

ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 86/Z

3219 HESS HB 485 - HB 497

Mr. Dennis DeWitt  
October 5, 1983  
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investigation as time will permit, all reasonable arguments in favor of administering treatment to prolong the life of the individual involved." In Re Saikewicz, 370 N.E.2d at 433. In that way, even if all concerned are in agreement that "No Code" is appropriate, the court will be presented with all reasonable contravailing arguments. These steps, taken during the pendency of the guardianship proceedings, could do much to clarify the duties of the various parties.

B. The Guardian's Powers and Duties

The court may appoint a guardian only if a determination of incapacity is made and the court finds that alternative forms of protection are not sufficient to meet the respondent's needs. The respondent has a jury trial right on the issue of incapacity. Even if guardianship is necessary, the law favors partial guardianship over full guardianship. Only if the court finds that the respondent is totally without capacity to care for himself, and that the combination of partial guardianship and alternatives to guardianship are not feasible or adequate to provide for the needs of the respondent, may a full guardian be appointed. It should be remembered, however, that legal incapacity is a distinct concept from decisionmaking incompetence, and that even an incapacitated ward for whom a full

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guardian has been appointed retains decisionmaking autonomy regarding treatment alternatives unless he or she is also incompetent.

Notwithstanding the limits of a temporary guardianship or an order of appointment, any guardian at all times has the right to authorize the provision of emergency life-saving medical services. AS 13.26.141. A full guardian has the same powers respecting his ward that a parent has respecting his unemancipated minor child, except as modified by the order of appointment. AS 13.26.150(c). A parent could certainly object if he or she believed that his or her unemancipated minor child was the subject of an inappropriate "No Code" order. A guardian, therefore, probably has the power (or standing) to object to such an order. A guardian also has a duty to "assure the care, comfort, and maintenance of the ward." AS 13.26.150(2). This duty probably includes the duty to object to an inappropriately entered "No Code" order. Finally, no guardian may consent on behalf of his or her ward to the withholding of life-saving medical procedures. AS 13.26.150(e)(3). This also leads to the conclusion that the guardian has a duty to object when "No Code" is inappropriate, i.e., when "life-saving" measures, as opposed to "life-sustaining" measures, are available, because failure to object might be construed as "consenting" to the withholding of treatment.

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In fact, if the Alaska courts refuse to make the Dinnerstein distinction, a guardian might have the duty to refrain from consenting to a "No Code" order under any circumstances. AS 13.26.150(e)(3) could be interpreted, when taken in conjunction with the duty to assure the care, comfort, and maintenance of the ward, to mean that a guardian has the duty to object to a "No Code" order, regardless of whether or not it was entered in accordance with accepted medical standards.

C. Judicial Clarification of Guardian's Authority.

If the health care provider determines that an incapacitated person for whom a guardian has been appointed is also incompetent with respect to decisionmaking regarding his or her own treatment, the provider should fully inform the guardian, to the same extent it would inform a competent patient, of the various treatment alternatives and the risks attendant to each. Failure to do so might result in liability for negligence, under the doctrine of Cobbs v. Grant, supra. It should also be noted that the hospital or nursing home, or any other person who "provides, or is likely to provide during the guardianship period, substantial services to the incapacitated person in a professional or business capacity," may not be appointed as the guardian for that person. AS 13.26.145.

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The guardian must then decide whether to oppose the "No Code" order, either on the ground that the ward would, if competent, oppose the particular order, or on the ground that the guardianship statutes, as he or she interprets them, require the guardian to oppose any "No Code" order. If the guardian requests that the "No Code" order be withdrawn, and even refuses to consent to the order, the provider must decide whether to honor the guardian's request. If, upon review and reconsideration, the provider still believes CPR would be medically inappropriate, it should seek judicial resolution of the issue rather than risk negligence liability for proceeding with an unconsented course of treatment.

Even if the guardian "consents" to the "No Code" order, the provider risks negligence liability for an unconsented course of treatment in that a court might subsequently hold that the guardian cannot give effective consent under the terms of AS 13.2.150(e)(3). A cautious approach, which we recommend, would be to seek judicial approval of the "No Code" order, and of the guardian's power to consent to it, at that point. Other courts have held that practical limits on the capacity of the judiciary indicate that judicial involvement is not warranted where there is no disagreement among the family and physicians (and presumably the guardian) on the propriety of a "No Code"

above

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order. In Re Dinnerstein, 380 N.E.2d at 137 n.5. Nevertheless, since Alaska courts have not ruled on that issue, and since any participant in the decision may petition the court for intervention, In Re Colyer, 660 P.2d at 750, it would not be inappropriate for a physician or health facility to seek judicial approval of a "No Code" order even though there is no disagreement as to its propriety, but only doubt as to the authority of a guardian, as a surrogate decisionmaker, to consent to such an order. Once Alaska law is established, it is not likely that decisions will normally require judicial resolution in cases where the physicians, the family, and the guardian all agree that "No Code" is appropriate.

### III. Recommendations.

#### A. Natural Death Act Legislation Should Be Enacted.

To clarify the extent to which physicians are bound to follow the wishes of a competent patient, or an incompetent patient who while previously competent made his or her wishes known regarding continued treatment in the event the patient's condition should become terminal and irreversible, the Alaska State Hospital Association could seek enactment of Natural Death Act legislation, such as 1983 Alaska House Bill 107. Such legislation would

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provide an avenue for a patient to clearly delineate his or her preference, and would provide that health care providers are not only immune from liability for following those wishes, but are bound to either follow those wishes or transfer the patient's care to a provider who will follow them.

1983 HB 107 should be amended, as indicated on the enclosed marked copy, to indicate the circumstances under which a "No Code" order may be entered for an incompetent patient in the absence of a written declaration as outlined in that proposed legislation.

We also recommend that AS 13.26.150(e)(3) be amended by adding a clause similar to the following: "This section does not preclude the guardian from consenting in the case of an irreversible, terminal illness, to the withholding of medical procedures which, in the opinion of the attending physician(s), have no reasonable expectation of effecting a temporary or permanent cure of or relief from the illness or condition being treated, but which serve only to prolong the dying process."

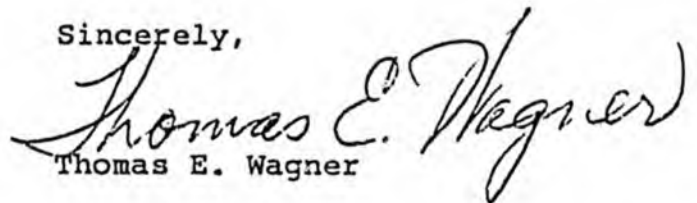
### III. Conclusion.

We hope you will find our discussion and recommendations helpful

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in developing a policy for your members. We are enclosing a copy of the report by the President's Commission, which contains a more detailed discussion of some of the issues discussed herein, and which contains in the appendices (particularly Appendix I) several policy statements of professional societies, health care institutions, federal agencies and the State of California. Please call me if you have further questions regarding this matter.

Sincerely,

  
Thomas E. Wagner

# Alaska State Legislature



## House of Representatives

REPRESENTATIVE  
JOHN L. SUND


Box 8440  
KETCHIKAN, ALASKA 99901  
(907) 225-5552

WHILE IN JUNEAU  
POUCH V  
JUNEAU, ALASKA 99811  
(907) 465-4818

CHAIR, HOUSE SPECIAL COMMITTEE ON LOANS  
VICE-CHAIR, JUDICIARY COMMITTEE  
MEMBER, SPECIAL COMMITTEE ON OIL AND GAS  
MEMBER, RESOURCES COMMITTEE

January 23, 1986

TO: Lisa  
Rep. Koponen's office

FROM:  Kitty  
Rep. Sund's office

RE: Another bill!

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HB485 is another guardian bill that you might want to consider scheduling along with HB474, for which I've already given you a packet. This packet includes:

1. A copy of the bill
2. An overview, with sectional analysis and history
3. A position paper from the Alaska Health Association
4. Letters of support
5. A legal opinion from the law office of William Council

Persons likely to testify are Dennis DeWitt, of the Alaska Health Association, a representative from the Office of Public Advocacy and Rep. Sund, himself.

Let me know what you can do about scheduling these bills.  
Thanks.

POSITION PAPER

HOUSE BILL NO. 485

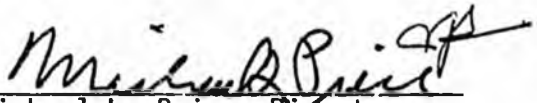
For an Act entitled: "An Act relating to powers and duties of guardians."

House Bill No. 485 amends Alaska Statute 13.26.150(e) to clarify that a guardian is not required to oppose the cessation or withholding of life-saving medical procedures when those procedures will serve only to prolong the dying process and offer no reasonable expectation of effecting a temporary or permanent cure of or relief from the illness or condition being treated.

It is the department's understanding that some guardians have a felt responsibility to oppose the withholding of medical treatment regardless of their beliefs or judgement. The change would allow the guardian to defer to a more appropriate party, such as a relative, to make critical decisions regarding life saving medical procedures. In addition, the bill is consistent with other federal and State policies requiring review of such decisions.

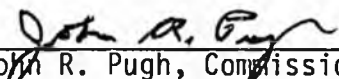
The department has no objection to the passage of HB 485.

RECOMMENDED:

  
Michael L. Price, Director  
Division of Family  
and Youth Services

DATE: February 4, 1986

APPROVED:

  
John R. Pugh, Commissioner  
Department of Health  
and Social Services

DATE: 2/5/86

**STATE OF ALASKA 1986 LEGISLATIVE SESSION  
FISCAL NOTE**

Revision Date : 2/3/86

**REQUEST**

Bill/Resolution No. : HB 485  
 Title : An Act relating to powers and  
duties of guardians.  
 Sponsor : Sund & Gruenberg  
 Requestor : \_\_\_\_\_  
 Date of Request : 2/3/86

**FISCAL DETAIL**

Agency Affected : Health & Social Services  
 BRU : Social Services  
Youth Services  
 Components : \_\_\_\_\_

**EXPENDITURES/REVENUES : (Thousands of Dollars)**

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>		0	0	0	0	0

CAPITAL						
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REVENUE						
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**FUNDING : (Thousands of Dollars)**

GENERAL FUND		0	0	0	0	0
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>		0	0	0	0	0

**POSITIONS :**

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

**ANALYSIS :** Attach a separate page if necessary

n/a

Prepared by : Michael L. Price, Director *Michael L. Price* Phone : 465-3170  
 Division : Family and Youth Services Date : February 4, 1986 *46*

Approved by Commissioner : John R. Pugh, Commissioner Date : 2/5/86  
 Agency : Health and Social Services

Distribution (by Agency preparing fiscal note) :

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

PROPOSED AMENDMENT A

IN THE HOUSE

BY

HOUSE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to powers and duties of guardians."

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

\* Section 1. AS 13.26.150(e) is amended to read:

(e) A guardian may not

(1) place the ward in a facility or institution for the mentally ill other than through a formal commitment proceeding under AS 47.30.350 - 47.30.915 in which the ward has a separate guardian ad litem;

(2) consent on behalf of the ward to an abortion, sterilization, psychosurgery, or removal of bodily organs except when necessary to preserve the life or prevent serious impairment of the physical health of the ward;

(3) consent on behalf of the ward to the withholding of life-saving medical procedures; however, the guardian is not required to oppose the cessation or withholding of life-saving medical procedures when those procedures will serve only to prolong the dying process and offer no reasonable expectation of effecting a temporary or permanent cure of or relief from the illness or condition being treated;

(4) consent on behalf of the ward to the performance of an experimental medical procedure or to participation in a medical experiment not intended to preserve the life or prevent serious impairment of the physical health of the ward;

(5) consent on behalf of the ward to termination of the

1  
2 ward's parental rights;

3 (6) prohibit the ward from registering to vote or from  
4 casting a ballot at public election;

5 (7) prohibit the ward from applying for and obtaining a  
6 driver's license;

7 (8) prohibit the marriage or divorce of the ward.  
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PROPOSED AMENDMENT B

POSSIBLE PROPOSAL FOR AN AMENDMENT

SENATE BILL NO. XXX  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
THIRTEENTH LEGISLATURE - SECOND SESSION  
A BILL

For an Act entitled: "Protection of Persons Under Disability and Their Property."

