorce or a dissolution is granted. Joint custody is an extremely useful tool which should be encouraged for use in future custody disputes. It is my further belief that the present state of the law in Alaska actually discourages the use of joint custody, benignly if not actively, and that any step towards the more frequent use of joint custody by the courts is a step in the right direction. The Committee Substitute is in fact such a step in the right direction, although it is not nearly as strong a step as I would like to see because it has little substantive effect beyond its mere rhetoric. The adoption of a rebuttable presumption, such as that contained in the original H.B. 210 would be a much stronger step in the right direction.

The largest single difficutly with past joint custody arrangements which I have observed has been when the joint custody concept has been inadequately defined and structured. Thus I would like to see a bill enacted which would create a rebuttable presumtion of joint custody but further require that such arrangements be tightly defined in the vast majority of cases. The use of mediation as authorized under both versions of H.B. 210 would be a significant help in arriving at such definition. I believe that all joint custody agreements should be required to include with specificity provisions for the actual physical custody of the children, together with the time to be spent with the children with the non-physical custodian, except in those unusual cases

where such specificity is not required for good reasons which are stated by the Court on the record. Such a requirement of specificity in joint custody awards would, I believe, resolve the major concerns of those persons who have opposed the rebuttable presumption concept. Such an approach also comports with my own experience in dealing with joint custody, which is that carefully defined joint custody arrangements seem to work very satisfactory, whereas loosely defined joint custody arrangements can frequently create more problems than they solve.

Just as there may be rare cases where a loosely defined joint custody arrangement may be appropriate, and should I believe be authorized if good reasons are stated on the record, it is certainly even more true that there are many cases where joint custody is not appropriate. I do not see that as being in any way inconsistant, however, with the rebuttable presumption. My experience has been that such cases are relatively obvious and the presumption can easily be rebutted and thereby disappear. One thing not addressed directly in either of the bills, although at least an attempt was made in the original H.B. 210, would be to provide some additional teeth to the laws and encouragement to the Courts to actively prosecute and stop the sort of outrageous conduct, harassment, manipulating of children and the like which occurs in the all too large minority of cases. While not essential to H.B. 210, such problems are, I believe, worthy of consideration.

I would also like to speak briefly to the mediation provisions of the bill. I am in complete agreement with the comments of Superior Court Judge Tom Schulz in his letter to your Committee dated May 4, 1981, which I found to be an excellent and thought provoking letter and would commend once again to your attention. I firmly believe, as does Judge Schulz, that mediation should be required in all but the most exceptional of cases, and further that doing so would work a tremendous improvement in the resolution of custody disputes, and thereby pay for itself almost immediately in terms of time savings from the crowded Court dockets. Mediation is already authorized by Alaska statutes, but virtually never ordered by the Courts, and anything which your Committee can do to change that situation could, I believe, be of substantial benefit to the entire domestic relations field in the State of Alaska. Again, H.B. 210 is a step in the right direction but does not go far enough.

One final note. Concerning the comments of myself and other witnesses at the hearing as to language problems with the bill, I feel that such problems do exist with both versions of H.B. 210. I have been involved in legislative drafting in the past, however, and am well aware of the difficulties involved in drafting good statutory language. I have always believed that critics in that regards should be willing to invest some of their own time in attempting to resolve problems which they note, in effect put their time where their mouth is. Should the Committee be interested in my suggestions, you should feel willing to call on me and I will be available to attempt to help draft legislative language along the lines which I have recommended herein.

Thank you for your consideration.

Yours very truly,

ELLIS LAW OFFICES, INC.

By _____
Drew Peterson

DP/jb

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

Children of Divorce Coalition

Second Partners Coalition

A NON-PROFIT ORGANIZATION

February 11, 1982

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

Dear Representative Bierne:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sincerely,

RUDY JOHNSON
President

RJ:peh

Alaska State Legislature

House of Representatives

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

January 27, 1982

Katie Green
6320 Lost Circle
Anchorage, Alaska 99502

Ms. Green:

HB 210 was introduced last February and was referred to the Health, Education and Social Services Committee and then to the Judiciary Committee.

I have sent a copy of your letter to Rep. Beirne and Rep. Barnes.

I appreciate your comments on this legislation and will give careful consideration to the bill.

Sincerely,

Joe D. Montgomery

cc: Rep. Beirne
Rep. Barnes

JDM:mjc

1/25/82

1/15/82

6320 LOST CIRCLE
ANCH. AK
99502

REPRESENTATIVE JOE MONTGOMERY
POUCH V
JUNEAU, AK
99811

DEAR MR. MONTGOMERY,

I AM A REGISTERED VOTER IN THE 12th DISTRICT IN ANCHORAGE, AND HAVE VOTED REGULARLY.

I HAVE BECOME AWARE THAT HOUSE BILL 210 WILL BE INTRODUCED INTO THE LEGISLATURE THIS SESSION. JOINT CUSTODY IS A DEVELOPING CONCEPT WHOSE TIME IS AT HAND. THIS IS THE BEST POSSIBLE ALTERNATIVE FOR A CHILD TO HAVE. IT IS A FUNDAMENTAL BUT NECESSARY CHANGE FOR THE LEGAL SYSTEM. IT WILL EDUCATE PARENTS TO THE CONCEPT THAT CHILDREN ARE NOT TOOLS TO MANIPULATE FORMER SPOUSES.

I HOPE YOU WILL CHOOSE TO GIVE THIS BILL YOUR FULLEST SUPPORT AND AID IN ITS EXPEDITIOUS PASSAGE.

I FEEL VERY STRONGLY IN FAVOR OF ~~THIS~~ H.B. 210 FOR SOME OF THE FOLLOWING REASONS. IN THE PAST, MANY WOMEN HAVE USED A CHILD AS A MEANS TO AVENGE A WRONG THAT A HUSBAND MAY OR MAY NOT HAVE COMITTED. TOO OFTEN CHILDREN HAVE BEEN USED AS CHATTELS. HOUSE BILL 210 SHOULD DETER THIS TYPE OF CHILD ABUSE.

TIMES ARE QUICKLY CHANGING. MORE WOMEN THAN EVER BEFORE HAVE ACQUIRED SUCESSFUL CAREERS. IN ESSENCE, WOMEN HAVE BECOME SOCIO-ECCONOMICALLY EQUAL TO MEN. ESPECIALLY IN ALASKA WHERE OUR COST OF LIVING IS SUCH THAT BOTH HUSBAND AND WIFE MUST WORK. SO WITH THE ACCEPTANCE OF "WOMENS LIBERATION" INTO OUR SOCIETY, SO SHOULD WE ACCEPT MENS LIB. H.B. 210 WILL INSURE MENS EQUALITY IN THE NOTURING OF CHILDREN. IT WILL ALSO ALLOW BOTH PARENTS TO CONTRIBUTE EQUALLY TO THE FINANCIAL RESPONSIBILITIES OF CHILD REARING.

THIS BILL ENCOURAGES PARENTS TO IMPLEMENT THEIR OWN CHILD CARE PROGRAMS OUTSIDE OF THE COURT SYSTEMS. THE ISSUE OF CHILD CUSTODY IS BEST LEFT OUT OF OUR COURTS AND THE REASONS ARE PRIMARILY TWO FOLD. LITIGATION PLACES PARENTS IN SUCH ADVERSIAL POSITIONS THAT THEY MAY NEVER BE ABLE TO DEAL WITH EACH OTHER EFFECTIVELY AS PARENTS A IN. IT SHOULD ALSO LIGHTEN THE COURT SYSTEMS CASE LOAD WHICH IS ALREADY OVER-BURDENED.

H.B. 210 ALSO CONTAINS A STIPULATION WHICH ALLOWS FOR MEDIATION BETWEEN PARENTS. AGAIN THIS WILL AID NOT ONLY PARENTS AND THEIR CHILDREN, BUT ALSO THE EXTREMELY BUSY DOMESTIC COURTS.

AND LASTLY, HOUSE-BILL 210 WILL ELIMINATE THE PRACTICE OF MAKING A CHILD CHOSE ONE PARENT OVER ANOTHER. THUS WE WILL BE RELIEVING OUR CHILDREN FROM HAVING TO SUFFER FROM THE EXTREME GUILT OF MAKING SUCH A CHOICE.