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

\* Section 1. AS 13.26.150(e)(3) is amended to read:

— Sect. 13.26.150(e)(3). (e) A guardian may not  
(3) consent on behalf of the ward to the withholding either of comfort  
care or of substantially beneficial medical treatment [OF LIFE-SAVING  
MEDICAL PROCEDURES]; although consent may be granted to the withholding  
of medical procedures which offer no reasonable expectation of effecting  
a temporary or permanent cure of or relief from the illness or condition  
being treated.

\* Section 2. This Act takes effect immediately in accordance with AS 01.10.070(c).

Amendment VIII--Ethical Issues Forum  
Cf. Rev. Ted Zembal, Providence Hospital  
February 5, 1984

# STATE OF ALASKA

## DEPARTMENT OF ADMINISTRATION

### OLDER ALASKANS COMMISSION

BILL SHEFFIELD, GOVERNOR

POUCH C, M.S. 0209  
JUNEAU, ALASKA 99811  
PHONE: (907) 465-3250

June 4, 1985

Dennis Dewitt  
Alaska State Hospital Association  
319 Seward Street  
Juneau, Alaska 99801

Dear Dennis:

I want to express my appreciation to you and the Association for your participation at our "Aging Together in Alaska Conference". Your participation and that of other Association members was very beneficial to the success of our meeting.

Peggy Burgin and I have reviewed your draft amendment to the guardianship laws (AS 13.21.150(c)). We agree that it is important to clarify or limit the role of guardians in making a living will declaration on behalf of their client. Let me know if we can be of assistance.

Sincerely,



Jon B. Wolfe  
Executive Director

PROVIDENCE HOSPITAL  
3200 PROVIDENCE DRIVE—POUCH 6604  
ANCHORAGE, ALASKA 99502-0604  
PHONE: (907) 562-2211

*File  
With Juneau slip  
Agis/whw*



SISTERS OF  
PROVIDENCE

SERVING IN THE WEST SINCE 1856

July 26, 1985

Joyce Munson  
Director of Division of Pioneer Benefits  
Pouch 66L  
Juneau, Alaska 99811

RE: Amendment to Guardianship Law

Dear Ms. Munson:

We were happy that you were able to attend our recent Bioethics Symposium on the Incompetent Patient. The problem with the present wording of the Guardianship Law arose several times during the day. After the final session you asked about the present status of the possible amendment.

Enclosed with this letter is a copy of a possible amendment. This possible amendment was itself amended because the public guardianship office felt an earlier version might offer too much latitude to the guardian. The present wording has the advantage of mentioning both the guardian and physician, thus implying a dialogue process of informed consent.

I am also enclosing a second possible amendment worked out by the Alaska State Hospital Association. This amendment also addresses the need for an amendment and proposes such an amendment. Those with whom I spoke found this amendment as very satisfactory but favored the first enclosed copy in its wording.

I do hope you will be able to further the passage of either of the proposed amendments or another which may better solve the uncomfortable problem created by the wording of the present law.

It was my pleasure to meet and speak to you. If I may of any assistance to you in the future, I would be happy if you called upon me.

Sincerely,

*Ted Zembal S.J.*  
(Rev) Ted Zembal, S.J.  
Coordinator, Human & Ethical Values

cc: Dennis DeWitt, ASHA  
Brant McGee, Public Advocacy  
Al M. Camosso, Providence Hospital  
Tom Boling, OLCCC  
Doug Smith, M.D.  
Mark Agnew, M.D.  
Donna Stephens, Pioneer Home

Enclosures (2)

July 26, 1985

A LETTER OF INTENT AND INTERPRETATION

Accompanying House Bill No.

Amending an Act entitled: "Protection of Persons Under Disability and Their Property."

PRESENT STATUTE:

AS 13.26.150(e)(3) presently reads: (e) A guardian may not... (3) consent on behalf of the ward to the withholding of life-saving medical procedures.

PROBLEM AREAS:

(1) A literal reading of the statute would mean that life-saving medical procedures cannot be stopped once they are started. Hence the possibility may arise that non-beneficial and even harmful procedures could not be withdrawn. A further result is that a different standard of care would be used for wards than for others. Those with guardians might be either overtreated since the treatment could not be stopped once started or undertreated because the treatment would not be begun lest it could not be withdrawn.

(2) The meaning of "life-saving medical procedures" is not clear nor is it defined. An attempt to define the phrase defies enumeration. Basically, this is so because the existing statute focuses on "procedures" etc., instead of the "relationship" of the procedure to the ward in terms of the benefits received, e.g., chemotherapy or a respirator is life-saving if it is helpful in the restoration of health of the ward but it would be counterindicated if it simply prolonged the dying process.

(3) To attempt to solve these problems by having the health care provider act independently of the guardian would defeat the purpose of guardianship. Also such activity on the part of the health care provider would undermine the informed consent process.

(4) In summary, this part of the statute can create difficulties in the decision-making process for the guardian, ward, physician, health care institution and its personnel, and other health care providers. Carrying out the existing law would sometimes lead to conflict with the practice of good medicine and ethics.

PROPOSED AMENDMENT:

AS 13.26.150(e) (3): (e) A guardian may not... (3) consent on behalf of the ward to the withholding either of comfort care or substantially beneficial medical treatment, although the guardian may consent to the physician's recommendation to withhold/withdraw medical procedures which offer no reasonable expectation of effecting a temporary or permanent cure or relief from the illness or condition being treated.

POSSIBLE PROPOSAL FOR AN AMENDMENT

HOUSE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "Protection of Persons Under Disability and Their Property."

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

\* Section 1. AS 13.26.150(e). (e) A guardian may not (3) consent on behalf of the ward to the withholding either of comfort care or of substantially beneficial medical treatment [OF LIFE-SAVING MEDICAL PROCEDURES]; however, the guardian may consent to/concur with the physician's recommendation to withhold/withdraw medical procedures which offer no reasonable expectation of effecting a temporary or permanent cure of or relief from the illness or condition being treated.

\* Section 2. This Act takes effect immediately in accordance with AS 01.10.070(c).

GENERAL INTENT OF THE AMENDMENT:

(1) By clearer delineation of the different types of medical/nursing care involved, the amendment would allow the guardian more adequately to carry out his/her responsibilities toward the ward.

(2) By distinguishing among the three general categories, the amendment allows for one category where "life-saving medical procedures" may be withheld, viz., those which are clearly ineffective and not beneficial to the ward from the perspective of the ward.

(3) The amendment would facilitate and keep open communication, dialogue and the informed consent process among the guardian and health care providers at all times.

INTERPRETATION AND AMPLIFICATION ON THE MEANING OF THE TERMS USED IN THE AMENDMENT..

(1) "Comfort care" is meant to cover that type of supportive care that common decency grants to all people by virtue of their being human. It entails respect for all stages and conditions of human life. Comfort care has two basic aspects. (1) Basic "nursing-like" care aims at maintaining the ward physically comfortable and emotionally at ease. It includes such items as food, water, air, positioning, bathing, mouth care, suction, etc. in so far as these are consistent with supportive comfort care. (2) The second type of comfort care has a medical component but is not associated with aggressive medical treatment but rather aims at providing comfort or the easing of pain.

(2) "Substantially beneficial medical treatment" covers a broader range than "life-saving medical procedures", e.g., it would include the treatment and repair of a broken limb. The treatment decisions would be evaluated in relation to the benefits for the ward from the perspective of the ward, e.g., to restore the ward permanently or temporarily to a cognitive, sapient state would be considered "substantially beneficial medical treatment." Choices giving substantial benefits for the ward would of necessity be sought for by the guardian.

(3) The exception clause, "medical procedures which offer no reasonable expectation of effecting a temporary or permanent cure of or relief from the illness or condition being treated," is itself a definition of "ineffective, futile medical procedures which offer no benefit for the ward from his/her perspective." Rather than the vague phrase "ineffective futile medical procedure, the exception clause attempts to define its meaning.

(4) "Illness or condition being treated" is meant to prevent the holding back of medical treatment on the basis of another condition which is not treatable. For example, being mentally retarded is not a medically treatable condition and hence it cannot be used as a basis for withholding other medical procedures which are substantially beneficial for the ward.

(5) The terms "terminal", "dying", and the like were not used (1) because they defy definition and (2) because, although they may fit most situations, they do not fit all, e.g., is a person in a stable coma dying or not.

1  
2 IN THE HOUSE

BY

3 HOUSE BILL NO.

4 IN THE LEGISLATURE OF THE STATE OF ALASKA

5 FOURTEENTH LEGISLATURE - FIRST SESSION

6 A BILL

7 For an Act entitled: "An Act relating to powers and duties of guardians."

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

9 \* Section 1. AS 13.26.150(e) is amended to read:

10 (e) A guardian may not

11 (1) place the ward in a facility or institution for the  
12 mentally ill other than through a formal commitment proceeding under  
13 AS 47.30.350 - 47.30.915 in which the ward has a separate guardian ad  
14 litem;

15 (2) consent on behalf of the ward to an abortion, sterili-  
16 zation, psychosurgery, or removal of bodily organs except when neces-  
17 sary to preserve the life or prevent serious impairment of the phys-  
18 ical health of the ward;

19 (3) consent on behalf of the ward to the withholding of  
20 life-saving medical procedures; however, the guardian is not required  
21 to oppose the cessation or withholding of life-saving medical  
22 procedures when those procedures will serve only to prolong the dying  
23 process and offer no reasonable expectation of effecting a temporary  
24 or permanent cure of or relief from the illness or condition being  
25 treated;

26 (4) consent on behalf of the ward to the performance of an  
27 experimental medical procedure or to participation in a medical exper-  
28 iment not intended to preserve the life or prevent serious impairment  
29 of the physical health of the ward;

(5) consent on behalf of the ward to termination of the

OUR LADY  
OF COMPASSION  
CARE CENTER

4905 CORDOVA STREET · POUCH 66111  
ANCHORAGE, ALASKA 99502  
PHONE: (907) 562-2251



SERVING IN THE WEST SINCE 1856

December 5, 1983

Kathleen Harrington, Atty.  
Probate Master  
303 K. Street  
Anchorage, Alaska 99501

Dear Ms. Harrington:

I represent a local Long Term Care Facility, Our Lady of Compassion Care Center. Our Social Services staff have been very involved with your offices and the appointment of Guardians for our incompetent residents. An issue that is becoming more of a discussion point is that of the relationship of No Code orders and the Guardian.

It is my understanding that since your appointment as Probate Master you have been addressing the issue of No Code in the following manner. On a case by case basis you evaluate the need, and if appropriate, include in the language of the order acknowledgement that a Guardian can not withhold life saving actions. However, it is mentioned that other family members and the physician can make such a decision in regards to No Code. It has been explained to me that if it is not mentioned in the order, the above may not be assumed.

Our Facility Administrator has recently received a legal opinion through Dennis DeWitt, President of the Alaska State Hospital Association. I have enclosed a copy for your reference. It seems the conclusion is that a test case needs to be found to bring issue of No Code Orders and the Guardianship role to a conclusion.

Our facility staff are often involved with physicians and families in encouraging their participation in choosing their own plan of care. This includes decisions about life saving actions. Sometimes a decision has been made prior to Guardianship hearings, other times it has not. I feel clarification of the Guardians role is needed to provide structure to all parties in the midst of these decisions. Sometimes advocating for patients best care does not include advocating for a specific life saving action. This option is not always allowed under the present system.

OUR LADY  
OF COMPASSION  
CARE CENTER

4395 CORDOVA STREET - POUCH 65-111  
ANCHORAGE, ALASKA 99502  
PHONE: (907) 572-2251



SERVING IN THE WEST SINCE 1856

I am most interested in your input and reactions to the enclosed opinion. I am also looking at what possible steps we could take together to discuss this issue and find a reasonable solution. I realize the difficulty this issue raises for all parties and the complications legally and morally.

I look forward to hearing from you.

Sincerely,

OUR LADY OF COMPASSION CARE CENTER

Julia Thorsness, BSW  
Director of Support Services

cc: John Nugent, Administrator  
Vernis DeWitt, ASFA  
D. Charlene Doris, Coroner

JT/jar 12/5/83

Original sponsors: Sund and  
Gruenberg

1 IN THE HOUSE

BY THE HEALTH, EDUCATION AND  
SOCIAL SERVICES COMMITTEE

2 CS FOR HOUSE BILL NO. 485 (HESS)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to powers and duties of guardians."

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11 mentally ill other than through a formal commitment proceeding under  
12 AS 47.30 in which the ward has a separate guardian ad litem;

13 (2) consent on behalf of the ward to an abortion, ster-  
14 ilization, psychosurgery, or removal of bodily organs except when  
15 necessary to preserve the life or prevent serious impairment of the  
16 physical health of the ward;

17 (3) consent on behalf of the ward to the withholding of  
18 life-saving medical procedures; however, a guardian is not required to  
19 oppose the cessation or withholding of life-saving medical procedures  
20 when those procedures will serve only to prolong the dying process or  
21 offer no reasonable expectation of effecting a temporary or permanent  
22 cure of or relief from the illness or condition being treated; a  
23 guardian is not civilly liable for acts or omissions under this para-  
24 graph unless the act or omission constitutes gross negligence or  
25 reckless or intentional misconduct;

26 (4) consent on behalf of the ward to the performance of an  
27 experimental medical procedure or to participation in a medical ex-  
28 periment not intended to preserve the life or prevent serious impair-  
29 ment of the physical health of the ward;

1                   (5) consent on behalf of the ward to termination of the  
2 ward's parental rights;

3                   (6) prohibit the ward from registering to vote or from  
4 casting a ballot at public election;

5                   (7) prohibit the ward from applying for and obtaining a  
6 driver's license;

7                   (8) prohibit the marriage or divorce of the ward.  
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**HOUSE  
COMMITTEE REPORT**

Date referred: 1/17/86

FURTHER REFERRALS: JUDICIARY

DATE: 2/6/86

The HEALTH, EDUCATION AND SOCIAL SERVICES Committee has considered HB 485

"An Act relating to powers and duties of guardians."

and recommends:

- do pass
- do not pass
- do pass with attached amendment(s)
- no recommendation
- replace with CS HB 485 (HES'S)  same title
- ~~replace~~ new title

and recommends do pass

further referral to the \_\_\_\_\_ Committee

- and attaches:
- letter of intent
  - first fiscal note
  - new fiscal note
  - zero fiscal note (2)

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

Mary G. Hurd  
John E. Koponen  
Kate Shirley  
Robert J. Taylor  
David W. Thompson

Alyce Hanley - No Rec

John Koponen co-chair  
Chairman  
Mary G. Hurd  
Co-Chair

\*\*\*\*\*  
 \* DELIVER TO: TCANC \*  
 \* ORIGINAL \*  
 \* SENT: 02/05/86 TIME: 17:11 \*  
 \* SUBJECT: HOUSE HESS COMM/2-6-86 \*  
 \* PRINT DATE: 02/06/86 TIME: 10:04 \*  
 \*\*\*\*\*

\* FINAL T/C STATE \*\*

DATE: FEBRUARY 5, 1986  
 SITE: ANCHORAGE  
 SPONSOR: HOUSE HESS COMMITTEE  
 SUBJECT: HB 474 & 485  
 LOCAL MODERATOR DAVID J

\*\*\*\*\*

TESTIFIED:

NAME/REPRESENTING	ADDRESS	PHONE
JAY MCCARTHY	900 W 5TH AVE STE 525 ANCH	274-1684
REBECCA CLEMENT	10045 GOODNEWS CL ANCH	344-6706
REV TED ZEMBEL	PROVIDENCE HOSPITAL ANCH	

\*\*\*\*\*

OBSERVED:

NAME/REPRESENTING	ADDRESS	PHONE
PHILLIP J MCCARTHY JR		

\*\*\*\*\*

TESTIFIED: 03 TIME START: 4:30  
 OBSERVED: 01 TIME END: 6:30PM  
 TOTAL: 04

\*\*\*\*\*  
 \* DELIVER TO: TCANC \*  
 \* ORIGINAL \*  
 \* SENT: 02/05/86 TIME: 17:11 \*  
 \* SUBJECT: HOUSE HESS COMM/2-6-86 \*  
 \* PRINT DATE: 02/06/86 TIME: 10:04 \*  
 \*\*\*\*\*

\*\*\* FINAL T/C STATS \*\*\*

DATE: \_\_\_\_\_ FEBRUARY 5, 1986 \_\_\_\_\_  
 SITE: \_\_\_\_\_ ANCHORAGE \_\_\_\_\_  
 SPONSOR: \_\_\_\_\_ HOUSE HESS COMMITTEE \_\_\_\_\_  
 SUBJECT: \_\_\_\_\_ HB 474 & 485 \_\_\_\_\_  
 LOCAL MODERATOR: \_\_\_\_\_ DAVID J \_\_\_\_\_

\*\*\*\*\*

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JAY MCCARTHY	900 W 5TH AVE STE 525	ANCH 274-1684
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\*\*\*\*\*

OBSERVED:

NAME/REPRESENTING	ADDRESS	PHONE
PHILLIP J MCCARTHY JR		

\*\*\*\*\*

TESTIFIED: \_\_\_\_\_ 03 \_\_\_\_\_  
 OBSERVED: \_\_\_\_\_ 01 \_\_\_\_\_  
 TOTAL: \_\_\_\_\_ 04 \_\_\_\_\_

TIME START: \_\_\_\_\_ 4:30 \_\_\_\_\_  
 TIME END: \_\_\_\_\_ 6:30PM \_\_\_\_\_

TO: House of Representatives  
Health, Education and Social Services Committee  
Robin Taylor, Alyce Hanley, Katie Hurley, F. Pettyjohn, D. Thompson,  
J. Sund, M. Gruenburg, N. Koponen

Testimony H.B. 485  
Feb. 5, 1986

My name is Rebecca Clement.

Some of you heard me speak last legislative session concerning House Bill 279, relating to Alzheimer's Disease and other bills concerning the elderly. My interest for such legislation comes from being a caregiver for my Mother for nearly 10 years. Because of my Mother's declining abilities to take care of herself and her finances, my sister and I were appointed her joint legal guardians in October of 1983.

It was not until June of 1985 that my sister and I realized what a significant impact the current Guardianship laws would play in our lives and ultimately the death of our Mother on June 31, 1985.

We first learned about the current law while attending a BioEthics symposium at Providence Hospital. We learned that, as her legal guardians, we would be breaking Alaska State law if we were to withhold life saving medical procedures.

At this time, our Mother was in the final stages of Alzheimer's Disease. She was no longer able to attend the Alzheimer's Day Care. She had to be fed and was incontinent. We had decided to care for her as long as possible in her own home.

It wasn't but a few days after the symposium that I received a call from our Mother's live-in nurse - "Martha wasn't able to walk, she didn't appear to be aware of anything and was in somewhat of a stupor."

I phoned her physician. Mother was admitted to Providence for tests and observation in order to determine if there was anything except Alzheimer's Disease causing the rapid decline in her condition.

Because Mother was being poked and prodded during the testing, she became a little more alert. She had lost her ability to swallow food. She had no idea what to do with anything put in her mouth. However, she did let us know that she wanted nothing to do with the catheter the hospital insisted on using. She tried several times to pull it out. Then the nurse came with the "hand cuffs" or what they call "wrist restraints". I told the nurse to take them away and for six hours, I held my Mother's hands. That six hours gave me plenty of time to decide that "Law or no Law, come hell, high water and possibly jail" there would be no more tubes for my Mother. About 10 p.m. that evening, the nurse came in with the N.G. feeding tube and looked at me very strangely when I asked her to please take it away until I called the Doctor. By 11:30 that same evening, I had borrowed a hospital bed from OLOC. I went home with Mother.

My Mother had lived many years in confusion. She did not deserve to be more confused and confined by the "Wonders of Medical Science" just to keep her alive. It would have only prolonged what was a natural process of this terminal disease. The current law put family members who become legal guardians in extremely precarious positions. I fully support this amendment and thank Representatives Sund and Gruenberg for

their efforts to relieve families from the anxiety of making a decision for a dying person they love. No one knows until they experience the dying process with someone, how it will go. I might have felt less afraid if I could have had the support of a hospital staff or nursing home where they could have said, "What is happening now is normal and this will happen next." I would have felt better with this kind of expertise. But because of the current law, I had to rely on the Books on Death and Dying, information from Hospice, and the many phone calls from people who said, "Yes, Becky, you are doing the right things for your Mother." My Mother died with dignity and in a very natural way.

In closing, I'd just like to ask - would you have done the same thing?

*Rebecca Clement*

Rebecca Clement  
10045 Good News Circle  
Anchorage, Ak. 99502

907-344-6706

POSITION PAP.  
Bill No. HB48.

The Office of Public Advocacy in the Department of Administration performs the duties of the Public Guardian under A.S. 13.26.360-13.26.410. Guardians provide informed medical consents for incapacitated persons (wards) directly impacting the ward's health and safety according to A.S. 13.26.150(c)(5) except as limited by (e) of this section.

PRESENT STATUTE:

A.S. 13.25.150(e) "A guardian may not... (d) consent on behalf of the ward to the withholding of life-saving medical procedures."

PROPOSED AMENDMENT:

A.S. 13.25.150(e) "A guardian may not... (3) consent on behalf of the ward to the withholding of life-saving medical procedures; however, the guardian is not required to oppose the cessation or withholding of life-saving medical procedures when those procedures will serve only to prolong the dying process and offer no reasonable expectation of effecting a temporary or permanent cure or relief from the illness or condition being treated;"

RATIONALE:

The current law could be interpreted as requiring the guardian to insist upon the continuation of "life-saving medical procedures" regardless of the values such procedures might offer the patient in terms of benefits received. The question which needs to be considered is whether the procedure offers relief or cure, versus simply prolonging the dying process by the use of heroic means.

PROBLEM AREAS IN THE PRESENT STATUTE:

(1) A literal reading of the statute would mean that life-saving medical procedures cannot be stopped once they are started. Hence the possibility may arise that non-beneficial and even harmful procedures could not be withdrawn. A further possible effect might be that a different standard of care would be used for wards than for other patients. Also those with guardians might be either overtreated since the treatment could not be stopped or undertreated because the treatment was not begun if it could not be withdrawn.

(2) the meaning of "life-saving medical procedures" is not clear nor is it defined. An attempt to define the phrase defies the enumeration process, as does a list of the exceptions. Moreover, such a task borders on the impossible because of the nature of the words. The phrase focuses on "procedures" instead of the "relationship" of the treatment to the ward in terms of the benefits received. E.G., chemotherapy or a respirator is life-saving if it is helpful in the restoration of health of the ward, but it would be counterindicated if it simply prolonged the dying process.

(3) An attempt to solve these problems by having the health care provider act independently of the guardian would defeat the purpose of guardianship. Further, such actions by the health care provider would be destructive of the informed consent process.

(4) The statute can create difficulties in the decision-making process for the guardian, ward, physician, health care institution and its personnel, and other health care providers. In addition, it would often conflict with the philosophy of medical ethics.

SUPPORT/HB485:

(1) The amendment more clearly delineates the different types of medical/nursing care involved, thus allowing the guardian to carry out more adequately his/her responsibilities toward the ward.

(2) The amendment allows the guardian to not oppose the cessation or withholding of life-saving medical procedures where they are clearly ineffective and not beneficial to the ward from the perspective of the ward.

(3) The amendment facilitates and keeps open the communication process and dialogue among the guardian and health care providers at all times.

(4) There are no foreseen costs to the OPA with passage of HB485.

*Brant McGee*  
\_\_\_\_\_  
Brant McGee, Public Advocate  
Office of Public Advocacy

*0/3/86*  
\_\_\_\_\_  
Date

\_\_\_\_\_  
Commissioner Eleanor Andrews  
Department of Administration

\_\_\_\_\_  
Date

# STATE OF ALASKA

## DEPARTMENT OF LAW

CRIMINAL DIVISION/THIRD JUDICIAL DISTRICT  
OFFICE OF THE DISTRICT ATTORNEY

December 17, 1985

Mr. John Reese, Co-Chair  
Volunteer Guardian ad litem Program  
Alaska Bar Association  
P.O. Box 100279  
Anchorage, Alaska 99510

Dear Mr. Reese:

I endorse the proposal to establish a volunteer guardian ad litem program. I am the prosecutor who handles most of the child sexual abuse cases in Anchorage and have done so for the last three years.