I BELIEVE THE IMPLEMENTATION OF HOUSE BILL 210 WILL BE IN THE BEST INTERESTS OF EVERY FAMILY RESIDING IN ALASKA. ONCE AGAIN I URGE YOU TO SUPPORT THIS BILL TO YOUR FULLEST ABILITIES. I WILL REMAIN ALERT FOR ANY PROGRESS I MIGHT DISCOVER THROUGH THE NEWS MEDIA. I WOULD APPRECIATE HEARING FROM YOU AS TO WHETHER OR NOT YOU WILL BE SUPPORTING THE PASSAGE OF H.B. 210.

THANK-YOU AND I HOPE THIS LEGISLATIVE SESSION IS A SUCESSFUL ONE.

SINCERELY

Kathi Green

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

IÑUICH IKAYUQTAAT SUTIGULLIQAA PITQURATIGUN
ALASKA LEGAL SERVICES CORPORATION
P. O. BOX 309
BARROW, ALASKA 99723
907-852-2311

☐ URGENT
☐ PLEASE RESPOND BY _____
☐ NO REPLY NECESSARY

TO: House HESS Committee

DATE: November 30, 1981

SUBJECT: Testimony on HB 210

MESSAGE:

Please find enclosed written testimony on HB 210 from:

1. Linda Wingenbach
2. John Holmes

Thank you for your consideration of these comments.

SIGNED

REPLY:

SIGNED DATE

SENDER: SEND WHITE AND PINK COPIES.

FORM NO. M8220 THE STATIONERY HOUSE, INC. 1000 FLORIDA AVENUE HAGERSTOWN, MD. 21740

TESTIMONY BEFORE THE HOUSE OF REPRESENTATIVES'
COMMITTEE ON HEALTH, EDUCATION & SOCIAL SERVICES
HOUSE BILL NO. 210

My name is Linda Wingenbach. I am an attorney with Alaska Legal Services Corporation in Barrow, Alaska. I have been in Barrow for five months. Prior to that, for a period of two years I was in private practice in Portland, Oregon, and during my last year of law school I worked as an intern for the Northwestern Legal Clinic in Portland. Oregon is a state that has a joint custody statute.

I favor joint custody, but I feel there are some problems with this specific bill.

I. §2 of the bill (page 1, subsection b of AS 09.55.205) reads: "An appointment of a guardian ad litem for a child shall be made under AS 09.65.130." The current AS 09.55.205 provides discretion in the appointment and reads, "Any appointment of a guardian ad litem for a child shall be made under AS 09.65.130." I believe this could be a typographical error in the bill, rather than the intent of this committee. But, as you can see, the particular error drastically changes the meaning of this provision. HB 210, as it reads now, would require a guardian ad litem to be appointed in all cases where an order is made on custody and visitation--that is, all divorce or dissolution cases where children are involved, whether or not custody and/or visitation is disputed.

If this is not a typographical error, then I wish to go on record opposing the unnecessary appointment of guardians ad litem in cases where custody, support, and/or visitation is not disputed. I agree with Master Francis Stevens' oral testimony on this point. In fact,

AS 09.65.130 provides the needed discretion:

> "(a) The court may, . . . upon its own motion, appoint an attorney to represent the minor with respect to his custody, support, and visitation. . . .
> (c) Instead of, or in addition to, appointment of an attorney under (a) of this section, the court may, . . . upon its own motion, appoint an attorney or other person to serve as guardian ad litem to represent the best interests of a minor in any legal proceedings involving his welfare."

Therefore, as written, HB 210 conflicts with the provisions of AS 09.65.130, by removing the discretion of the court in orders on custody and visitation. At the very least, the bill should make these two statutes consistent.

Further, the Alaska Supreme Court believes that the power to appoint guardians ad litem should remain discretionary. In dicta, the Court said: ". . .There will be many custody cases in which a guardian will not be needed, and in such cases neither the statute, the court rules, nor our decisions compel the court to waste its time and money, as well as that of the parties and counsel, in employing one." Veazey v. Veazey, 560 P2d 382, 385 (1977). AS 09.65.130 provides payment of the guardian ad litem from assets held jointly by the parents. It is unfair, then, when parents agree to custody and visitation to require them to pay for an unnecessary appointment of a guardian ad litem.

II. S2 of the bill (page 2, AS 09.55.205(c)(6)) permits the court, in determining the best interests of the child, to consider, "the desirability of offering the child a variety of life experiences." This particular consideration could work to the disadvantage of rural parents, especially if the custody decision is to be made by an urban judge. Many people persevere in the belief that "variety of life experiences"

can only be obtained in an urban setting. Therefore, when there is a conflict between a custodian in an urban setting and one in a rural setting, the rural parent would be placed at a disadvantage before an urban judge.

A variety of life experiences has not been defined and is so vague and ambiguous as to encourage individual bias in interpretation.

AS 09.55.205(c)(6) of this bill also seems to conflict with subsection (d) of the same bill wherein "the court may not consider the. . . income, social or cultural environment, . . .of either parent. . . ." Where would "variety of life experiences" come except due to the "income, social or cultural environment" of a parent?

III. §3 of the bill (page 3, AS 25.20.060) allows the court to settle disputes over the custody of children, based on a child's best interest. The court is specifically instructed to consider the factors enumerated in AS 09.55.205(c). Besides my objections to AS 09.55.205(c)(6), I feel this section should also specifically prohibit the court from considering those factors enumerated in AS 09.55.205(d). Since 25.20.060 concerns the determination of custody of children, both the factors and the prohibitions in AS 09.55.205 should apply. By only specifying subsection (c), the bill suggests that the court may consider the otherwise prohibited factors.

IV. §4 of the bill (page 3, AS 25.20.070) creates a rebuttable presumption that shared custody is in the best interest of the child. I agree with Master Francis Stevens' and Attorney John Reese's testimony that shared or joint custody is an alternative to be considered in all cases, equally with custody in a single parent. Although shared custody is preferable to sole-parent custody, raising it to the level of a

rebuttable presumption is unnecessary and can create additional problems for the divorced parents they may not be prepared to handle. The attorney,Timothy Lynch, felt that if joint custody were not made a rebuttable presumption, this bill would completely lose its meaning. That, obviously, is no reason to make shared custody a rebuttable presumption. If it is decided the whole bill is worthless, that decision should be made. If the substance of a bill is lost, the bill should be eliminated--that is, a poor provision should not be retained simply because the bill would otherwise be meaningless. That is what these hearings and written testimony is all about.

Besides, statutorily promoting shared custody is worthwhile. However, shared custody should not be a rebuttable presumption because it brings an improper bias into the court. Shared custody is not always in the best interest of the child. It should be encouraged, yes, but in many cases, as Mr. Lynch and Mr. Reese pointed out, many couples who are divorcing cannot sort out their feelings sufficiently to agree to a joint custody arrangement. And if couples cannot agree to the shared custody arrangement, shared custody will not work because, as Ms. Louster testified, the ability to communicate with each other and come to mutually agreeable decisions concerning the welfare of the child is essential in a joint custody situation. Alaska cannot be compared with California, Oregon, or other lower 48 states where the state court systems provide family counselors to help couples come to agreement on shared custody and offer continuing aid. The majority of the state courts in Alaska cannot offer this kind of help.

With shared custody a rebuttable presumption, parents are pushed into that alternative. It becomes an easy tool to be used by one party or the other in negotiating other aspects of the divorce. It will tend

to delay the dissolution of a marriage, conflicting with the intent of the current statutes providing a speedy resolution to the petition, the delay and intervening bargaining being possibly detrimental to the child. The court should favor agreements between parents concerning the custody of children but should not presume that all caring parents can come up with a joint custody agreement at the time of the divorce. In some cases, the parents may even agree that one or the other of them should have sole custody.

V. §4 of this bill (page 3, AS 25.20.090(d)) allows a court to "require the parents to submit to the court a proposal for award of shared custody." This is objectionable for the same reasons as stated above. Where two people cannot come to an agreement by themselves, the court cannot force them to, particular where the interests of the child are at stake. And unless the parents agree to share custody, the proposal would not be workable. The court should not be able to force negotiations between possibly battling parents under circumstances the court is not fully apprised of. Even if this bill is passed with the above rebuttable presumption intact, this section should be eliminated. If this section is also retained, the court should be required to give the parties an "out" by permitting them to show that such a proposal is inappropriate. If the intent of this section is mediation between parents, that is handled under the proposed AS 25.20.080, which permits the court to appoint, or be, a third party mediator.