Sexually abused children need an effective advocate to prevent damage to them from their involvement with the criminal justice system. In the past our prosecutors were able to spend much more time with victims to help ease their way through the system. Due to budget cuts and the increasing number of these cases we can no longer provide these services.

I believe a volunteer guardian ad litem would be very useful in child sexual abuse cases to fill the gap caused by our lack of resources. Advocating for the child's best interest takes a lot of time. I see no need for that advocate to be an attorney. In fact, there is an advantage to the guardian being outside the system because the guardian can encourage the system better to act in the best interest of the child. Lucy Berliner of the Harborview Sexual Assault Center in Seattle, who is a nationally known expert on child sexual abuse, endorses this concept of each sexually abused child having a non attorney advocate like the ones proposed in the volunteer ad litem program.

Very truly yours,

HAROLD M. BROWN  
ATTORNEY GENERAL

VICTOR C. KRUMM  
DISTRICT ATTORNEY

*Elizabeth H. Sheley*  
Elizabeth H. Sheley  
Assistant District Attorney

BILL SHEFFIELD, GOVERNOR

REPLY TO

1031 WEST 4th AVENUE, SUITE 520  
ANCHORAGE, ALASKA 99501  
PHONE (907) 277-8622

DRAWER 1180  
KENAI, ALASKA 99611  
PHONE (907) 283-3131

326 CENTER AVE. 2ND FLOOR  
KODIAK, ALASKA 99615  
PHONE (907) 486-5744

P.O. BOX 1070  
FALMER, ALASKA 99645  
PHONE (907) 745-5027

P.O. BOX 671  
VALDEZ, ALASKA 99686  
PHONE (907) 835-2462



DEC 30 1985

Bus. 276-7278  
24-hr.  
Crisis 276-RAPE

# S.T.A.R.

December 20, 1985



Mr. John Reese  
Volunteer Guardian ad Litem Program  
P.O. Box 100279  
Anchorage, Alaska 99510

Dear John:

On behalf of STAR I am writing to express our support of the proposed Volunteer Guardian ad litem Program. We are well aware of the need for such a program. Some of our clients have recently worked closely with staff from the Office of Public Advocacy. Additionally, I have visited this agency and am aware of the high quality of work that the staff perform.

As with any small agency it is important to maximize the use of volunteers. It sounds like your program will provide services to clients who could otherwise have been left unserved, and these services will be provided at a low cost. Children who are victims of sexual assault are unfortunately often revictimized by the length of and complexities in the court process. Further, children may not have the kind of support they deserve to receive from their parents. In the interest of serving and protecting the interests of children a program such as yours should provide a kind of advocacy that is the right of any victim.

Please feel free to contact me at STAR if we can be of assistance.

Sincerely,

Ann W. Stockman, MSW  
Director of Crisis Services

AWS/sjj

**STANDING TOGETHER AGAINST RAPE**  
PO BOX 103358 ANCHORAGE, ALASKA 99510



DEC 20 1985



## Trial Courts

State of Alaska

THIRD JUDICIAL DISTRICT

303 K STREET

ANCHORAGE, ALASKA 99501

December 19, 1985

WILLIAM D. HITCHCOCK  
Master, Trial Courts

John Reese, Co-Chairman  
Volunteer Guardian ad Litem Program  
211 H Street  
Anchorage, Alaska 99501

Dear Mr. Reese,

I am writing this letter in support of the efforts being made to establish a full-time volunteer guardian ad litem program within the Office of Public Advocacy. As Children's Court Master here in Anchorage for the past seven years, I have seen firsthand the important role which the guardian ad litem plays in children's proceedings. Case investigation and assessment are the most important and often the most time consuming aspects of this job. Unfortunately, the resources of the state within any agency are often strained to the maximum just dealing with the voluminous caseloads. This is where volunteers can play a vital role in being able to devote the time needed to complete impartial investigations and more adequately represent the best interests of the children.

As a member of the National Council of Juvenile and Family Court Judges, I have attended various national conferences at which presentations have been made by volunteer programs in other states. It is my impression that these programs have been extremely successful and have overwhelmingly won the support of the bench and the bar. I think it is particularly unfortunate that we here in Alaska have not done more to tap the resources of our communities and achieve more citizen involvement in areas such as child welfare. A program such as this one would do just that, and from a cost efficient standpoint would materially save the expense of adding more paid staff and attorneys to public agencies.

It is also my distinct impression that no program outside that has been successful has been able to do so without competent administration. Recruitment, training and quality control monitoring of volunteers is an absolute prerequisite to success. Therefore, I urge the legislature to pass enabling legislation which would provide funds to secure an administrator for this program so that it may benefit not only Anchorage but eventually become a statewide program.

Sincerely,

A handwritten signature in cursive script, appearing to read "William D. Hitchcock".

William D. Hitchcock  
Master, Children's Court

WDH/ss

BILL SHEFFIELD, GOVERNOR

**DEPT. OF HEALTH AND SOCIAL SERVICES**

DIVISION OF MENTAL HEALTH & DEVELOPMENTAL DISABILITIES  
ALASKA PSYCHIATRIC INSTITUTE

2900 PROVIDENCE AVENUE  
ANCHORAGE, ALASKA 99508-4677

(907) 561-1633

December 20, 1985

John Reese, Co-Chairman  
Volunteer Guardian Ad Litem Program  
Alaska Bar Association  
Family Law Section  
P.O. Box 100279  
Anchorage, Alaska 99510



Dear Mr. Reese:

Dr. Bruce Livingstone, our Acting Medical Director, and I have reviewed your letter of December 3, 1985.

We would both endorse the creation of a Volunteer Guardian Ad Litem Program in the community. We would see them as being persons who would be most useful to our patients. Please feel free to contact us if we can in any way help train your volunteers.

We look forward to working with you when this new program is available.

Sincerely,

*Veronica Duke*  
Veronica Duke, ACSW  
Chief, Clinical Social Work Services

VD/eb EB4 1781

d. 12/20/85

t. 12/20/85

# STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

## PUBLIC DEFENDER AGENCY

900 W. 5TH AVENUE  
SUITE 200  
ANCHORAGE, ALASKA 99501  
PHONE: (907) 279-7541

### MEMORANDUM

DATE: December 20, 1985

TO: John Reese, Co-Chair  
Volunteer Guardian ad litem Program .

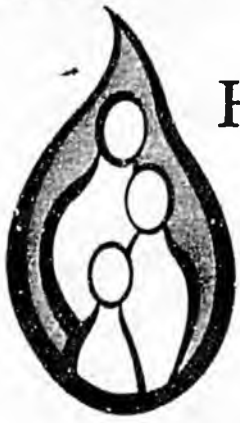
Jay McCarthy  
Office of Public Advocacy

FROM: *Dana Fabre*  
Dana Fabre  
Public Defender



I am writing to add my support for proposed legislation establishing a volunteer guardian ad litem program within the Office of Public Advocacy. This program would save money for the State of Alaska by avoiding the necessity of adding guardian ad litem positions to meet rising caseloads. Careful recruitment and training of qualified community volunteers should increase the level of service to children needing guardians ad litem to represent their best interests.

I fully support establishment of a volunteer guardian ad litem program within the Office of Public Advocacy. Please let me know if there is anything I can do to aid passage of enabling legislation for such a program.



# Human Relations Center

421 E. 45th, Suite 1  
Anchorage, Alaska 99503-7348  
(907) 562-6677

Phillip Kaufman, M.S.  
Pamela Kirk, M.S.  
Dr. Patricia C. Patrick, M.D.  
Child Psychiatric Consultant  
Dr. Jim Harper, Ph.D.  
Psychological Consultant  
Dr. Janet Lindeman, Ph.D.  
Psychological Consultant

December 23, 1985

John Reese  
Co-chair of the Volunteer  
G.A.L. Program  
Family Alaska Bar Association  
Family Law Section  
P.O. Box 100279  
Anchorage, Alaska 99510



Re: Letter of Support

Dear Mr. Reese:

In response to your letter of December 3, 1985, asking for letters of support for the Office of Public Advocacy and the G.A.L. Program, the Human Relations Center is very much in support of the Office of Public Advocacy. Since most of the cases we work with have to do with child sexual abuse, it is extremely important that our child clients have a strong G.A.L. to protect their interests in these difficult situations. We would be supportive of any legislation that would guarantee more funding for the Office of Public Advocacy so that more G.A.L.'s could be hired. It is obvious that the guardians are so overworked at the present time that they are having difficulty providing high quality services to the children.

We also work with a number of cases where children have reported that they have been sexually abused by a parent during visitation. These cases often result in custody and visitation battles which are complicated by the child sexual abuse allegations. In such cases it is important for the safety of the children that supervised visitation be provided. D.F.Y.S. is not able, due to the time and case load restrictions, to provide such supervision for these children. If the volunteer G.A.L. Program could be expanded and supported, then these volunteers could provide some of the supervision that was necessary in our custody cases. Such supervised visitation is also often necessary in our child sexual abuse cases so that the children may maintain a relationship with the perpetrator yet remain safe.

In some child sexual abuse cases, we have mothers who are not supportive of their children and therefore, the children can not be left alone in visitation with a non-offending, non-supportive parent. These are another set of cases where the G.A.L.'s could provide much needed supervision so that the children maintain their mother/child bond with these non-supportive mothers.

We would give our support to any legislation that would: 1) increase the number of G.A.L.'s at the Office of Public Advocacy, 2) provide for funding to increase the volunteer G.A.L. Program, and 3) provide funding so that the volunteer G.A.L.'s could be trained to provide complete and safe supervision to children.

We highly support the Office of Public Advocacy and the volunteer G.A.L. Program. If we can be of further service providing support, please do not hesitate to contact this office.

Respectfully submitted,



Pamela Kirk, M.S.



Phil Kaufman, M.S.

PK:ln  
cc: Jay McCarthy

**ALASKA BAR**  
ASSOCIATION

JAN 10 1986

December 16, 1985

John Reese, Co-Chair  
Volunteer Guardian ad litem Program  
Alaska Bar Association  
P. O. Box 100279  
Anchorage, AK 99510

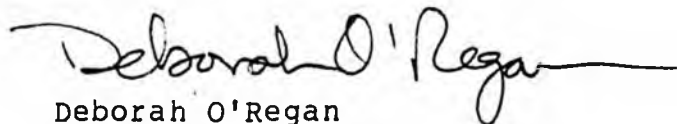
Dear Mr. Reese:

I am writing in support of the committee's efforts to develop a volunteer guardian ad litem program.

Such a program would provide much needed representation for children in our community. The utilization of trained volunteers will make it possible to adequately represent children without substantially increased state funding.

I endorse the enabling legislation which would establish a volunteer guardian ad litem program within the Office of Public Advocacy.

Sincerely,



Deborah O'Regan  
Executive Director

vu



# Alaska Baptist Family Services

1600 O'Malley Rd. • Anchorage, Ak. 99516 • Phone (907) 349-2222

December 5, 1985

John Reese, Co-Chair  
Volunteer Guardian ad litem Program  
AK BAR ASSOCIATION  
P O Box 100279  
City 99510



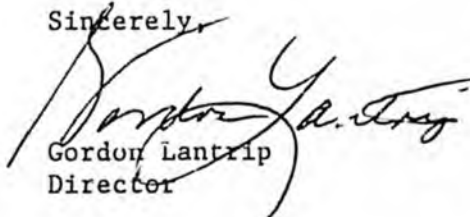
Dear Mr. Reese:

Thank you for your recent letter re the development of a Volunteer Guardian ad litem program here in Alaska.

It has been my experience over these past 25 years in child care work that better things happened to youth who had a guardian ad litem working in their behalf. I know the financial cost of such a program for every child would be staggering and so I think a volunteer program that utilized well chosen and trained citizens has great potential.

I heartily endorse the development of enabling legislation to begin such a program.

Sincerely,

  
Gordon Lantrip  
Director



# THE CENTER FOR CHILDREN AND PARENTS

December 13, 1985



John Reese, Co-Chair  
Volunteer Guardian ad litem Program  
Alaska Bar Association  
P.O. Box 100279  
Anchorage, Alaska 99510

Dear Mr. Reese:

I am pleased to submit a letter of support for your efforts to establish a volunteer guardian ad litem program. Such a service will provide a needed adjunct to existing guardian ad litem services.

The use of carefully selected and well trained volunteers in child welfare matters has proven to be very effective. The Court Appointed Special Advocate Program (CASA) is well respected in communities in the lower forty-eight. The continued increase of child abuse cases and the number of divorces in the Anchorage area are impacting the court system as well as investigation and rehabilitation resources. At a time when financial resources are declining we must find responsible, yet creative ways to serve families in need. The volunteer guardian ad litem is, indeed, a responsible solution to the problem of the increased number of children requiring representation.

I wish you well in the development of the volunteer guardian ad litem program. I am happy to support your efforts and the enabling legislation which will allow you to proceed.

Sincerely,

Milli Andreini, M.S.W.  
Executive Director

MA/wst



Southcentral Alaska Chapter -  
National Committee for  
Prevention of Child Abuse

808 E STREET, SUITE 200, ANCHORAGE, ALASKA 99501 (907) 276-4994  
Programs of the Anchorage Child Abuse Board, Inc.





FEB 3 1986

## Alaska Court System

State of Alaska

303 "K" STREET  
ANCHORAGE, ALASKA  
99501

ARTHUR H. SNOWDEN II  
ADMINISTRATIVE DIRECTOR

(907) 274-8611

January 29, 1986

Rep. Niilo Koponen  
Rep. Max Gruenberg, Co-Chairman  
House Health Education and  
Social Services Committee  
P. O. Box V  
Juneau AK 99811

Dear Representatives Koponen and Gruenberg:

I am writing to express support by the Alaska Court System for those provisions of HB 474 which would permit the Office of Public Advocacy to develop and coordinate a volunteer guardian ad litem program.

Information from other states in which similar programs have been established indicates that programs of this nature improve the quality of guardian ad litem services and also help contain costs.

If you have any questions regarding the court's position, please contact either me or my staff counsel Karla Forsythe.

Sincerely,

Arthur H. Snowden, II  
Administrative Director

KF/k1

cc: Karla Forsythe  
Brant McGee  
John Reese

# Court Appointed Special Advocate Association

909 N.E. 43rd, Suite 202; Seattle, Washington 98105 (206)547-1059

January 30, 1986

FEB  
5 1986

Mr. Philip J. McCarthy, Jr.  
Office of Public Advocacy  
900 W. 5th Avenue, Ste. 525  
Anchorage, AK 99501

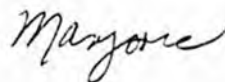
Dear Jay,

Thank you for your memorandum and copy of the legislation which you introduced January 15, 1986. There is no problem at all with the National CASA Association's supporting this Bill.

I am wondering if there are particular items regarding your CASA Project or regarding your legislation which you would wish to address. Please let me know. There is no difficulty in simply stating that the legislation seems to be appropriate and helpful to the cause of Volunteer Guardians. As a matter of fact, I am a bit envious of your §44.21.450, that holds that the Volunteer Guardian may not be held civilly liable except in cases of gross negligence.

If you need more than the above statement please let me know.

Sincerely,



Marjorie MacAdams  
President, National CASA Association  
Executive Director, FOCAS

# STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date: \_\_\_\_\_

**REQUEST**

Bill/Resolution No.: HB 485  
 Title: "An Act relating to powers and duties of guardians."  
 Sponsor: Rep. Sund  
 Requestor: HESS & Judiciary  
 Date of Request: 1/28/86

**FISCAL DETAIL**

Agency Affected: Administration  
 BRU: Office of Public Advocacy  
 Components: Office of Public Advocacy

**EXPENDITURES/REVENUES : (Thousands of Dollars)**

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES	-0-	-0-				
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>-0-</b>	<b>-0-</b>				

<b>CAPITAL</b>	<b>-0-</b>	<b>-0-</b>				
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<b>REVENUE</b>	<b>-0-</b>	<b>-0-</b>				
----------------	------------	------------	--	--	--	--

**FUNDING : (Thousands of Dollars)**

GENERAL FUND	-0-	-0-				
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	<b>-0-</b>	<b>-0-</b>				

**POSITIONS :**

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

**ANALYSIS :** Attach a separate page if necessary

Prepared by: Phillip J. McCarthy, Jr. / Brent McGee, Public Advocate  
 Division: Office of Public Advocacy

Phone: 274-1684  
 Date: 2/4/86

Approved by Commissioner: Eleanor Andrews  
 Agency: Department of Administration

Date: 2/4/86

**Distribution (by Agency preparing fiscal note):**

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

House Bill 485- An act relating to powers and duties of guardians  
Overview prepared by Rep. John Sund's office

#### SECTIONAL ANALYSIS

Section 1, subsection (3) is amended to allow a guardian to accept a medical decision to withhold medical procedures from their ward, when the procedures would only serve to prolong the dying process.

#### HISTORY

Current law is being interpreted as requiring that a guardian insist on the continuation of medical procedures, once begun, regardless of a medical judgment that those procedures will not provide relief or cure for the guardian's ward.

The bill does not require the guardian to accept the medical judgment, but gives them permission to accept or reject that judgment as they see fit.

A guardian is appointed by the court with the "same powers and duties respecting the ward that a parent has respecting an unemancipated minor child," except for the responsibility for care and maintenance.

# health association of alaska

319 Seward St., Juneau, Alaska 99801 • (907) 586-1790  
REPRESENTING ACUTE, LONG TERM AND OUTPATIENT FACILITIES

## POSITION PAPER

### GUARDIANSHIP LAW: NO CODE ORDERS

#### POSITION:

Guardians should be permitted to consent to the withholding of medical procedures which offer no reasonable expectation of effecting a temporary or permanent cure of or relief from the illness or condition being treated. The current law, AS 13.26.150(e)(3) presently is being interpreted to require the continuation of "lifesaving medical procedures" no matter what value such procedures might offer the patient in terms of benefits received. The question which needs to be considered is whether the procedure offers relief or cure or rather is simply prolongation of the dying process by use of invasive and heroic means.

#### ACTION:

Amend AS 13.26.150(e)(3) to provide that a guardian is not required to oppose the cessation or withholding of lifesaving medical procedures when those procedures will serve only to prolong the dying process and offer no reasonable expectation of effecting a temporary or permanent cure of or relief from the illness or condition being treated.

December 6, 1985

Chairman of the Board  
Michael Herring  
South Peninsula Hospital  
Homer

Chairman-Elect  
R. Dale Reynolds  
Charrar North Hospital  
Anchorage

Immediate Past Chairman  
Edward Zeina  
Cordova Community  
Hospital  
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American Hospital Assoc.  
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Ketchikan General Hospital  
Ketchikan

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Governing Boards  
Maxine Robertson  
Ketchikan General Hospital  
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Alternate Delegate to the  
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Boards

Sharon Jean  
Central Peninsula  
General Hospital  
Soldotna

Physician Member of  
the Board  
Morris Hanning, M.D.  
Anchorage

President  
Dennis DeWitt  
Juneau

FORMERLY

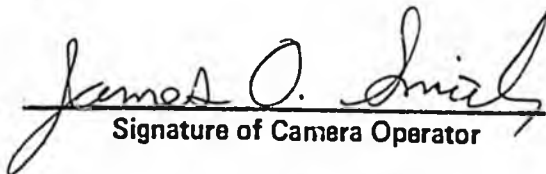
alaska  
state  
hospital  
association

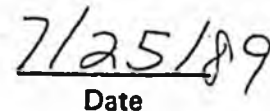


# RECORDS CERTIFICATION



I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

  
Signature of Camera Operator

  
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MAR 12 '86 13:58 AOA 2ND JUD DIST FAX276-6242



Alaska Court System  
State of Alaska

OFFICE OF ADMINISTRATIVE DIRECTOR

KARLA L. FORSYTHE  
STAFF COUNSEL

303 K Street  
Anchorage, Alaska 99501

(907) 264-8228

March 12, 1986

Rep. Max Gruenberg  
House HESS Committee  
P. O. Box V  
Juneau AK 99811

Rep. Gruenberg:

It is my understanding that you will be proposing an amendment to HB 497 which would provide for expedited calendaring of matters involving child custody upon the request of a party, to the extent allowed by law and court rule.

It is the position of the court system that case calendaring is within the rules of practice and procedure established by the supreme court under Article IV, section 15 of the Alaska Constitution. The court system opposes the adoption of legislation which sets calendaring priorities for the court. However, in recognition of your concern, the chief justice has asked the presiding judges to discuss the desirability of expedited calendaring in custody matters at their next meeting, scheduled for March 24, 1986.

If you have any questions about the court system's position, please let me know.

Sincerely,  
*Karla L. Forsythe*  
Karla L. Forsythe  
Staff Counsel

KF/

cc: Chief Justice Rabinowitz  
Arthur H. Snowden, II

A M E N D M E N T

#2

Offered in the HOUSE

By Gruenberg

TO: CSHB 497(HESS)

Page 2, following line 13, insert a new bill section to read:

"\* Sec. 4. AS 25.20 is amended by adding a new section to read:

Sec. 25.20.125. PRIORITY. Upon request of a party to a proceeding involving the custody of a child, the proceeding shall be given calendar priority to the extent allowed by law and court rules, and shall be handled expeditiously."

Renumber remaining bill section accordingly.

A M E N D M E N T

#1

Offered in the HOUSE

By Gruenberg

TO: CSHB 497(HESS)

Page 2, following line 7, insert a new subsection to read:

"(g) The court may order the Department of Health and Social Services, or another qualified agency or person to evaluate the suitability of placing a child in the custody of either parent or of a legal guardian by means of a home study. The court shall enter an order for costs, fees, and disbursements in favor of the state, agency, or person that conducts the home study."

Introduced: 1/22/86  
Referred: Health, Education &  
Social Services and Judiciary

BY THE RULES COMMITTEE BY  
REQUEST OF THE GOVERNOR

1 IN THE HOUSE

2 HOUSE BILL NO. 497

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to a child's birth certificate,  
7 parental responsibilities for a child's actions, and  
8 child custody; and providing for an effective date."

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

10 \* Section 1. AS 09.65.110(b) is amended to read:

11 ~~(b) Either parent, or both parents, or the legal guardian, or~~  
12 ~~the [A] person having legal custody of an unemancipated minor who~~  
13 ~~shoplifts merchandise is liable in a civil action to the owner or~~  
14 ~~seller of the merchandise for both of the following:~~

15 (1) a penalty equal to the retail value of the merchandise  
16 or \$500, whichever is less; and

17 (2) a penalty of not less than \$100 or more than \$200.

18 \* Sec. 2. AS 25.20.060 is amended to read:

19 Sec. 25.20.060. CUSTODY OF THE CHILD. (a) <sup>In any case involving</sup> If there is a dis-  
20 pute over child custody, either parent may petition the superior court  
21 for resolution of the matter under AS 25.20.060 -- 25.20.130. The  
22 court shall award custody on the basis of the best interests of the  
23 child in either a disputed or undisputed case. In determining the  
24 best interests of the child, the court shall solicit information  
25 regarding [CONSIDER ALL] relevant factors in determining the award of  
26 custody, including information about the [THOSE] factors enumerated in  
27 AS 25.24.150(c) and information about any understanding regarding  
28 custody reached between the parents.

29 (b) Neither parent, regardless of the question of the child's

*Amend?*  
*Consider age*  
*10/16/86*

*In any case involving*  
*custody of unemancipated*  
*child to the child's best*  
*interests.*

1 legitimacy, is entitled to preference in the awarding of custody.

2 (c) The court may award shared custody to both parents if shared  
3 custody is determined by the court to be in the best interests of the  
4 child. An award of shared custody must [SHALL] assure that the child  
5 has frequent and continuing contact with each parent to the maximum  
6 extent possible.