VI. §4 of the bill (page 4, AS 25.20.120(4-5)) permits a court, in determining shared custody, to consider "(4) the advantages of maintaining the child in the same community as compared with the potential advantages of a new community; (5) the advantages of providing a varied life experience for the child." This provision is objectionable

for the same reasons as my part II, above. Alaska is a state of vast land area. Many of its communities can only be reached by air or water. In many cases, divorced parents live far away from each other or, at least, in areas where it would be difficult to travel from one to the other. Again, the "variety of life experiences" factor would work to the disadvantage of the parent in the rural community, especially if it is one of the many isolated communities in this state, because of inherent biases against isolated villages. It is not possible, due to the size of Alaska and the distances between communities and the lack of urban centers, to compare this state with any other state in the "lower 48". These factors again conflict with AS 09.55.205(d), above, which prohibits the court from considering a parent's income, social or cultural environment. Those prohibitions should apply here because the determination of shared custody is a determination of custody and therefore the same criteria should apply.

VII. §4 of the bill (page 3, AS 25.20.150) allows the court to award custody to a nonparent if it "finds that an award of custody to a parent would be detrimental to the best interests of the child." This criterion does not give sufficient import to the parent-child relationship, which has Constitutional protection. See, for example, Meyer v. Nebraska, 262 US 390 (1923); Pierce v. Society of Sisters, 268 US 510 (1925); Skinner v. Oklahoma, 316 US 535 (1942); May v. Anderson, 345 US 528 (1953); Stanley v. Illinois, 405 US 645 (1972); Wisconsin v. Yoder, 406 US 205 (1972); Quilloin v. Walcott, 434 US 246 (1958). The Alaska Supreme Court has said:

> "We agree that the right of parents to the care, custody and control of their children is an important and substantial right protected by, although not specifically enumerated in, both the United

States and Alaska Constitutions." Matter of S.D.,Jr., 549 P2d 1190, 1200 (Alaska, 1976).

The Alaska Supreme Court, in Turner v. Pannick, 540 P2d 1051 (1975), specifically found, contrary to Mr. Lynch's testimony, that "detrimental to the best interest" is the wrong test to apply. In fact, the Supreme Court reversed the order of the Superior Court because the latter had applied the "best interest" test. The court found that custody in the parent is clearly "preferable and only to be refused where clearly detrimental to the child." 540 P2d at 1055. The Court held that "If 'best interest' of the child is the only criterion, then a judge may take children from their parents because the judge personally disagrees with the parents' limited means." 540 P2d at 1054. Therefore, "Unless the superior court determines that a parent is unfit, has abandoned the child, or that the welfare of the child requires that a non-parent receive custody, the parent must be awarded custody." 540 P2d at 1055.

It is difficult to distinguish between the test "best interest" and "detrimental to the welfare." The Alaska Supreme Court explained in Veazey v. Veazey, 560 P2d 382, 286 (1977), that "Between parents, custody is to be awarded according to the best interests of the child. . . Between parent and a non-parent, the parent is to be preferred unless placing custody with him or her would be detrimental to the child." Under the "Child in Need of Aid" statutes, the State has a set of certain minimum standards for parenting and when parents fall below that standard, the State can step in and make the child a ward of the court. That is, the State must show that the parental care is detrimental to the welfare of the child or the parents are unfit. The "detrimental to the best interests" criterion can be above that standard and interjects a comparative standard. That is, who can provide the most for the child. The "best interest test does not require a determination that the parent

creates harm or a danger to the child's welfare. Therefore, it is an improper test to use to determine custody as between a parent and a non-parent. As in Turner v. Pannick, supra, the test should be "detrimental to the welfare of the child, abandonment of the child, or parental unfitness."

Thank you for considering my statements.

Linda M. Wingenbach
Attorney-at-Law
ALASKA LEGAL SERVICES CORPORATION

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

TESTIMONY BEFORE THE HOUSE OF REPRESENTATIVES'

COMMITTEE ON HEALTH, EDUCATION & SOCIAL SERVICES

HOUSE BILL NO. 210

November 29,1981

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sincerely Yours,

John M. Holmes,
Attorney at Law

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

HB 210

Box 381
Kenai, Alaska 99611
22 Feb. 1982

Members of the HESS Commitee

Dear Sirs,

I am the non-custodial parent of a beautiful eight-year old girl, Rachel. For the past three to four years, I have been shooting for joint custody at best, for shared coustody outside the law at least. The process of reconciliation and building of a mutual trust has been painfully slow. We are not there yet, but we are now closer than we have ever been. We have just taken a giant step toward full understanding and cooperation with the developements over the past month.

Rachel came to visit us for four weeks following Christmas. Three weeks into the visitation, we decided to see if we could keep Rachel for the remainder of this school year. A number of factors went into making this decision; academic performance in the school here compared with performance in Washington, amount of supervision we were giving Rachel compared with the amount her mother was able to provide, and other factors as well. One very important factor was that Rachel definitely wanted to stay.

Initially, Rachel's mother's response was 'no', accompanied with no concrete reasons. She was simply afraid that she would not get her back, and that she might somehow compromise her position as the custodial parent. There was never any reference to what was the best for Rachel. I accepted her decision.

The night before Rachel was due to return to Washington, while packing her suitcases, Rachel broke down crying. She said that she did not want to go back. Attempts at reassurance did not alter her position. I decided to try convincing her Mother again. After an hour on the phone, I got a commitment from her mother that she would give this much more sincere consideration.

At this point, I contacted Rudy Johnson of Equal Rights for Fathers of Alaska. I told him that I was planning to have Rachel stay up with me and accept the consequences. Through his council, I realized that this course of action would not be the best for Rachel. Keeping in mind Rachel's best interests, Mr. Johnson counciled patience,nothing but positive involvement with Rachel's mother in the future, and further poitive involvement with Rachel. He suggested ideas, such as, when parents feel good about themselves and their relationship with each other, kids feel good.

This last statement is what I feel is at the heart of HB-210. HB-210 will provide the mechanism whereby separated and divorced parents will no longer be made into legally sponsored adversaries. Instead, parents will be encouraged

to cooperate, to find grounds for agreement over what is the most important thing to each of them, the well-being of their children.

Through talking with Mr. Johnson at length, I know that he represents very closely what my philosophy is pertaining to this issue. Please listen very closely to what he has to say and know that he is a representative of more people than those belonging to his organization. There are a lot of children out there who are needlessly struggling through the kinds of tug-o-wars that this bill is going to eliminate.

Sincerely,

Dana W. Hallett

P.S.

Rachel's mother has consented to letting her stay through the remainder of the school year. Perhaps Mr. Johnson's advice had somehow tempered my attitudes and provided me with incentive to state my case in a more convincing, calm manner. Without his advice, this situation could have set back the painstaking progress to the beginning.

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K–STATE CAPITOL
JUNEAU, ALASKA 99811

(907) 465-3603

March 26, 1981

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

Re: House Bill 210

Dear Mr. Clocksin:

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

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

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

03-C5LH

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

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

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

Sincerely,

WILSON L. CONDON
ATTORNEY GENERAL

By: Linda Scoccia
Linda Scoccia
Assistant Attorney General

cc: Art Peterson

LS:ml

THE JOINT CUSTODY ASSOCIATION

10436 Wilkins Avenue
Los Angeles, California 90024
(213) 475-5352
James A Cook
President

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

FILE HB 210

April 15, 1982

Senator Pat Rodey
State Capitol
Pouch V
Juneau, Alaska 99811

Dear Senator Rodey:

As a responsible legislative committee member, you may be particularly concerned with the timeliness and importance of the enclosed material.

The assurance of joint custody for the children of divorce, and the ability to secure frequent and continuing contact with both parents through a less litigious proceedings, is the intent of the enclosed model joint custody statute.

We urge you to introduce the enclosed proposal in your legislature.

The text is drawn primarily from two sources: (1) The existing California and Nevada statutes, which afford two of the Nation's largest bordering states with nearly identical child custody statutes. (2) Amendment improvements dictated by experience in implementation and need for guidance to the courts and that are now in the final stage of legislative consideration by California's "second house".

The decisive vote that the joint custody concept is attracting in state legislatures could reflect a perception of the public's readiness for a statute that makes joint custody a first preference, a "rebuttable presumption," and with the burden of proof that joint custody might not be in the best interests of a particular child upon the individual seeking to isolate a child in exclusive sole parent custody.

The enclosure is a recognizably humane and decent refuge for the children of divorce and for salvaging the conscientious parent's desire to be a responsible participant in the upbringing of their children, regardless of divorce. The proposal, as enclosed, does not seek to pass a value judgment on divorce, but is to protect one of the Nation's most valuable resources for stability despite the instability of divorce: the relationship between children and each parent.