7 (d) An award of shared custody does not eliminate the duty of  
8 child support, nor does shared custody alone constitute grounds for  
9 modification of a support order.

10 (e) In awarding custody, the court shall consider only those  
11 factors that directly affect the well-being of the child.

12 \* Sec. 3. AS 25.20.100 is amended to read:

13 Sec. 25.20.100. [DENIAL OF] SHARED CHILD CUSTODY. If a parent  
14 or the guardian ad litem requests shared custody of a child and the  
15 court awards or denies the request, the reasons for the award or  
16 denial must [SHALL] be stated on the record, including the court's  
17 reasoning on each of the factors enumerated in AS 25.24.150(c).

18 \* Sec. 4. AS 18.50.160(f) is repealed.

19 \* Sec. 5. This Act takes effect immediately in accordance with AS 01.-  
20 10.070(c).

23207 Note (# / w/ analysis  
letter for Sup # 75)

Introduced: 1/22/86  
Referred: Health, Education &  
Social Services and Judiciary

1 IN THE HOUSE

BY THE RULES COMMITTEE BY  
REQUEST OF THE GOVERNOR

2 HOUSE BILL NO. 497

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

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25 regarding [CONSIDER ALL] relevant factors in determining the award of  
26 custody, including information about the [THOSE] factors enumerated in  
27 AS 25.24.150(c) and information about any understanding regarding  
28 custody reached between the parents.

29 (b) Neither parent, regardless of the question of the child's

HB 497

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A M E N D M E N T

#1

Offered in the HOUSE

By Gruenberg

TO: CSHB 497(HESS)

Page 2, following line 7, insert a new subsection to read:

"(g) The court may order the Department of Health and Social Services or another qualified agency or person to conduct a home study to assist the court in deciding custody and visitation issues.



STATE OF ALASKA

OFFICE OF THE GOVERNOR

ALASKA WOMEN'S COMMISSION

3601 C STREET - SUITE 742

ANCHORAGE, ALASKA 99503

March 4, 1986

Representative Max F. Gruenberg, Jr.  
Alaska State Legislature  
Pouch V (MS 3100)  
Juneau, AK 99811

Dear Representative Gruenberg:

House HESS Committee heard HB 497, the Child Custody bill, on Monday, February 24th. The Women's Commission requested the Governor to introduce the bill because of our concern about the plight of Alaska's children following divorce. Nationally, the Census Bureau projects 2/3 of the children born in wedlock in 1980 will experience divorce by the time they are 17. Here in Alaska 50 percent of all marriages end in divorce. Child custody arrangements have, therefore, become increasingly important.

Following the identification of several issues during the HESS hearing on HB 497, the Commission completed some additional research about these issues. We have found that there has been a major shift in child custody laws during the last ten years from the concept of maternal preference to the gender neutral standard of the "best interests of the child".

Although legal rules now give fathers equal right to custody, mothers continue to be awarded physical custody of the children 90 percent of the time. The reason appears to be that maternal custody is preferred by the parents themselves. There has been no change in the percentage of fathers who request custody. While judges appear to maintain their preference for maternal custody, only 10 percent of the contested cases actually go to trial. Most cases are negotiated out of court.

96 percent of mothers want custody. While 57 percent of fathers want custody, only 13 percent of them actually request it. When fathers do request custody in negotiated settlements, they succeed 66 percent of the time. This high success rate is due to the fact that women are less secure than they used to be under maternal preference about

potential custody threats because the "best interests of the child" standard is often interpreted in favor of the father. Under the "best interest" standard, the focus shifts from unfitness to a consideration of each persons relationship with the child and to which parent is best able to care for the child. Women are perceived often as less able for following reasons:

- 1) Courts regard women's employment, as opposed to men's, as a "diminished capacity" to care for children.
- 2) Judges assume that when both parents have worked outside the home they have been equal in the amount of care given to the child. Research indicates, however, that men provide even less care of the children when both parents work because they are less willing to relieve a mother who has not spent the day with the child.
- 3) "Quality of care" is equated with financial resources and women earn only 2/3 of that earned by men.
- 4) Courts favor two parent living situations for children and men are most likely to remarry in the first year following divorce.

As a result, when custody is negotiated women feel compelled to give up or compromise financial interests (child support, alimony, property) in order to gain custody. So, although women are receiving custody in 90 percent of the cases, it is because they have bargained for it.

The Women's Commission is committed to custody arrangements being made in "the best interest of the child". It is the standard used to determine "best interests" that is in question. We believe the standard should be based on whoever has had the primary responsibility of the care and nurtrance of the child during the marriage. This standard has the dual advantage of valuing primary caretaking and decreasing ambiguity about the criterion used for custody awards, so that custody can less easily be used as a bargaining tool. This "establishment of certainty" prevents the use of custody as a coercive weapon.

Alaska's law has six factors which are to be considered in disputed custody determinations:

- 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 age and capacity to form a preference;
  - 4) the love and affection existing between the child and parent;
  - 5) the length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity;
  - 6) the desire and ability of each parent to allow an open and loving frequent relationship between the child and the other parent;

The last factor, referred to as "the friendly parent rule" has been opposed by several bar associations because of its potential for coercion. Assume, for example, that one person does not want joint custody but is afraid of losing sole custody if a judge learns that she or he was uncooperative and refused joint custody. They will agree to joint custody in order to keep from losing custody altogether. The Women's Commission would like the HESS committee to eliminate this factor from Alaska's law by amending HB 497.

Secondly, the Commission believes that all custody arrangements should undergo at least minimal scrutiny by the court system to ensure coercion has not taken place (compromises of financial resources). If it appears from the initial scrutiny that coercion may have occurred, the Commission would like to have the court system perform a more in depth examination of the custody arrangement. As in disputed cases, we would like the six factors listed above considered. We assume that this is occurring to a certain extent right now since nationally, only 10 percent of cases are contested but according to the court system's fiscal note, over 50 percent of all custody cases are referred to a custody investigator. Although we do not know how many of these were contested cases, it is safe to assume, not all were. We therefore assert that our proposal, would reduce the current fiscal note.

The third objective of the Commission in this legislation is to request the reasons joint custody is awarded or denied be included in the record. Under current law this only occurs when joint custody is denied. Joint custody is an important means of ensuring children get access to both parents. A five year study of the impact of divorce on children concluded children adjust best when they maintain a continuing relationship with both parents. However, the single most

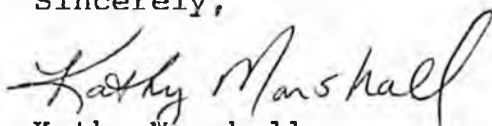
dangerous consequence to children from divorce is hostility between parents. If the joint custody arrangement is voluntary and both parties truly want it, it is the preferred custody choice. If, however, coercion has occurred, there is a high likelihood of hostility. In fact, a number of studies have indicated higher rates of conflict and relitigation among couples with joint custody. Careful investigation of these cases is essential. The Commission believes this proposal would have limited fiscal impact. We assume that these cases are among the over 50 percent of the cases currently being investigated.

The fourth and last proposal included in HB 497 is to make a clear distinction between child support and child custody. The Commission would like to have these two issues considered separately because we believe children should be guaranteed both access to their parents and economic security following a divorce. If a monetary value is placed on the amount of time spent with a child, that child may be deprived of access to one parent if that parent has limited financial resources. On the other hand, the amount of time spent with a child should not relate to the economic security of the child when with one of the parents. If one spouse cannot meet the financial needs of the child, the other parent should provide the necessary child support regardless of the amount of time spent with the child.

There has been extensive research which indicates that the amount of visitation has no relationship to the amount of child support paid. For example, fathers with joint custody are no more likely to pay more child support than fathers who are the noncustodial parent. There does appear to be a relationship between the amount of time spent with children and parent's educational level, race, proximity to the child and marital status. Less educated, black, and remarried fathers have less contact with their children. Overall, 52 percent of the children surveyed had not seen their fathers in the past year.

The Commission hopes you will give careful consideration to our three proposals on HB 497 and to amending the bill to eliminate the "friendly parent rule". If you have any questions or would like additional information, please don't hesitate to contact me.

Sincerely,



Kathy Marshall  
Executive Director

KM/dn

FOOTNOTES

- 1/ Sandra's counsel omitted "slow in responding", order at 18, in submitted written findings and added Sandra "was not negligent." Findings of Fact at 5. The rule that oral decisions control written findings should here apply; Concerned Citizens of S. Kenai Peninsula v. Kenai Peninsula Borough, 527 P.2d 447, 456-7 (Alaska 1974) (n.19).
- 2/ Marilyn watched the children while Sandra crewed on Alan's boat between May - , 1984. Marilyn's denial in deposition of Susan complaining is preceded by a long dash, (also R. [argument.]) She does not have immunity from a negligent tort.
- 3/ Marilyn Jones' deposition was stipulated into evidence. She did not testify at trial.
- 4/ Anna Freud is the primary source of the idea that the experience of disruption is as intense in children whose custody changes between parents as the separation trauma she observed in institutionalized children in England during World War II. Because the evolution of this idea in Alaska case law from its proper application in parent-non parent cases to parent-parent cases has occurred perhaps without judicial awareness, and because Freud's idea as a basis of judicial policy has come under considerable criticism from psychologists and commentators alike, considering the application of Freud's idea to Alaska cases may change a policy which is as unchallenged as maternal preference was before Margert Mead's works were quoted in a brief submitted in Johnson. See infra Karkin and Villinova LR.

In Turner v. Pannick 540 P.2d 1051, 1056 (Alaska 1975), Justice Rabinowitz quoted an article in which extensive interviews of Anna Freud were conducted in 1963 about her research in 1942 at a war nursery where children suffered institutionalized separation trauma. Yale Law Journal 73:135, 159, n.36. Freud's psychological conclusions were appropriately applied to the parent-non parent facts in Turner. In Hootch v. Alaska, 536 P.2d 793, 813 (Alaska 1975), Justice Rabinowitz noted again the separation of Natives from their homes may be via a vis Freud (Beyond the Best Interests of the Child, 1973) psychologically harmful. The final correct application of Freud in Alaska family law is a note in UCLA AK LR 12:141, 150 n.69 (1982-3) which analyzes the disruption of adoption against the conflicting needs of continuous, stable relationships and natural rights of parents. Id. at 151. The article glosses over Rutter's 1980 dispute with ~~Rutter's~~ Freud's (1950) view of separation Trauma at N.69.

A divergent separation trauma evolutionary line appears in Alaska custody modification cases. The missing link in the evolutionary chain <sup>to</sup> the Alaska <sup>cases</sup> is Max Gruenberg's ~~concepts of disruption and~~ <sup>article</sup> ~~need for continuous, stable relationships~~ (UCLA AK LR, 34, 39 (1976)) <sup>then</sup> are extracted from the dependency or adoption context in which Freud made her observations. The disruption and stability arguments of Freud are transferred to a modification context in SNE v. RLB, 699 F.2d 875, 879 (Alaska 1985); Gratrix v. Gratrix, 652 P.2d 76, 81 (Alaska 1982); Morel v. Morel, 647 P.2d 605, 608 (Alaska 1982); Starkweather v. Curritt, 636 P.2d 1181, 1183 n.1 (Alaska 1981); Veazy v. Veazy, 560 P.2d 382, 386 (Alaska

In AK custody cases disruption + the need for continuous stable relationships

1977); DeHart v. Layman, 536 P.2d 789 (Alaska 1975); and Nichols v. Nichols, 516 P.2d 732 (Alaska 1973). In at least half these cases, serious parental unfitness accompanied the idea that harm results from a shuffling or shuttling back and forth between relatively fit parents as intense as or damaging as their placement in wartime institutions, shipments from Akiachak to Oklahoma, or ultimate severance from a parent. Commentators indicate both current psychological research and contemporary social practice confound the research conducted by Freud and her colleagues 30 and 40 years ago. See Daniel Katkin et.al., "Above and Beyond the Best Interests of the Child: An Inquiry Into the Relationship Between Social Science and Social Action" Law and Society Review, 669, 674-5, 678-58, 683 nn.5,8,9,14,20,28 (Summer 1974) (attached) and "Stability in Custody Modifications", Villanova Law Review 29:1109, 1110, 1112, 1114, 1118 (1983-84).