Sincerely,

James A. Cook

Enclosures

Master, Model

Joint Custody Statute

FOR UNIFORMITY NATIONWIDE

THE JOINT CUSTODY ASSOCIATION
10606 Wilkins Avenue
Los Angeles, California 90024

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

Text for a modern, up-to-date joint custody statute available for introduction in state legislatures with the intent of seeking more nearly uniform joint custody practices nationwide and ease of implementation under the Uniform Child Custody Jurisdiction Act.

The following is predicated primarily on California's joint custody statute, combines observations of Nevada's joint custody statute (which was enacted following the California example and provides a similar statute for two major states with one of the Nation's longest contiguous borders)

An advantage of the following is that the issues have undergone legislative analysis and debate, found public approval, and incorporate minor technical improvements that experience has demonstrated as desirable.

Indexing should be integrated with each state's Civil, family and domestic law provisions.

POLICY — Section 1. Section 100. (a) The Legislature finds and declares that it is the public policy of this state to assure minor children of frequent and continuing contact with both parents after the parents have separated or dissolved their marriage and that it is in the public interest to encourage parents to share the rights and responsibilities of child rearing in order to effect this policy.

AT OUTSET & THEREAFTER — In any proceeding where there is at issue the custody of a minor child, the court may, during the pendency of the proceeding or at any time thereafter, make such order for the custody of the child during minority as may seem necessary or proper.

PRIORITIES — (b) Custody should be awarded in the following order of preference, according to the best interests of the child.

1. To both parents jointly pursuant to Section 100.5

PLAN — The court, in its discretion, may require the parents to submit a plan for implementation of the custody order upon finding that both parents are suitable parents, or the parents acting individually or in concert may submit a custody implementation plan to the court prior to issuance of a custody decree.

COOPERATION

2. To either parent. In making an order for custody to either parent, the court shall consider, among other factors, which parent is more likely to allow the child or children frequent and continuing contact with the noncustodial parent, and shall not prefer a parent as custodian because of that parent's sex. The burden of

proof that joint custody would not be in a child's best interest shall be upon the parent requesting sole custody

(3) If to neither parent, to the person or persons in whose home the child has been living in a wholesome and stable environment.

(4) To any other person or persons deemed by the court to be suitable and able to provide adequate and stable environment.

(c) Before the court makes any order awarding custody to a person or persons other than a parent without the consent of the parents, it shall make a finding that an award of custody to a parent would be detrimental to the child and the award to a non parent is required to serve the best interests of the child. Allegations that parental custody would be detrimental to the child, other than a statement of that ultimate fact, shall not appear in the pleadings. The court may, in its discretion, exclude the public from the hearing on this issue.

PRESUMPTION

Section 2. Section 100.5. (a) There shall be a presumption, affecting the burden of proof, that joint custody is in the best interests of a minor child unless

(1) the parents have agreed to an award of custody to one parent or so agree in open court at a hearing for the purpose of determining the custody of a minor child of the marriage or

(2) the court finds that joint custody would be detrimental to a particular child of a specific marriage.

For the purpose of assisting the court in making a determination whether an award of joint custody is appropriate, the court may direct that an investigation be conducted.

REASONS

If the court declines to enter an order awarding joint custody pursuant to this subdivision, the court shall state in its decision the reasons for denial of an award of joint custody.

DEFINITIONS

(b) For the purposes of this section, "joint custody" means joint physical and legal custody. "Joint physical" means an order awarding each of the parents significant periods of time in which a child resides with or is under the care and supervision of each of the parents or parties. Joint physical custody shall be shared by the parents in such a way as to assure a child of frequent and continuing contact with both parents. "Joint legal" means that the parents or parties share, or shall have voluntarily allocated or the court shall have decreed between them, the decisionmaking rights, responsibilities, and authority relating to the health, education, and welfare of a child.

An award of joint physical and legal custody obligates the parties to exchange information concerning the health, education, and welfare of the minor child, and unless allocated, apportioned, or decreed, the parents or parties shall confer with one another in the exercise of decision-making rights, responsibilities and authority.

MODIFICATION from JOINT CUSTODY

REASONS

(c) Any order for joint custody may be modified or terminated upon the petition of one or both parents or on the court's own motion if it is shown that the best interests of the child require modification or termination of the order. The court shall state in its decision the reasons for modification or termination of the joint custody order if either parent opposes the modification or termination order.

MODIFICATION to JOINT CUSTODY

(d) Any order for the custody of a minor child of a marriage entered by a court in this state or in any other state, subject to jurisdictional requirements, may be modified at any time to an order of joint custody in accordance with the provisions of this section.

CONCILIATION

(e) In jurisdictions having a private or publicly-supported conciliation service, the court or the parties may, at any time, pursuant to local rules of court, consult with the conciliation service for the purpose of assisting the parties to formulate a plan for implementation of the custody order or to resolve any controversy which has arisen in the implementation of a plan for custody.

RECORDS

(f) Notwithstanding any other provision of law, access to records and information pertaining to a minor child, including but not limited to medical, dental, and school records, shall not be denied to a parent because the parent is not the child's custodial parent.

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Explanatory notes

Issues not to be contained in the statute, but as an outgrowth of implementation and as a guide to furthering the statute's policy.

Initiating planning

To facilitate easing litigating parents into consideration of joint custody planning, you are encouraged to examine, and duplicate for distribution within the family court system, "Initiating Joint Custody Planning; Encouraging & facilitating joint physical and legal custody plans."*

Decree clauses

Joint custody provisions and clauses for decrees or agreements, as a convenient reference for judges, attorneys and counselors, can be found in "Decree or Agreement, Joint Custody Provisions & Clauses."*

Public pamphlet

A basic and explanatory booklet suitable for reproduction and distribution to parents filing for divorce, written in lay language and addressing the divorce process, is available in "Cooperative Parenting Following Dissolution: Your child needs both of you. Prepared by the Los Angeles Committee to Implement California's Joint Custody Statute (Los Angeles Superior Court)."*

Best interests

"Best interests of a child" need not be specified within the statute in view of the on-going analysis and redetermination of what amounts to "best interests" and lest a listing of presumed "best interests" constitute an unconstitutional denial

of access by child and parent to each other and thereby jeopardize the entire custody statute.

However, informal court guidelines, apart from the formal statute, may include the following:

In determining the best interests of the child the court may consider:

1. The physical, emotional, mental, religious, and social needs of the child;
2. The capability and desire of each parent to meet these needs
3. The love and affection existing between the child and each parent;
4. The length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity;
5. The desirability of offering the child a variety of life experiences;
6. The desire and ability of each parent to allow an open and loving relationship between the child and his other parent.

Child's preference

It is not considered advisable that a child's preference, desire or wish be elicited from the child, under the pretext of 'best interests of a child,' as a prerequisite for court determination of custody because:

a. Such an action or supposition could vest with a child, at an impressionable age, and prior to a comprehension of the long-term consequences by the child, a sense of power or control or leverage over either or both parents and over the court system.
b. A decision predicated on a child's decision between two parents raises the spectre of an eventual guilt-feeling by the child regarding the excluded parent and the necessity of a custodial parent to reassure the child of the wisdom of excluding a parent.
c. By implying the power of decision by a child, the parents are unecessarily and unwisely thrown into a competitive situation to cater to and curry favor with the child in hopes of influencing a child's decision of one parent over another.

Criteria for joint custody

So-called criteria for determining the qualifications or suitability of one or both parents to be decreed joint custody, such as geographic convenience, association with friends, and adequacy of living quarters are not advisable to be specified in a statute. Such criteria have been widely debated and eventually dropped because:

a. definitive criteria that are largely the product of opinion or cultural viewpoint have the likelihood of being unconstitutional, and
b. a listing of criteria provokes litigating parents into envisioning methods for defeating joint custody and of scrutinizing comparisons and issues that could be used to belittle the opposite parent.

* Items available from The Joint Custody Association, James A. Cook, 10606 Wilkins Avenue, Los Angeles, California 90024

Supportive Background Materials

10606 Wilkins Avenue
Los Angeles, Californ 024

James A. Cook
President

THE JOINT CUSTODY ASSOCIATION

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

From the Joint Custody Association:

Joint Custody, Sole Custody: A New Statute Reflects a New Perspective

The legislative evolution of the new California custody law; origins and intent as a guide to understanding and administering joint or sole custody. (Published in the Conciliation Courts Review, Volume 18, Number 1, June 1980.)

Initiating Joint Custody Planning. Encouraging and Facilitating Joint Physical and Legal Custody Plans

A step-by-step questionnaire to elicit from divorcing parents their preferences in child rearing, to indicate areas of agreement, and to relieve the court of dictating decisions that could be unacceptable to one or both parents. Encompasses areas of medical care, education, religion, residence, travel, support, communications, discipline, dispute resolution, and time allocation.

Decree or Agreement, Joint Custody Provisions & Clauses

A selection of options for jurists, attorneys and parents in creating decrees or agreements in the form of provisions and clauses dealing with intent, residence, time allocation formulas, holidays, travel, moving residence, education, medical, child support, implementation, review, remarriage, decisions, and conflict resolution.

Cooperative Parenting Following Dissolution: Your Child Needs Both of You

A pamphlet for parents prepared by the Los Angeles Committee to implement California's joint custody statute.

Research

Recent and pertinent research regarding the effects of child custody decisions by the courts.

THE JOINT CUSTODY ASSOCIATION
10606 Wilkins Avenue
Los Angeles, California 90024

Effects of Child Custody Decisions by the Courts.

The negative effects of sole parent custody following divorce upon all members of a family, and the probability of long-term, socially-undesirable results of sole parent exclusive child custody have been widely published in numerous studies during the past decade and a half.

There are no known studies which substantiate the wisdom or the likelihood of favorable results in pursuing a policy of presumption for sole parent exclusive custody even though decades of sole parent custody decrees "beg" a justification for having done so.

Hence, the evolving solution of joint custody has been encouraged by the following studies which arose from the detrimental effects of sole parent custody.

PSYCHOLOGICAL ADJUSTMENT OF JOINT CUSTODY CHILDREN, AS COMPARED WITH OTHER CUSTODY ALTERNATIVES

Pojman, E. Unpublished doctoral dissertation, 1981, California Graduate Institute, 1100 Glendon Ave., Los Angeles, Calif. 90024.

Comparison of four groups of 20 boys each (aged 5-13 years) living in a) joint; b) sole custody; c) happy intact marriages; and d) unhappy intact marriages. Boys were compared on the Louisville Behavior Checklist (parent's rating), the Inferred Self-Concept Scale (teacher's rating), and the California Test of Personality (child's rating). Boys in joint custody arrangements were significantly better emotionally adjusted than boys of exclusive custody and of the unhappily married group, on both the Louisville Behavior Checklist and on the Self-Concept Scale. Boys in joint custody situations had higher personal adjustment scores on the California Test of Personality than did boys in sole custody, just short of statistical significance. Boys in sole custody did not score significantly differently on any of the three tests, when compared to boys living in unhappy intact families.

RELITIGATION OF JOINT CUSTODY DECREES, AS AN INDICATOR OF SATISFACTION COMPARED WITH OTHER CUSTODY DECREES

Ilfeld, Frederic W., Holly Ilfeld, M.A., and John R. Alexander, J.D., "Does Joint Custody Work? A First Look at Outcome Data of Relitigation," Amer. J. of Psychiatry 139:1, January 1982, pp. 62-66.

Relitigation records on 414 consecutive custody cases were studied in the West District Dept. J of the Los Angeles County Superior Court. Two-thirds of the cases involved sole custody and one-third joint custody. In those cases which were returns

to court, the proportion of relitigation for joint custody families was one-half that of exclusive custody families. A small subsample of contested joint custody cases showed no difference in relitigation rate with sole custody awards. "Considering that the best interests of the children are foremost, all professionals should recognize a strong, positive indication for joint custody. Unless future data persuasively contradict our and Pojman's findings, the burden of proof that joint custody would not be in a child's best interests should be on the parent requesting sole custody." (p. 65.)

ANALYSIS OF FAMILIES WITH JOINT CUSTODY

Ahrons, Constance R. "The CoParental Divorce: Preliminary Research Findings and Policy Implications," in Joint Custody: A Handbook for Judges, Lawyers, and Counselors, Association of Family Conciliation Courts, Portland, Oregon, 1979.

41 divorced parents, representing 30 separate families. "Most of the divorced parents in this sample were able to maintain a shared parenting relationship, and to parent their offspring in ways that are satisfactory to them."

Abarbanel, Alice, "Shared Parenting After Separation and Divorce: A Study of Joint Custody," in Joint Custody Handbook, op. cit.

In-depth case study of 4 families. "Joint custody appears to be working effectively in the four families studied. The four major factors contributing to its success are commitment of the parents, support for the co-parent, a flexible sharing of responsibility, and agreement on the implicit rules." Children lived with parents no longer than 2 weeks at a time, and parental division of child care responsibilities ranged from 50/50 to 67/33.

Nehls, Nadine, "Joint Custody of Children: A Descriptive Study," in Joint Custody Handbook, op. cit.

Study of 12 parents, representing 8 families, who shared custody of their child(ren). Twelve children. Eleven of the twelve children perceived by parents as "very" or "fairly" satisfied with the custody arrangement. Nine of the 12 experienced only minor problems. None of the parents said they were dissatisfied. "In general, the results of this study substantiate the feasibility of joint custody arrangements...there are indeed potential benefits of j.c. for divorcing families."

Steinman, Susan, Unpublished paper, Jewish Family and Children's Services, San Francisco, Calif.

25 joint custody families studied 1978-80. 32 children residing in 5 counties in the S.F. Bay Area. 2/3 chose and implemented a j.c. plan of their own. Most children were able to adapt to each household with minimum conflict and confusion. Children felt torn when parental conflict over child-rearing was strong and overt. Overall, children did not suffer from loyalty conflicts, but 1/3 did express "superloyalty" or desire to be absolutely fair to both parents. About 1/4 of the children did experience

some confusion, but "overall, children's clarity about their schedule and location of their homes was very impressive." "...the findings certainly suggest that children can live in two homes."

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

Extensive research and interviews with mothers and fathers, brothers and sisters, judges, lawyers, and psychiatrists. Woolley concludes that what she calls "shared custody" is best for the emotional health of children and parents. Shared custody is any form of custody or visitation arrangement which allows both parents to have lots of normal, day-to-day interaction with their offspring and provides that each adult participate in both the responsibilities and rewards of child raising.

Ricci, Isolina, Mom's House-Dad's House, MacMillan, 1981.

Based on eight years of clinical experience and research in divorce, custody, and single parenting. Her clinical cases demonstrate successful shared parenting arrangements under a wide range of circumstances: with former spouses who were friendly, angry, vindictive, possessive; with those living in the same community or across the country.

DOCUMENTED EFFECTS OF SHARED PARENTING ON ADULTS

Keshet, Harry F. and K. Rosenthal, "Fathering After Marital Separation." Social Work, Jan. 1978, pp. 11-18.

Taking on the responsibilities of child-rearing is important for healthy adult development. "Parenting is an important stage in the identity formation of adults." Study of 128 men during first two years after marital dissolution.

Greif, Judith Brown, "Fathers, Children, and Joint Custody," American J. of Orthopsychiatry, April 1979.

Study of 40 legally separated or divorced fathers, and 63 children. Joint custody fathers were less likely to remove themselves from the child's growth and development. Such ties are critical for both the father and the child. "Rather than support imposition of legal visitation restrictions, we should do everything in our power to maximize contact between children and both parents." Study did not find evidence that children were used as pawns, or that joint custody was disruptive to children or to children's friends, or that parents needed to be on good terms with each other.

Steinman, Susan, Jewish Family and Children's Service, unpublished paper.

Study of 25 joint custody families showed that coparenting helped to make separation easier for parents.

NEED OF CHILDREN FOR FREQUENT CONTACT WITH BOTH PARENTS AFTER DIVORCE.

Wallerstein, Judith, and J. Kelly, "The Effects of Parental Divorce: Experiences of the Pre-School Child," J. of the American Academy of Child Psychiatry 14:4, Autumn 1975, pp. 600-616.

----------"The Effects of Parental Divorce: Experiences of the Child in Early Latency," American J. of Orthopsychiatry 46, Jan. 1976, pp. 20-32.

----------"The Effects of Parental Divorce: The Child in Later Latency," American J. of Orthopsychiatry 46, April 1976, pp. 256-269.

60 families in Marin County, California, 131 Children aged 2-18; 5-year longitudinal study (1970-75). Greatest fears of the children were of being abandoned by their parents. Children felt great sense of loss if one parent absent. Effects observed of children being left almost exclusively in the care of only one parent were negative. Best adjustment occurred among children who saw both parents frequently and had parents' support to do so. The conventional visitation arrangement of twice a month found inadequate. Working on the coparenting concept helps both children and parents according to Joan Kelly.