Contrary to Freud's view, these commentators see modification as an affirmation of the bond with the other parent which can ameliorate ~~any~~ disruption and that respect for the child's wishes is itself a countervailing force. Day care, joint custody shifts, and yearly changes in summer long visitation are contemporary experiences rarely practiced in the 1940's or 50's, which provide opportunity to observe how children in the 80's have been able to adapt to conditions seen as disrupting 30 years ago.

IN short <sup>since</sup> ~~the research~~ current research indicates flaws in Freud's theory, commentators suggest <sup>stability</sup> ~~being~~ the social policy of emotional ~~health~~ <sup>stability</sup> requiring change only <sup>there is</sup> if a major change in circumstances.

IT is wrong or not justified to base the policy of ~~stability~~ <sup>which Freud theory is</sup> protecting children from disruption upon a ~~psychological~~ <sup>psychological</sup> theory whose premisses have been ~~severely~~ <sup>severely</sup> weakened by current research.



**ASAEYC**  
ALASKA STATE ASSOCIATION  
FOR THE EDUCATION  
OF YOUNG CHILDREN

February 24, 1986

The Honorable Niilo Koponen  
The Honorable Max Gruenberg  
Alaska House of Representatives  
Pouch V  
State Capitol  
Juneau, Alaska 99811

Dear Representatives Koponen and Gruenberg:

The Alaska State Association for the Education of Young Children urges you and the other members of the Health, Education and Social Services Committee to support passage of House Bill 497 - the Children's Bill. We are especially concerned with the section regarding the determination of child custody. We believe that it is important that questions be asked of the parents regarding how they came to agreement about custody of the child. Financial support should not be a criteria for determining who is given custody of the child. Children deserve maintenance of their standard of living, regardless of which parent they are living with.

Thank you for the opportunity to speak in support of this legislation.

Sincerely,

Lynn McKinnon  
Vice-President for Advocacy  
502 West 10th  
Juneau, Alaska 99801



HB 497

STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

January 22, 1986

The Honorable Ben Grussendorf  
Speaker of the House  
Alaska State Legislature  
P.O. Box V  
Juneau, AK 99811

Dear Representative Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill pertaining to several aspects of parent/child relationships. It amends Alaska statutes regarding parental responsibility for children's actions and regarding child custody decisions, and repeals a statute that inappropriately distinguishes between the birth certificates of children born to married parents and children born to unmarried ones.

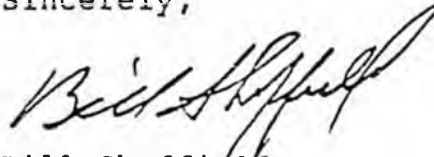
The bill amends AS 09.65.110(b) to provide that either or both parents, or the legal guardian, or the person having legal custody of an unemancipated minor, would be liable in a civil action when the minor shoplifts merchandise. The Alaska Women's Commission recommends the change to prevent the situation in which the parent having legal custody, but not physical custody, of the child would necessarily be solely responsible for acts that took place when the child was not under that parent's control.

The bill also amends AS 25.20.060 to require the court to solicit information regarding the best interests of a child in disputed and undisputed custody situations. The Alaska Women's Commission believes that this information should be actively solicited by the court to determine that the best interests of the child are represented and that the agreement reached by the parents and presented to the court is

not a result of unequal bargaining power. The amendment would also make clear that the court may award child support even when shared custody is ordered. The court would also be instructed in child custody matters to consider only those factors that directly affect the well-being of the child. Such a procedure would avoid decisions being made about custody based upon lifestyle judgments when the parent's behavior would have no adverse effect upon the well-being of the child.

Finally, the bill repeals AS 18.50.160(f), which expressly authorizes the state registrar to direct a procedure for filing the birth certificate of a child born out of wedlock that is different from that provided for a child born to married parents. It is difficult to imagine a need to make this distinction, and I understand that this statutory authority is not exercised. Whatever social stigma may attach to the "illegitimate" child should not be condoned or formalized by a statute such as this.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill Sheffield", written in a cursive style.

Bill Sheffield  
Governor

cc  
1/22

# STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : 12/23/85

REQUEST NB 497 #1  
Bill/Resolution No. : 377-003-86  
Title : Birth Certificates, parental responsibilities for children's actions, and child custody  
Sponsor : \_\_\_\_\_  
Requestor : \_\_\_\_\_  
Date of Request : \_\_\_\_\_

FISCAL DETAIL  
Agency Affected : Div. of Fam. & Youth Svs  
BRU : \_\_\_\_\_  
Components : \_\_\_\_\_

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		0	0	0	0	0

CAPITAL		0	0	0	0	0
---------	--	---	---	---	---	---

REVENUE		0	0	0	0	0
---------	--	---	---	---	---	---

FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL		0	0	0	0	0

POSITIONS :

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

ANALYSIS : Attach a separate page if necessary

Prepared by : Pearl Johnson  
Division : Family & Youth Services

Phone : 465-3227  
Date : 12/23/85

Approved by Commissioner : John R. Burg  
Agency : Health and Social Services

Date : 12/23/85

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

Attachment: This bill amends AS 09.65.110(b) to provide that.....Either parent or both parents or the legal guardian or the person having legal custody of an unemancipated minor would be liable in a civil action when the minor shoplifts merchandise....

It should be noted that AS 34.50.020(b) specifically exempts a state agency from the acts of an unemancipated minor in its charge or custody. This fiscal note is based on that exemption.

The proposed changes to AS 25.20.600 would require the court to solicit information regarding the best interests of the child in custody situations. A previous court opinion, Granato V. Occhipinti, File no 3756, holds that the Division of Family and Youth Services is not responsible to perform these studies except in specific circumstances. The Division has no objections to the changes with the understanding that the home studies do not become a responsibility of the Division. The court system may have a financial impact in providing the personnel to perform these studies. The court should be contacted and informed that the Division of Family and Youth Services, in meeting its mandated child protection responsibilities, does not have the resources to perform these home studies.

STATE OF ALASKA 1986 LEGISLATIVE SESSION  
FISCAL NOTE

*Handwritten initials and numbers: P.K., 1/22*

REQUEST NB 497 #2  
 Bill/Resolution No. : 377-CO 3-86  
 Title : \_\_\_\_\_  
 \_\_\_\_\_  
 Sponsor : \_\_\_\_\_  
 Requestor : \_\_\_\_\_  
 Date of Request : \_\_\_\_\_

Revision Date : \_\_\_\_\_  
 FISCAL DETAIL  
 Agency Affected : AWC  
 BRU : \_\_\_\_\_  
 \_\_\_\_\_  
 Components : \_\_\_\_\_  
 \_\_\_\_\_

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-					

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-12-					

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

RECEIVED  
DEC 23 1985

Prepared by : Kathy Marshall  
 Division : AK Women's Commission

ALASKA WOMEN'S  
 COMMISSION  
 Phone : 561-4227  
 Date : 12/24/85

Approved by Commissioner : \_\_\_\_\_  
 Agency : \_\_\_\_\_

Date : \_\_\_\_\_

Distribution (by Agency preparing fiscal note) :

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

# STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : \_\_\_\_\_

**REQUEST**

Bill/Resolution No. : HB 497  
 Title : An Act relating to ... and  
Child Custody

Sponsor : RULES COMMITTEE BY REQUEST  
 Requestor : Governor  
 Date of Request : 1/22/85

**FISCAL DETAIL**

Agency Affected : Alaska Court System  
 BRU : Trial Courts

Components : \_\_\_\_\_

**EXPENDITURES/REVENUES : (Thousands of Dollars)**

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		237.1	251.3	266.4	282.4	299.3
TRAVEL		12.0	12.7	13.5	14.5	15.2
CONTRACTUAL						
SUPPLIES						
EQUIPMENT		17.3				
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>		<b>266.6</b>	<b>264.0</b>	<b>279.9</b>	<b>296.7</b>	<b>314.5</b>

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

**FUNDING : (Thousands of Dollars)**

GENERAL FUND		266.6	264.0	279.9	296.7	314.5
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>						

**POSITIONS :**

FULL-TIME		4	4	4	4	4
PART-TIME		1	1	1		
TEMPORARY						

**ANALYSIS :** Attach a separate page if necessary

Prepared by : Robert G. Fisher  
 Division : Alaska Court System

Phone : 264-8215  
 Date : 1/28/85

Approved by Commissioner : Arthur H. Sweeney, II  
 Agency : Alaska Court System

Date : 1/28/85

Distribution (by Agency preparing fiscal note) :

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

ALASKA COURT SYSTEM  
 EB 497 - CUSTODY

FISCAL IMPACT

	TOTAL COST
PERSONAL SERVICES:	
Juneau, serving First District:	
1 - Custody Investigator I (PPT, 6 months, range 20A)	\$27,879
Anchorage, serving Third and Second Districts:	
2 - Custody Investigator I (PFT, range 20A)	111,514
1 - Secretary (PFT, range 12B)	34,604
Fairbanks, serving Fourth District:	
1 - Custody Investigator I (PFT, range 20A)	63,097
	-----
Total Personal Services	237,094
TRAVEL:	
Travel from base locations to other courts in service area.	12,000
EQUIPMENT: (one-time item)	
Standard office equipment and reference materials	17,499
	-----
TOTAL FY 87 COST	\$266,593
	*****

Subsequent fiscal years adjusted to reflect 6% inflation.

## FISCAL IMPACT

### HOUSE BILL 497

It is assumed for purposes of this fiscal note that information about factors relevant to a child custody award will be solicited through a custody investigator. This is the current procedure in Anchorage and Fairbanks when the court is faced with a custody dispute. This information is factual and often involves sensitive areas. Trained professionals can obtain relevant and accurate details and make appropriate recommendations, which frees judicial resources to determine any legal issues.

At present, information is solicited only in contested custody matters. This bill will require an active solicitation effort in every divorce in which there are minor children of the marriage, even if there is no dispute about custody.

In FY 85, approximately 1,200 divorces were filed in the third judicial district. It is estimated that there were minor children in 75% of these cases, resulting in 900 cases which would be subject to the provisions of this bill. Under current law, 507 cases were referred to the custody investigator (of which 82% arise from divorces or dissolutions), which are investigated by a professional staff of three. Under this bill, using FY 85 figures, 480 additional cases would be referred for custody investigation, which would require a minimum of two additional custody investigators (assuming that the chief custody investigator is expending a substantial portion of her time in supervisory and administrative work).

Filings in other portions of the state accounted for 574 divorce matters. Using Anchorage as a work standard, and assuming that 30% of cases are investigated or receive additional attention under current law, the bill would affect 260 additional cases, which would require one and one-half new investigator positions.

Run 112

# STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : \_\_\_\_\_

## REQUEST

Bill/Resolution No. : HB 497  
Title : An Act relating to ... and  
Child Custody

Sponsor : Rules Committee by Request  
Requestor : Governor  
Date of Request : 1/22/85

## FISCAL DETAIL

Agency Affected : Alaska Court System  
BRU : Trial Courts

Components : \_\_\_\_\_

## EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		237.1	251.3	266.4	282.4	299.3
TRAVEL		12.0	12.7	13.5	14.3	15.2
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SUPPLIES						
EQUIPMENT		17.5				
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		266.6	264.0	279.9	296.7	314.5

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

## FUNDING : (Thousands of Dollars)

GENERAL FUND		266.6	264.0	279.9	296.7	314.5
FEDERAL FUNDS						
OTHER						
TOTAL						

## POSITIONS :

FULL-TIME		4	4	4	4	4
PART-TIME		1	1	1	1	1
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : Robert G. Fisher

Division : Alaska Court System

Phone : 264-8215

Date : 1/28/86

Approved by Commissioner : Arthur H. Snowden, II

Agency : Alaska Court System

Date : 1/28/86

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

ALASKA COURT SYSTEM  
HB 497 - CUSTODY

## FISCAL IMPACT

	TOTAL COST
PERSONAL SERVICES:	
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Anchorage, serving Third and Second Districts:	
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	-----
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Travel from base locations to other courts in service area.	12,000
EQUIPMENT: (one-time item)	
Standard office equipment and reference materials	17,499
	-----
TOTAL FY 87 COST	\$266,593
	*****

Subsequent fiscal years adjusted to reflect 6% inflation.