Hetherington, E. Mavis, Martha Cox, Roger Cox, "The Aftermath of Divorce," in J. H. Stevens, Fr. and Marilyn Matthews, eds., Mother-Child, Father-Child Relations, Washington, D.C., NAEYC, 1977.

2-year longitudinal study of 96 families (half divorced and half intact families). Total of 144 children. "When support and agreement occurred between divorced couples, the disruption in family functioning appeared to be less extreme, and the re-stabilizing of family functioning occurred earlier.." Mothers' effectiveness in dealing with child(ren) most dependent on mutually supportive relationship of the divorced couple and continued involvement of the father w. child (mothers were the custodial parents).

Both of these studies indicate that the nature of the parental relationship has a direct impact on children's adjustment. The more conflict between parents over their children, the worse the children's adjustment.

CUSTODY ALTERNATIVES & MEDIATION

Olson, David et. al., "Custody Resolution Counseling: Description and Comparison with Custody Study," in Child Custody: Literature Review and Alternative Approaches, Child Custody Research Project, Hennepin County, Minnesota, Domestic Relations Division, Sept. 1979.

Study of 686 contested custody cases filed between 6/75 and 6/78 in Hennepin Co., Minnesota. Compared cases going to Custody Study (evaluation and recommendation mode) vs. those receiving custody counseling (mediation mode). Both services are offered through the court's Domestic Relations Dept.--parental agreements

Divorced father seeks clues to son's wherabouts

by Carol Murkowski
Times Writer

The only clue Ray Hitchcock has to his three-year-old son's whereabouts is a faded newspaper clipping describing the boy as the youngest hanglider in Oregon.

Hitchcock's ex-wife, her new husband, and young Ryan quietly left Anchorage two days after Hitchcock got a court order enforcing his right to visit Ryan. Although he has visitation rights, he has not seen or heard from his son since July.

He knows that Ryan has been in Oregon, and is probably living in southern California now; he knows that the boy is hangliding with his stepfather; he knows that Ryan is being taught that his last name is not Hitchcock.

And, although the courts tell him that his ex-wife is in the wrong, he knows there's not much he can do about it.

Hitchcock is a member of Equal Rights for Fathers of Alaska, a group that has been getting its name in the news with increasing frequency by lobbying for changes in domestic relations law.

One of the group's efforts comes up for a hearing Nov. 20 in Anchorage and Fairbanks. House Bill 210 would encourage joint custody arrangements, in which one parent would have physical custody of children, but both would share in the legal, financial and moral obligations to the children.

The bill would help parents like Hitchcock, says Rudy Johnson, president of Equal Rights for Fathers.

"Ray is a perfect example of what happens without joint custody, when parents are forced into litigation to have access to their children," says Johnson.

With joint custody, "at least I'd have a say in what they were teaching my son," Hitchcock adds.

Hitchcock, 28, and his wife Vicki, 26, were married in 1975 and divorced four years later. Vicki was awarded custody of their son Ryan, and a visitation schedule — alternate weekends and one month in summer — was set up.

However, Hitchcock says, Vicki and her new husband often refused to comply with the visitation order, hiding, refusing to let Hitchcock take Ryan for the weekend, and twice beating Hitchcock.

"When I went over, I'd follow the law to the letter," recalls Hitchcock, a stocky young man whose arms are covered with tattoos. "I'd keep my hands in my pockets, and always take somebody with me." Once, when he was refused Ryan, he filed for a writ of assistance, and a state trooper accompanied him to pick up Ryan; even with the trooper's presence, Ryan was not released until Vicki and her husband were threatened with arrest.

In February, Hitchcock filed a suit to enforce his visitation rights. Two days after the court agreed to enforce the order, Vicki left the state.

Her last address was Rockaway, Ore., but Hitchcock hears she has since moved to California. He has been told by Vicki's friends and relatives that she will get in touch with him in the spring, when his summer visitation rolls around.

Hitchcock is worried that Ryan's stepfather takes the boy hangliding with him. The newspaper article he received from Oregon says that Ryan "understands there is a very high element of risk and danger," and Hitchcock is unhappy about it. "I don't have any say in something that I think is dangerous for my son," he says.

The article also uses Ryan's stepfather's name — Griffeth — instead of Hitchcock.

"If Ryan decides one day that his stepfather has been more of a father to him, and he wants to change his name legally, that should be his choice. I'd be hurt, but I wouldn't interfere," Hitchcock says. "But that decision should not be made for him while he's still too young to decide."

Hitchcock admits he has had some bad times in his past which might prevent asking for full custody of his son. He admits to a bout with alcoholism and suicidal tendencies after his divorce, but a psychologist has "assured me that those are normal post-divorce reactions."

He says he is fine now, and "the court has been on my side all the way."

The court ordered Vicki's attorney to find her and tell her to notify Hitchcock and the court where she was living, or a warrant would be issued for her arrest. She complied this summer, and Hitchcock took Ryan for his summer visit in July.

"But since my son left July 30, I have not seen him or heard of him at all," he says. "Apparently she feels I don't have the right to know where Ryan is 11 out of 12 months. But I still have to pay child support, and I feel I have the right to write my son once in awhile."

In the meantime, he's trying other avenues. He wanted to put an ad in the Los Angeles Times placing a reward for information on Ryan's whereabouts, but he can't afford the $1,400 it would cost. Neither can he afford a private detective.

And he's researching cases in which "alienation of affection" has been proven, hoping to use it against Vicki. If he can, he'll ask for temporary custody of Ryan until Vicki can come to court and explain her actions. If he doesn't hear from her by spring, when Ryan's annual visit should be arranged, he plans to ask for a hearing to show cause why she is not following the court's orders.

"Until then, my hands are tied."

The need for Alaska to switch to 'joint custody' of children

by John Havelock

A BILL NOW pending in the Legislature would make "joint custody" the presumptive form of custody of children in divorce proceedings. This bill should pass.

Up to the late 19th century, children, along with wives, were treated in the law as a special form of property of men. In the rare event of a divorce, the man, of course, kept his property in any children of the union.

Women in the 20th century have shucked off the remnants of their role as property, but the powerful analogy of property rights applied to children has persisted in a number of legal arrangements. Now, the man no longer keeps his title to children. As a new, early 20th century image of woman as omniscient nurturant emerged, the title in children has been customarily passed by the courts to the divorced woman.

THE CHILD'S INTEREST. But children should not be treated on an analogy to property. If a child of divorcing parents, thinking of her own best interests, could speak for herself she would say, "I am not interested in being under the exclusive control of one of you. I want to maximize my relationship with each of you, despite the circumstance that you will live apart."

Joint custody, adopted by California as the presumptive first choice among custody arrangements in 1979, recognizes that the child's logical preference should be honored to the extent possible. Joint custody arrangements can be worked out to fit the personal circumstances of each parent and child.

The current preference in fact for single parent custody has burdened the rest of society with a heavy burden of direct and indirect costs. Unfortunately, but understandably, the parent who "loses" custody will tend to divorce the child along with the parent.

SOLE CUSTODY COST. Directly, this translates into a massive national legal system for the pursuit, frequently unsuccessful, of child support payments and public welfare costs for aid to dependent children. The non-custodial parent, psychologically severed from the child, is permitted to consider the support obligation on the same level as the overdrawn revolving credit account at Sears. In fact, it may be much worse as the non-custodial parent is allowed to indulge in the fantasy that the support payment is actually being used to support the custodial parent in a life of idle debauchery.

Joint custody will not, of course, result in the dismantling of the child support and welfare systems. We will continue to have parents who will prefer to be shed of the child along with the parent. There are lots of people who do not have the psychic capacity to be parents while (regrettably) maintaining the biological capacity. But as joint custody becomes the most common form of custodial relationship, it will help reduce these system costs.

The child is the hook. To the extent that the law supports the customary and natural obligation of a parent to care in an immediate sense for the welfare of a child it will strengthen the parent's psychological stake in the child. That link of direct responsibility and caring, in turn, supports the child's claim on the parent for economic support.

RELATION TO DELINquency. The indirect social costs of forced single parent custody are, of course, greater than the direct. When we speak of a child who is the "product" of a "broken" home, we are referring to a child who has been victimized by his divorcing parents. Both parents have put their preference for combat before the interest of the child. Regrettably, the law encourages the adversarial disposition of the child's interests in the context of parental warfare over property and emotional injury.

There is no necessity in this. A divorce need not be a calamity for the child. The divorce becomes the child's disaster to the extent that the relationship with one of the parents is seriously diminished and the role model and learning bond severed. The society bears this cost in delinquent acting out by the hurt and angry child.

CHANGING MARRIAGE CUSTOMS. A generation ago, custom dictated that unhappy parents stick together "for the sake of the children." The current conventional wisdom is that the state of unhappiness in such cases was such that the interests of the child were not in fact served by the cohabitation. However, it is likely that in many cases the parental sacrifice worked, when one or the other spouse adjusted to a lower expectation from the marriage relationship.

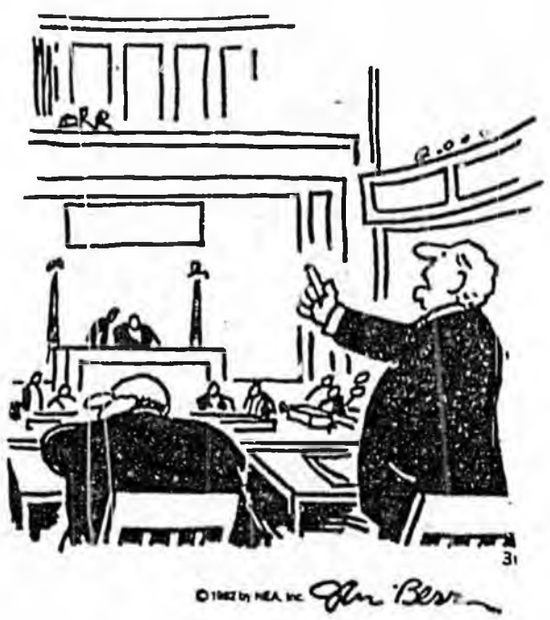
Contemporary adult Americans are less likely to sacrifice their own interests on this justification. For better or worse the trend to multiple marriages continues. Its increasing ordinariness has made divorce less explosive and less painful for parent and child alike.

The last remnants of "fault" divorce are now eliminated from the statutes. But our treatment of custody as an adversarial contest of title in the child remains.

While recognizing the best interests of the child in a number of other legal arrangements, the law of child custody has not kept up with the changing social order. We incorrectly assume that the child's interest consists of putting all the chips in one basket. On the contrary, in a divorce, the presumptive best interest of the child is to maximize her relationship with each parent. Alaska should follow California in encouraging joint custodial arrangements.

John Havelock is director of legal studies at the University of Alaska, Anchorage. He served as attorney general to Gov. William A. Egan, was a White House Fellow in the Johnson administration and has won several Alaska Press Club awards for writing.

Berry's World



"I submit that we should all go down to the Caribbean Basin and check things out while the weather is still crummy around here."

Men's group files suit against judges

By SHEILA TOOMEY
Daily News reporter

A group championing equal child custody rights for fathers has filed a class action lawsuit against nine Anchorage Superior Court judges for allegedly giving mothers preferential treatment in their courtrooms.

Equal Rights for Fathers of Alaska named the nine judges and two court custody investigators in a complaint filed Monday in U.S. District Court. Custody decisions made by the judges "unlawfully deny fathers and their children the fundamental constitutionally protected right to a legal and personal relationship that is equal to the relationship accorded . . . to the mother," the suit claims.

Last year Equal Rights for Fathers issued a study of custody decisions by Anchorage judges indicating mothers received sole custody of children significantly more often than fathers. The group advocates joint custody agreements wherever possible.

Despite new attitudes toward outmoded sexual stereotypes, courts and the Division of Family Services "are reluctant to award or recommend father custody except in the most extraordinary situations," the suit charges.

Presiding Superior Court Judge Mark Rowland denied the allegations. "So far as I know, there is no basis for the suit, which has been filed . . . either factually or legally," Rowland said.

The suit contends the best interests of children would be best served by ending alleged sexual discrimination against men in child custody cases. "Sole custodial mothers abuse or neglect their children. . . . If non custodial fathers were given more fairness in divorce courts, then child abuse and child neglect would immediately drop," the suit claims.

"Custody and visitation are alleged to be, in the women's rights movement, just about the last control women possess over men," the suit says.

Equal Rights for Fathers wants the federal court to award them $5 million to "study the devastating effects of paternal deprivation and father absence on child development." In an exhibit filed with their suit, the group calls a $5 million federal grant reportedly given to the National Organization for Women a "gross and shocking violation" of sex discrimination laws because an equal grant was not awarded to "men's liberation."

Named as defendants in the suit are Judges Victor Carlson, Karl Johnstone, Eban Lewis, Ralph Moody, Justin Ripley, Brian Shortell, James Singleton, Milton Souter, and Rowland. Also named are custody investigators Artis Cry and Francis Stevens.

Official Business

Alaska State Legislature

House of Representatives

Committee on

Health, Education & Social Services

Pouch V
State Capitol
Juneau, Alaska 99811

December 15, 1981

Ms. Joan Bennett Schrader
P.O. Box 1264
Kenai, AK 99611

Dear Ms. Schrader:

Thank you for your letter regarding House Bill 210. Your line-by-line analysis is quite helpful and appreciated. Your mention of income tax consequences provides some food for thought also, since it probably has not been adequately considered.

Thank you again for writing.

Sincerely,

Mike Beirne
State Representative

MB/bw

P.O. Box 1264
Kenai, Alaska 99611
November 20, 1981

Health, Education &
Social Service Committee
700 H Street
Anchorage, Alaska 99501

Dear Mr. Chairman and Members of the Committee,

My Name is Joan Bennett Schrader and I am Testifying for myself.

HB 218 "An Act Relating to Child Custody"

Page 6; Lines 3-6

This contains the defination of this Act and is what my family is operating under (in actuality). I speak as a Grandmother of a seven (7) year old male whose custody is not formally "Joint".

Page 1; Lines 24-26

This is good, I believe this reinforces the continued protection of the child/children by enabling the custody terms to be reviewed during the childs/childrens minority.

Page 2; Lines 13-14

This section could predispose awarding the child to the parent who has had custody. While this is a necessary proviso I would caution that care be taken with this section.

Lines 15-16

Good, as this enables the extended family to know the child/children; to offer the care and protection; the background or ROOTS, that these children have a right to. We acknowledge the childs rights to a financial interest in the estates of extended family members --Grandparents, Aunts, Uncles, etc. This section may guarentee the childs/childrens right to the "emotional" estates of the same people. The child, in my opinion, can only benefit.

Page 4; Lines 17 & 18

The above applies here also.

Page 5; Lines 11-12

My experience in the Interior and on the Kenai Peninsula is that the extended family has been "locked out" numerous times. Custody has been awarded at the expense of cutting off the childs place in the extended family. This has been especially noticable, to me, over the years , where Native children were involved. Their roots were severed. This is my conception of what I saw happening--my own opinion. Please look carefully at this section.

Lines 20-23

Hereagain I am uneasy. I differ from Mr. Lynch (the attorney from Anchorage) in that the extended family is not considered for custody. I would have the court put their reasons in writing. Families should have that right.

Lines 28-29~~--and Page 6,~~ Lines 1-2

Excellent and only fair.

I have taken several days to consider writting this testimony and I am glad I did as there are two points I wish to mention.

1. The Fairbanks testimony on the safety of the mother where a Abusing husband is concerned. This is a valid concern but such people can be handled out of a custody hearing.

2. Tax purposes will enter into prominence. Perhaps one parent claims the child one year, the other parent the next.

Thank you,

Yours truly

Joan Bennett Schrader

Joan Bennett Schrader

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

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

February 15, 1982

MEMORANDUM

TO: Representative Mike Beirne
Attn: Jody Sutherland

FROM: Christine Johnson, Research Staff

RE: Joint Custody
Research Request 82-18, Additional Information

Enclosed please find an updated version of the joint custody legislation now under consideration in the State of Washington. We hope this is of use to you.

CJ

Attachment

SUBSTITUTE HOUSE BILL NO. 905

State of Washington
47th Legislature
1982 Regular Session

by Committee on Ethics, Law & Justice (originally sponsored by Representatives Wang, Ellis, Armstrong, Owen, Patrick, Tupper, Becker, King (J), Winsley, Brown, Barleen, Granlund, Mitchell, Vander Stoep, Salatino, Lewis, Hankins, Johnson, Sherman and Teutsch)

Read first time February 2, 1982, and passed to Committee on Rules for second reading.