## FISCAL IMPACT

## HOUSE BILL 497

It is assumed for purposes of this fiscal note that information about factors relevant to a child custody award will be solicited through a custody investigator. This is the current procedure in Anchorage and Fairbanks when the court is faced with a custody dispute. This information is factual and often involves sensitive areas. Trained professionals can obtain relevant and accurate details and make appropriate recommendations, which frees judicial resources to determine any legal issues.

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In FY 85, approximately 1,200 divorces were filed in the third judicial district. It is estimated that there were minor children in 75% of these cases, resulting in 900 cases which would be subject to the provisions of this bill. Under current law, 507 cases were referred to the custody investigator (of which 82% arise from divorces or dissolutions), which are investigated by a professional staff of three. Under this bill, using FY 85 figures, 480 additional cases would be referred for custody investigation, which would require a minimum of two additional custody investigators (assuming that the chief custody investigator is expending a substantial portion of her time in supervisory and administrative work).

Filings in other portions of the state accounted for 574 divorce matters. Using Anchorage as a work standard, and assuming that 30% of cases are investigated or receive additional attention under current law, the bill would affect 260 additional cases, which would require one and one-half new investigator positions.



# NATIONAL ORGANIZATION FOR WOMEN

STATE OF ALASKA  
STATE PRESIDENT  
200 W. 34TH AVENUE, SUITE 844  
ANCHORAGE, ALASKA 99503  
(907) 562-3081, Ext. 844

## TESTIMONY

Lillian Ruedrich

HB 497 - Child Custody

HESS Committee

February 24, 1986

My name is Lillian Ruedrich. I am a member of the National Organization for Women. I am here today to present testimony for the statewide NOW organization.

Alaska NOW, with almost 1,000 members, is the largest membership organization working for women in this state.

As members of the State Legislative Alliance for Women, we participated in developing this bill on child custody. Much thought and research has gone into the writing of this bill, and we want you to know of our support for it and our commitment to seeing it passed.

Thank you for the opportunity to testify.

Alaska Women's Commission

TESTIMONY

Kathy Marshall

HB 497 - Child Custody

Health, Education, Social Services Committee

February 24, 1986

The Alaska Women's Commission is concerned about issues involving parents and children. The traditional family, as we know it, has changed dramatically. Only 11% of all families are headed by one wage earner, with a non working spouse who cares for the children. More and more children are faced with the emotional crisis of living in non-traditional families. Women comprise  $\frac{1}{2}$  of the work force in Alaska and those with children must leave them in the care of others. Over half the marriages in Alaska end in divorce and 25% of all families headed by women live in poverty. These facts have led to new challenges in determining custody arrangements and financial survival of families.

HB 497 addresses several of these issues. Section 1. of the bill amends the shoplifting law to provide the court the same option of assigning joint responsibility for the child's actions it currently does for acts of vandalism caused by minors. Under the shoplifting law the custodial parent has total legal responsibility for the child's actions even if they do not have physical custody of the child. For example, assume the mother has legal custody, but the father has the child for the summer months. Under present law, the mother must bear the financial responsibility for the summer acts of shoplifting even though the child was living with the father at the time. Since the child is influenced by both parents, both should be held accountable for the child's acts.

Section 2. of the bill addresses the issue of custody determinations. The Women's Commission is committed to the concept of custody arrangements being made in the best interest of the children as opposed to those of the parents. In order to insure this, we are requesting that the court solicit information about any understanding regarding custody reached between the parents as well as having the court document the reasons for the custody award. There are six factors listed in the law which are to be considered in disputed custody determinations:

- 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 age and capacity to form a preference;
- 4) the love and affection existing between the child and each parent;
- 5) the length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity;
- 6) the desire and ability of each parent to allow an open and loving frequent relationship between the child and the other parent;

Currently these factors are only looked at in disputed cases. We believe that parents often agree to custody arrangements without the best interest of the child having been considered. One party, for example, may coerce the other into an agreement by refusing to agree to a divorce unless certain custody arrangements are accepted. This bill would require the court to investigate the custody agreement even if it is not being contested.

Section 2. also separates custody arrangements from child support obligations. The purpose of the provision is to insure that children are guaranteed both financial support and access to both parents.

Our concern is to avoid the situation where access to a parent is dependent on the amount of child support paid. In other words, if a parent were to pay x amount of child support, the child would receive x amount of the time with that parent. The other side of the same issue is that the amount of time spent with the child might determine the amount of financial support received. In shared custody, for example, financial support might be denied because both parents have equal access to the child. The more needy spouse would then be unable to sufficiently provide for the child's financial needs. The end result is that the child is deprived economically.

Section 3. of the bill would require the court to place in the record the reasons shared custody has either been denied or awarded. Under the current law the reasons are only stated when shared custody is denied. Here again the purpose of the amendment is to insure the custody arrangement has been made with the best interest of the child in mind.

While this requirement for fuller judicial participation would require additional time and expense by the judiciary to be spent on cases, the high societal importance of protecting children's interests in custody determinations would certainly appear to make such expenditures highly justifiable.

Section 4. of the bill repeals the ability of the state registrar to require a different procedure be followed for the filing of a birth for a child born to unmarried parents than for a child born to married parents. The state registrar assured us that in the past nine years separate procedures have never been used nor was there a reason not to repeal the law.

# ALASKA WOMEN'S LOBBY

POST OFFICE BOX 10-1571, ANCHORAGE, ALASKA 99510

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February 24, 1986

Honorable Max Gruenberg  
Honorable Niilo Koponen  
House Health, Education and Social Services Committee

Mr. Chairman and Members of the Committee:

The Alaska Women's Lobby appreciates this opportunity to express its support for HB 497, a bill which recognizes and addresses the fact that the traditional family is in transition.

In Alaska, over one half of all marriages end in divorce. These changes affect the lives of many children. We support this legislation because it puts emphasis on the best interests of the child by requiring the court to actively solicit information regarding those interests in all custody situations.

The bill also requires the court to report more explicitly its findings in custody cases, and assures that when a joint custody agreement is awarded, the child will have frequent and continuing contact with each parent. It also makes clear that the financial status of each parent is a distinct issue from the custody arrangement by separating the custody agreement, determined in the best interests of the child, from the matter of child support.

Directing the court to consider only those factors which directly affect the child avoids custody decisions being based upon parental lifestyle or conduct unrelated to the parents relationship with the child.

We believe that these amendments to present law will benefit children faced with living in non-traditional families.

We also approve of the repeal of AS18.50.160 (f), an unused provision which allows the state registrar to require a different procedure for filing of a birth certificate depending upon the marital relationship of the parents. We support Section 1 of the bill which amends the shoplifting law to provide the same option of assigning joint parental responsibility for the child's actions, as it currently does for acts of vandalism caused by minors.

Thank you for your consideration.

Sherrie Goll, Lobbyist  
Alaska Womens Lobby

POSITION PAPER

HOUSE BILL NO. 497

For an Act entitled: "An Act relating to child's birth certificate, parental responsibilities for child's actions, and child custody; and providing for an effective date."

This bill amends AS 09.65.110(b) to provide that.....Either parents or both parents or the legal guardian or the person having legal custody of an unemancipated minor would be liable in a civil action when the minor shoplifts merchandise....

It should be noted that AS 34.50.020(b) specifically exempts a state agency from the acts of an unemancipated minor in its charge or custody. The department's fiscal note is based on that exemption and the following conditions.

The proposed changes to AS 25.20.600 would require the court to solicit information regarding the best interests of the child in custody situations. A previous court opinion, Granato V. Occhipinti, File no 3756, holds that the Division of Family and Youth Services is not responsible to perform these studies except in specific circumstances. The Division has no objection to the changes proposed in AS 25.20.600 with the understanding that the home studies are a responsibility of the court and not a responsibility of the Division of Family and Youth Services. The division in meeting its mandated child protection responsibilities, does not have the resources to perform these home studies.

Court officials have stated that these investigations will be a responsibility of the court system and are preparing a fiscal note to reflect the costs of these additional duties.

The Division supports repeal of AS 18.50.160(f).

RECOMMENDED: Michael L. Price  
Michael L. Price, Director  
Division of Family  
and Youth Services

DATE: Feb 11, 1986

APPROVED: John R. Pugh  
John R. Pugh, Commissioner  
Department of Health  
and Social Services

DATE: 2/14/86

# STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : \_\_\_\_\_

**REQUEST**

Bill/Resolution No. : HB 4  
 Title : An Act relating to child's birth certificate, parental responsibilities for child's actions, and child custody  
 Sponsor : \_\_\_\_\_  
 Requestor : \_\_\_\_\_  
 Date of Request : 2/11/86

**FISCAL DETAIL**

Agency Affected : Health and Social Services  
 BRU : Social Services  
Youth Services  
 Components : \_\_\_\_\_

**EXPENDITURES/REVENUES : (Thousands of Dollars)**

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>		0	0	0	0	0

<b>CAPITAL</b>		0	0	0	0	0
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<b>REVENUE</b>		0	0	0	0	0
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**FUNDING : (Thousands of Dollars)**

GENERAL FUND		0	0	0	0	0
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>		0	0	0	0	0

**POSITIONS :**

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

**ANALYSIS :** Attach a separate page if necessary

Prepared by : Michael L. Priddy, Director  
 Division : Family and Youth Services

Phone : 465-3170  
 Date : 2/11/86

Approved by Commissioner : John R. Pugh  
 Agency : Department of Health and Social Services

Date : 2/12/86

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

MEMORANDUM

TO: HOUSE HESS COMMITTEE MEMBERS  
FROM: NANCY BENNETT, COMMITTEE STAFF  
RE: TODAY'S AGENDA  
DATE: MARCH 12, 1986

WF HAVE TWO BILLS SCHEDULED FOR TODAY

HB 497 - RELATING TO CHILD CUSTODY, BIRTH CERTIFICATES

We have a draft committee substitute for this bill which makes the following changes:

1. deletes section 1 relating to minor shoplifting
2. Expands current section 1 (25.20.060) to specify how the court will review child custody arrangements.
3. Adds a new section 2 which allows the court to order visitation by grandparents and others and specifies that child support may be ordered under any custody arrangement.

There are also two Gruenebrg amendments in your file. One relates to priority of calendaring for child custody cases and the other would allow the court to order home studies by Health and Social Services and other agencies.

HB 641 - RELATING TO THE BOARD OF PHARMACY

This is our sunset review hearing. The audit recommends:

1. State registration of professionals with access to controlled substances duplicates DEA requirements and should be repealed.
2. The board should allow Occupational Licensing to perform administrative duties required by statute to improve documentation and file management.
3. AS 08.80.030(3), assigning the board authority to conduct investigations, is in conflict with statutory provisions requiring Occupational Licensing to perform these functions.
4. The Marijuana Therapeutic Research Program should be repealed because the board did not respond in a timely fashion.

HB 641 continues the board of Pharmacy, repeals the Marijuana Therapeutic Research Program and 08.80.030(3) and contains the generic drug language passed by this committee last year in HB 209.

We also have the following proposed amendments:

HOUSE  
COMMITTEE REPORT

(7)

Date referred: 1/22/86

FURTHER REFERRALS: JUDICIARY

DATE: March 12, 1986

The HEALTH, EDUCATION AND SOCIAL SERVICES Committee has considered HB 497

"An Act relating to a child's birth certificate, parental responsibilities for a child's actions, and child custody; and providing for an effective date."

and recommends:

- do pass
- do not pass
- do pass with attached amendment(s)
- no recommendation
- replace with CS HB 497 (HESS)  same title
- new title

and recommends do pass

further referral to the \_\_\_\_\_ Committee

- and attaches:
- letter of intent
  - first fiscal note
  - new fiscal note
  - zero fiscal note

SIGNING DO PASS:

[Signature]

W. E. Koprowski

Katie Hurley

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

SIGNING OTHER RECOMMENDATIONS:

[Signature] no rec

David W. Thompson NO REC

Clayce Hanley NO REC

Alvin L. Taylor NO REC

\_\_\_\_\_

\_\_\_\_\_

[Signature] co-Chair

[Signature] co-Chair