AN ACT Relating to child custody; amending section 9A.40.050, chapter 260, Laws of 1975 1st ex. sess. and RCW 9A.40.050; amending section 19, chapter 157, Laws of 1973 1st ex. sess. and RCW 26.09.190; amending section 20, chapter 157, Laws of 1973 1st ex. sess. and RCW 26.09.200; amending section 26, chapter 157, Laws of 1973 1st ex. sess. and RCW 26.09.260; amending section 28, chapter 157, Laws of 1973 1st ex. sess. as amended by section 4, chapter 32, Laws of 1975 and RCW 26.09.280; amending section 9, chapter 50, Laws of 1949 and RCW 26.12.090; amending section 10, chapter 50, Laws of 1949 and RCW 26.12.100; amending section 12, chapter 50, Laws of 1949 and RCW 26.12.120; amending section 18, chapter 50, Laws of 1949 and RCW 26.12.180; amending section 19, chapter 50, Laws of 1949 and RCW 26.12.190; amending section 20, chapter 50, Laws of 1949 and RCW 26.12.200; adding new sections to chapter 26.09 RCW; creating a new section; prescribing penalties; and providing an effective date.

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

NEW SECTION. Section 1. The legislature finds that it is the public policy of this state to enable minor children to have frequent and continuing contact with both parents when such contact is appropriate. It is the intent of the legislature to encourage parents to share the rights and responsibilities of raising their children when in the best interests of the children. It is also the intent of the legislature to recognize the importance of flexibility in custody arrangements. Therefore the legislature finds and declares that, in the

interests of children, it is the public policy of this state to recognize joint custody as an alternative to be considered with sole custody.

NEW SECTION. Sec. 2. There is added to chapter 26.09 RCW a new section to read as follows:

For the purposes of this chapter, "joint custody" means an order awarding custody of the minor child or children to the parties in such a way as to continue the sharing of parental rights and responsibilities and to assure the child or children of having frequent and continuing contact with the parties. In its order, the court may award joint custody with or without shared or alternating residential arrangements.

Sec. 3. Section 19, chapter 157, Laws of 1973 1st ex. sess. and RCW 26.09.190 are each amended to read as follows:

The court shall determine custody in accordance with the best interests of the child. The court shall consider all relevant factors including:

(1) The wishes of the child's parent or parents as to ((his)) joint or sole child custody and as to visitation privileges;

(2) The wishes of the child as to ((his--custodian)) custody and as to visitation privileges;

(3) The interaction and interrelationship of the child ((with-his)), the child's parent or parents, ((his)) the child's siblings, and any other person who may significantly affect the child's best interests;

(4) The child's adjustment to ((his)) the child's home, school, and community; and

(5) The mental and physical health of all individuals involved.

The court shall include written findings of fact as to these relevant factors in any order in which custody is disputed. At the request of either party or on its own motion, the court may transfer the cause to the family court or refer the parties to another counseling or mediation service of their choice for

amicable settlement of the issues in controversy. The court shall not consider conduct of a parent, proposed guardian, or custodian that does not affect the welfare of the child. The court shall not prefer a parent, proposed guardian, or custodian because of the parent's, proposed guardian's, or custodian's gender.

NEW SECTION. Sec. 4. There is added to chapter 26.09 RCW a new section to read as follows:

In any temporary or final custody determination, the parties shall submit to the court a plan for the implementation of the final custody order. If the parties cannot agree on a plan, then each party shall submit a proposed plan. The plan shall include but not be limited to provisions for:

(1) Residential arrangements for the child;

(2) Financial resources in support of the child;

(3) Frequent and continuing contact with the parties when such contact is appropriate;

(4) Subsequent amendments of the plan in the event of the relocation of a party or other major changes affecting the minor child; and

(5) Resolution of disputes which may arise between the parties.

NEW SECTION. Sec. 5. There is added to chapter 26.09 RCW a new section to read as follows:

(1) A final order for joint custody shall include but not be limited to:

(a) Written findings of fact by the court as to the relevant factors in determining the best interests of the child under RCW 26.09.190:

(b) The implementation plan ordered by the court including but not limited to the following:

(i) Residential arrangements for the child;

(ii) Provisions for resources in support of the child;

(iii) Provisions for amendments to the implementation plan adopted by the court; and

(iv) Provisions for a mechanism for the resolution of disputes which may arise between parties. Such mechanism may include counseling, mediation, or the use of family courts.

(2) The court may include the factors in subsection (1) of this section in a temporary joint custody order under RCW 26.09.200.

NEW SECTION. Sec. 6. There is added to chapter 26.09 RCW a new section to read as follows:

If the parties have agreed to joint custody and have agreed to an implementation plan under section 4 of this act, the court shall order joint custody unless the court determines it is not in the best interests of the child.

Sec. 7. Section 20, chapter 157, Laws of 1973 1st ex. sess. and RCW 26.09.200 are each amended to read as follows:

A party to a custody proceeding may move for a temporary custody order. The motion must be supported by an affidavit as provided in RCW 26.09.270. The court may award temporary custody after a hearing, or, if there is no objection, solely on the basis of the affidavits.

The temporary custody order shall be for joint custody if the parties have agreed to a temporary plan under section 4 of this act unless the court determines it is not in the best interests of the child.

If a proceeding for dissolution of marriage, legal separation, or declaration of invalidity is dismissed, any temporary custody order is vacated unless a parent or the child's custodian moves that the proceeding continue as a custody proceeding and the court finds, after a hearing, that the circumstances of the parents and the best interests of the child require that a custody decree be issued.

If a custody proceeding commenced in the absence of a petition for dissolution of marriage, legal separation, or declaration of invalidity, (subsection (1) of RCW 26.09.180) is dismissed, any temporary order is vacated.

Sec. 8. Section 26, chapter 157, Laws of 1973 1st ex. sess. and RCW 26.09.260 are each amended to read as follows:

(1) The court shall not modify a prior custody decree unless it finds, upon the basis of facts that have arisen since the prior decree or that were unknown to the court at the time of the prior decree, that a change has occurred in the circumstances of the child or ((his)) the child's custodian or joint custodian and that the modification is necessary to serve the best interests of the child.

((In)) (2) For actions in which the residential arrangements for the child would be modified, in addition to applying ((these)) the standards in subsection (1) of this section, the court shall retain the custodian established by the prior decree unless:

(a) The custodian agrees to the modification;

(b) The child has been integrated into the family of the petitioner with the consent of the custodian; or

(c) The child's present environment is detrimental to ((his)) the child's physical, mental, or emotional health and the harm likely to be caused by a change of environment is outweighed by the advantage of a change to the child.

(((2))) (3) Subsection (2) of this section shall not apply to actions in which the residential arrangements for the child would not be modified.

(4) If the court finds that a motion to modify a prior custody order has been brought in bad faith, the court shall assess the attorney's fees and court costs of the ((custodian)) respondent against the petitioner.

Sec. 9. Section 28, chapter 157, Laws of 1973 1st ex. sess. as amended by section 4, chapter 32, Laws of 1975 and RCW 26.09.280 are each amended to read as follows:

(1) Hereafter every action or proceeding to change, modify, or enforce any final order, judgment, or decree heretofore or hereafter entered in any dissolution or legal separation or declaration concerning the validity of a marriage,

whether under this chapter or prior law, in relation to the care, custody, control, or support of the minor children of the marriage may be brought in the county where said minor children are then residing, or in the court in which said final order, judgment, or decree was entered, or in the county where the parent or other person who has the care, custody, or control of the said children is then residing.

(2) For the purposes of this section, a parent or other person shall only be considered to have the care, custody, or control of a child if by the terms of any final order, decree, or judgment the child is to reside with the person more than six months of the year.

(3) For the purposes of this section, a child shall only be considered to reside within a county if:

(a) The county is the county of residence within the state of the person with whom the child under the terms of any final order, decree, or judgment is to reside for more than six months of the year;

(b) The county is the county where the child has by agreement in fact resided for more than six of the last twelve months; or

(c) In the case of a child under twelve months of age, the county is the county where the child has resided more than one-half of the child's life.

(4) For the purposes of this section, if by the terms of any final order, decree, or judgment, or by agreement of the parties, the child spends an equal amount of time with two parties, the action may be brought in either county where a party resides.

Sec. 10. Section 9, chapter 50, Laws of 1949 and RCW 26.12.090 are each amended to read as follows:

Whenever any controversy exists between spouses which may result in the dissolution of the marriage, legal separation, or ((annulment)) declaration concerning the validity of the marriage or the disruption of the household, and there is any